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SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

MARCH 12 - 19, 2019

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Supreme Court
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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 11641. March 12, 2019]

MARILU C. TURLA, *complainant, vs.* **ATTY. JOSE M. CARINGAL,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; BAR MATTER NO. 850 (RULES ON MANDATORY CONTINUING LEGAL EDUCATION FOR MEMBERS OF THE INTEGRATED BAR OF THE PHILIPPINES); MANDATORY CONTINUING LEGAL EDUCATION; MUST BE COMPLIED WITH TO KEEP MEMBERS' CAREER, ABREAST WITH LAW AND JURISPRUDENCE, TO MAINTAIN THE ETHICS OF THE PROFESSION AND TO ENHANCE THE STANDARDS OF THE PRACTICE OF LAW.—** The directive to comply with the MCLE requirements is essential for the legal profession, as enshrined in BM No. 850. The purpose is "to ensure that throughout [the IBP members'] career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law."

2. **ID.; ID.; ID.; ID.; CONSEQUENCES OF FAILURE TO COMPLY THEREWITH WITHIN THE COMPLIANCE PERIOD; CASE AT BAR.—** It is clear from [Section 12 (c) to (e) of the MCLE Implementing Rules], x x x that a non-compliant lawyer must pay a non-compliance fee of PhP 1,000.00 **and** still comply with the MCLE requirements within a sixty

(60)-day period, otherwise, he/she will be listed as a delinquent IBP member after investigation by the IBP-CBD and recommendation by the MCLE Committee. The non-compliance fee is a mere penalty imposed on the lawyer who fails to comply with the MCLE requirements within the compliance period and is in no way a grant of exemption from compliance to the lawyer who thus paid. It is worthy to note that Atty. Caringal could not be declared a delinquent member as the sixty (60)-day period for compliance did not commence to run. There was no showing that he was ever issued and that he had actually received a Non-Compliance Notice as required by the MCLE Implementing Rules. In addition, by March 11, 2011, he had already complied with the MCLE requirements for MCLE II and III compliance periods, albeit belatedly.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 1.01, CANON 1, RULE 10.01, CANON 10, CANON 17 AND CANON 18 THEREOF, VIOLATED WHEN A LAWYER INDICATED THAT HE WAS MCLE-EXEMPT IN THE PLEADINGS AND MOTIONS HE FILED, ALTHOUGH IN FACT HE WAS NOT.— Atty. Caringal is being held liable for knowingly and willfully misrepresenting in the pleadings he had signed and submitted to the courts that he was exempted from MCLE II and III. BM No. 1922, issued on June 3, 2008, required the practicing members of the IBP to indicate in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, as may be applicable, for the immediately preceding compliance period. It also explicitly stated that "[f]ailure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records." In a Resolution dated January 14, 2014, in BM No. 1922, the Court amended the rules for non-disclosure of current MCLE compliance/ exemption number in the pleadings. x x x Prior to its amendment on January 14, 2014, BM No. 1922 imposed a stiff penalty for a practicing lawyer's failure to indicate the details of his/her MCLE Compliance/Exemption in the pleadings filed before the courts or quasi-judicial bodies, *i.e.*, the dismissal of the case and expunction of the pleadings from the records, which, in effect, ultimately penalized said lawyer's clients, too. Atty. Caringal, in this case, not only failed to indicate the necessary MCLE details in his pleadings and motions, but purposely stated

therein the false information that he was exempted from MCLE II and III. As he had filed the subject pleadings in 2010, prior to the amendment of BM No. 1922 on January 14, 2014, he risked the dismissal of the cases and expunction of the pleadings and motions by the courts, to his clients' detriment. In fact, as Turla mentioned, the pleadings which Atty. Caringal filed before the RTC of Makati City, Branch 59, in Civil Case No. 09-269, were indeed expunged from the records per the Order dated March 4, 2013 because of the false MCLE information he indicated therein. Considering the foregoing, Atty. Caringal violated his sworn oath as a lawyer to "do no falsehood" as well as the following provisions of the Code of Professional Responsibility: CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES. Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. CANON 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. CANON 17 — A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM. CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE. When Atty. Caringal indicated that he was MCLE-exempt in the pleadings and motions he filed, although in fact he was not, he engaged in dishonest conduct which was also disrespectful of the courts. He undoubtedly placed his clients at risk, given that pleadings with such false information produce no legal effect and can result in the expunction of the same. Undeniably, he did not stay true to the cause of his clients and actually violated his duty to serve his clients with competence and diligence.

APPEARANCES OF COUNSEL

Joel Enrico N. Santos for complainant.

The Law Firm of Antonio B. Manzano & Associates for respondents.

D E C I S I O N

HERNANDO, *J.*:

This administrative case arose from a verified Complaint[1] dated October 8, 2010 filed by Marilu C. Turla (Turla) against the respondent, Atty. Jose Mangaser Caringal (Caringal), before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP). Turla is the petitioner in Special Proceedings No. Q09-64479 before the Regional Trial Court (RTC) of Quezon City, Branch 222, wherein Atty. Caringal is the counsel for the oppositor.

In July 2010, Turla discovered that Atty. Caringal[2] had not attended the required Mandatory Continuing Legal Education (MCLE) seminars for the Second (MCLE II) and Third (MCLE III) Compliance Periods, which were from April 15, 2004 to April 14, 2007 and April 25, 2007 to April 14, 2010 respectively. Turla confirmed such information when she received a Certification[3] dated August 2, 2010 issued by the MCLE Office. Yet, Atty. Caringal signed the pleadings and motions in several cases on which he indicated the following information after his signature and other personal details: "MCLE Exemption II & III Rec. No. 000659126 Pasig 8.10.10."[4] These pleadings and motions are particularly identified, *viz*.:

A. In Special Proceedings No. Q09-64479 (RTC Quezon City, Branch 222)

1) Motion to Remove Marilu Turla as Special Administratrix dated 2 September 2010;
2) Urgent *Ex Parte* Motion to Re-Schedule the Collection of Biological Sample dated 12 September 2010;

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[1] *Rollo*, pp. 2-6.

[2] Roll Number 25207 of IBP Pasay-Parañaque-Las Piñas-Muntinlupa Chapter.

[3] *Rollo*, p. 7.

[4] *Id.* at 191.

3) Motion to Issue Order Authorizing the National Bureau of Investigation to Examine the Birth Certificate of Petitioner dated 11 October 2010;

B. In Civil Case No. Q09-64850 (RTC Quezon City, Branch 221)

1) Comment On/Opposition to Motion to Expunge Pleadings dated 15 August 2010;

C. In Civil Case No. 09-269 (RTC Makati, Branch 59)

1) Motion for Reconsideration of Order dated 16 July 2010 dated 10 August 2010;[5]
2) Motion for Indefinite Suspension of Proceedings dated 17 July 2010;
3) Comment On/Opposition to Motion to Expunge Pleadings dated 15 August 2010;

D. In CA-G.R. SP. No. 115847 (Court of Appeals)

1) Compliance dated 24 September 2010.
2) Comment On/Opposition to Petition for *Certiorari* dated 26 September 2010;

E. In CA-G.R. SP. No. 117943 (Court of Appeals)

1) Petition for *Certiorari* dated 15 December 2010; and

F. In the Present Case

1) Answer to Complaint dated 13 November 2010.[6]

As it turned out, the receipt Atty. Caringal pertained to was not for his MCLE exemption, but for his payment of the MCLE non-compliance fee.[7]

Consequently, in her Complaint, Turla charged Atty. Caringal with (1) failure to take the MCLE seminars for the MCLE II and III compliance periods as required under Bar Matter (BM) No. 850; and (2) violation of his lawyer's oath not to do any

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[5] Typographical error in the Report and Recommendation of the Investigating Commissioner of the Commission on Bar Discipline.

[6] *Rollo*, p. 192.

[7] *Id.* at 4.

falsehood.[8] She further alleged that even if Atty. Caringal was already confronted with his deception, he continued to flaunt such duplicity since he still filed pleadings with the courts afterwards.

Turla contended that under Section 2, Rule 13[9] of BM No. 850, Atty. Caringal's non-compliance resulted in his being listed as a delinquent member. She likewise argued that Atty. Caringal violated Rule 139-A[10] of the Rules of Court.

Although Turla admitted that Atty. Caringal had already complied with the MCLE requirement as of March 10, 2011, she asserted that he had already committed a gross infraction, and hence should be sanctioned accordingly. All the same, Turla averred that she did not file the instant complaint in order to harass Atty. Caringal since Special Proceedings No. Q09-64479 had nothing to do with the latter's violation of the MCLE requirement.

Atty. Caringal, in his Answer,[11] countered that Turla's Complaint was a form of harassment since as the counsel for the oppositor in Special Proceedings No. Q09-64479, he had filed motions in the said case for Turla to undergo DNA testing to prove her filiation with the deceased over whose estate she was claiming rights.

In any case, Atty. Caringal averred that he had taken several units for the First (MCLE I) Compliance Period, which was

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[8] *Id.* at 2.

[9] SEC. 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.

[10] **Section 10.** *Effect of non-payment of dues*. — Subject to the provisions of Section 12 of this Rule, default in the payment of annual dues for six months shall warrant suspension of membership in the Integrated Bar, and default in such payment for one year shall be a ground for the removal of the name of the delinquent member from the Roll of Attorneys.

[11] *Rollo*, pp. 22-26.

from April 15, 2001 to April 14, 2004, but was unable to complete the required units. During the months of March and April 2008, he supposedly completed the required units for MCLE II at the Halls of the Philippine Senate in Pasay City. However, the MCLE supervising officer erroneously applied the said units to his MCLE I instead. Thereafter, on January 7, 2009, he paid an "exemption fee"[12] of PhP1,000.00[13] for his uncompleted MCLE I. Afterwards, on January 19, 2009, a Certificate of Compliance[14] was issued to Atty. Caringal for his completion of MCLE I.

Upon verification,[15] Atty. Caringal was informed that he still had some units left before the completion of his MCLE II. On August 10, 2010, Atty. Caringal paid the non-compliance fees for his MCLE II and III in the total amount of PhP2,000.00.[16]

In his Report,[17] the Investigating Commissioner[18] of the CBD held that Turla's motives are unimportant to a disbarment case since the issue is mainly to determine the fitness of a lawyer to continue acting as an officer of the court. He found that there was no question that Atty. Caringal failed to complete the MCLE requirements for the MCLE II and III compliance periods, but noted that Atty. Caringal paid the non-compliance fee of PhP2,000.00, evidenced by Official Receipt No. 0659126, pursuant to Rule 13, Section 1 of BM No. 850, which then served as his penalty for said infraction.

The Investigating Commissioner added that according to Rule 13, Section 2 of BM No. 850 (on listing as a delinquent member), the sixty (60)-day period for compliance only begins to run once notice of non-compliance is sent. Yet, Turla did not allege

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[12] This is actually a non-compliance fee.

[13] *Rollo*, p. 16.

[14] *Id.* at 17; MCLE Compliance No. 1-0016256.

[15] *Id.* at 18.

[16] *Id.* at 19.

[17] *Id.* at 190-201.

[18] Investigating Commissioner Leland R. Villadolid, Jr.

the date of receipt by Atty. Caringal of such notice, nor did she present any certification from the MCLE Office attesting to Atty. Caringal's non-compliance even after due notice. In any case, he noted that Atty. Caringal had already complied with the MCLE requirements as of March 11, 2011, thereby making the issue of his supposed status as a delinquent member moot.

As to Turla's contention that Atty. Caringal should still be penalized because he had already committed the infraction, the Investigating Commissioner stated that "[c]omplainant only proved that Respondent failed to comply with the MCLE requirements within the Second and Third Compliance Periods. Respondent was already penalized for the same pursuant to B.M. 850, Rule 13, Section 1."[19]

Still, the Investigating Commissioner held that Atty. Caringal breached his oath to do no falsehood by stating that he was exempted from complying with the MCLE requirements when what he really paid for was the non-compliance fee and not any exemption fee. The Investigating Commissioner reasoned that:

> Respondent should have known that he could not merely pay to be exempted from the MCLE Requirement. *First*, as a lawyer he is obligated to keep abreast of legal developments. *Second*, Respondent's experience in the completion of MCLE for the First Compliance should have put him on notice that he had to complete thirty-six (36) hours per compliance period. Respondent narrated that after attending an MCLE course for the Second Compliance Period, the officer-in-charge applied the subjects to his uncompleted units [for] the First Compliance Period. *Last*, Complainant had raised the matter of MCLE in several pleadings. This should have forced Respondent to check the MCLE Requirements as provided in B.M. No. 850.[20]

The Investigating Commissioner likewise noted that Atty. Caringal's failure to report his MCLE information placed the pleadings he signed on behalf of his clients at risk of expunction. Notwithstanding this, Atty. Caringal's liability is mitigated since

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[19] *Rollo*, p. 198.

[20] *Id.* at 200.

he belatedly complied with the MCLE requirements. Even so, whether or not Atty. Caringal intended to mislead the court, he still had a duty to faithfully report his MCLE status but he failed to do so.

Ultimately, the Investigating Commissioner made the following findings and recommendations:

1. Respondent failed to comply with the MCLE Requirements in a timely manner;
2. Respondent falsely asserted he had an exemption from the MCLE requirement; and
3. Respondent be reprimanded with a stern warning that repetition of same or similar acts or conduct shall be dealt with more severely.[21]

In a Resolution[22] dated April 18, 2015, the IBP Board of Governors resolved to adopt and approve the foregoing Report and Recommendation of the Investigating Commissioner with modification that Atty. Caringal be suspended from the practice of law for three years due to his failure to comply with the MCLE requirements and because of his misrepresentation that he had an MCLE exemption.

Atty. Caringal asked for a reconsideration but was denied in a Resolution[23] dated August 26, 2016.

Discontented, Atty. Caringal filed a Petition for Review by *Certiorari*[24] before the Court.

In its Resolution[25] dated August 1, 2017, the Court referred the case to the Office of the Bar Confidant (OBC) for evaluation, report, and recommendation.

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[21] *Id.* at 201.

[22] *Id.* at 189; CBD Case No. 10-2772.

[23] *Id.* at 236-237.

[24] *Id.* at 282-298A.

[25] *Id.* at 313.

The OBC, in its Report and Recommendation[26] dated October 29, 2018, determined that Atty. Caringal's Petition for Review was a mere rehash of the matters already passed upon by the Investigating Commissioner in his Report. It highlighted that Atty. Caringal wrongfully stated that he was exempt from complying with the MCLE requirements in 11 different pleadings. The significant number of pleadings which he signed indicating such wrong details completely negated any defense of good faith since it demonstrated negligence in the performance of his duties towards his client and the courts. Hence, the OBC agreed with the recommendation of the IBP Board of Governors to impose a three-year suspension on Atty. Caringal from the practice of law.

Atty. Caringal's Petition for Review is without merit.

The directive to comply with the MCLE requirements is essential for the legal profession, as enshrined in BM No. 850. The purpose is "to ensure that throughout [the IBP members'] career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law."[27]

Turla was able to secure a Certification dated August 2, 2010 from the MCLE Office that Atty. Caringal, as of said date, had not yet complied with the requirements for MCLE II and III compliance periods. Despite being confronted with such Certification by Turla, Atty. Caringal continued to sign and submit pleadings and motions before various courts in several cases, indicating therein that he was "exempt" from the MCLE requirements and referring to the Official Receipt for his payment of the non-compliance fees.

In case a lawyer fails to comply with the MCLE requirements within the compliance period, Rule 13 of BM No. 850 lays down the following consequences:

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[26] *Id.* at 323-331; Penned by Atty. Maria Celina S. Carungay-Sevillano and reviewed by Atty. Rosita M.R. Nacional, noted by Atty. Ma. Cristina B. Layusa, Deputy Clerk of Court and Bar Confidant.

[27] Bar Matter No. 850, Rule I, Section 1, October 2, 2001.

SEC. 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.

SEC. 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.

Section 12(c) to (e) of the MCLE Implementing Rules further provide as follows:

SEC. 12. *Compliance Procedures*

x x x x x x x x x

c. If a lawyer fails to comply with any requirement under the Rules, the Committee will send him/her a notice of non-compliance on any of the following deficiencies:

    1) Failure to complete the education requirement within the compliance period;

    2) Failure to provide attestation of compliance or exemption;

    3) Failure to provide satisfactory evidence of compliance (including evidence of exempt status) within the prescribed period;

    4) Failure to satisfy the education requirement and furnish evidence of such compliance within sixty (60) days from receipt of a non-compliance notice; and

    5) Any other act or mission analogous to any of the foregoing or intended to circumvent or evade compliance with the MCLE requirements.

d. A member failing to comply with the continuing legal education requirement will receive a Non-Compliance Notice stating his specific deficiency and will be given sixty (60) days from the receipt of the notification to explain the deficiency or otherwise show compliance with the requirements. Such notice shall be written in capital letters as follows:

YOUR FAILURE TO PROVIDE ADEQUATE JUSTIFICATION FOR NON-COMPLIANCE OR PROOF OF COMPLIANCE WITH THE MCLE REQUIREMENT WITHIN 60 DAYS FROM RECEIPT OF THIS NOTICE, SHALL BE A CAUSE FOR LISTING YOU AS A DELINQUENT MEMBER AND SHALL NOT BE PERMITTED TO PRACTICE LAW UNTIL SUCH TIME AS ADEQUATE PROOF OF COMPLIANCE IS RECEIVED BY THE MCLE COMMITTEE.

The member may use the 60-day period to complete his compliance with the MCLE requirement. Credit units earned during this period may only be counted toward compliance with the prior compliance period requirement unless units in excess of the requirement are earned, in which case the excess may be counted toward meeting the current compliance period requirement.

e. A member who is in non-compliance at the end of the compliance period shall pay a non-compliance fee of ₱1,000.00 and shall be listed as a delinquent member of the IBP by the IBP Board of Governors upon the recommendation of the MCLE Committee, in which case Rule 139-B of the Rules of Court shall apply.

It is clear from the aforequoted provisions, which are simply and clearly worded, that a non-compliant lawyer must pay a non-compliance fee of PhP 1,000.00 **and** still comply with the MCLE requirements within a sixty (60)-day period, otherwise, he/she will be listed as a delinquent IBP member after investigation by the IBP-CBD and recommendation by the MCLE Committee. The non-compliance fee is a mere penalty imposed on the lawyer who fails to comply with the MCLE requirements within the compliance period and is in no way a grant of exemption from compliance to the lawyer who thus paid.

It is worthy to note that Atty. Caringal could not be declared a delinquent member as the sixty (60)-day period for compliance did not commence to run. There was no showing that he was ever issued and that he had actually received a Non-Compliance Notice as required by the MCLE Implementing Rules. In addition,

by March 11, 2011,[28] he had already complied with the MCLE requirements for MCLE II and III compliance periods, albeit belatedly.

Nevertheless, Atty. Caringal is being held liable for knowingly and willfully misrepresenting in the pleadings he had signed and submitted to the courts that he was exempted from MCLE II and III.

BM No. 1922, issued on June 3, 2008, required the practicing members of the IBP to indicate in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, as may be applicable, for the immediately preceding compliance period. It also explicitly stated that "[f]ailure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records." In a Resolution dated January 14, 2014, in BM No. 1922, the Court amended the rules for non-disclosure of current MCLE compliance/exemption number in the pleadings, to wit:

> (a) AMEND the June 3, 2008 resolution by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "Failure to disclose the required information would subject, the counsel to appropriate penalty and disciplinary action"; and
>
> (b) PRESCRIBE the following rules for non-disclosure of current MCLE compliance/exemption number in the pleadings:
>
> (i) The lawyer shall be imposed a fine of ₱2,000.00 for the first offense, ₱3,000.00 for the second offense and ₱4,000.00 for the third offense;
>
> (ii) In addition to the fine, counsel may be listed as a delinquent member of the Bar pursuant to Section 2, Rule 13 of Bar Matter No. 850 and its implementing rules and regulations; and
>
> (iii) The non-compliant lawyer shall be discharged from the case and the client/s shall be allowed to secure the services of a

[28] As found by the Investigating Commissioner. Complainant though alleged that the date is March 10, 2011.

> new counsel with the concomitant right to demand the return of fees already paid to the non-compliant lawyer.

Prior to its amendment on January 14, 2014, BM No. 1922 imposed a stiff penalty for a practicing lawyer's failure to indicate the details of his/her MCLE Compliance/Exemption in the pleadings filed before the courts or quasi-judicial bodies, *i.e.*, the dismissal of the case and expunction of the pleadings from the records, which, in effect, ultimately penalized said lawyer's clients, too. Atty. Caringal, in this case, not only failed to indicate the necessary MCLE details in his pleadings and motions, but purposely stated therein the false information that he was exempted from MCLE II and III. As he had filed the subject pleadings in 2010, prior to the amendment of BM No. 1922 on January 14, 2014, he risked the dismissal of the cases and expunction of the pleadings and motions by the courts, to his clients' detriment. In fact, as Turla mentioned, the pleadings which Atty. Caringal filed before the RTC of Makati City, Branch 59, in Civil Case No. 09-269, were indeed expunged from the records per the Order[29] dated March 4, 2013 because of the false MCLE information he indicated therein.

Considering the foregoing, Atty. Caringal violated his sworn oath as a lawyer to "do no falsehood"[30] as well as the following provisions of the Code of Professional Responsibility:

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 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.

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[29] *Rollo*, pp. 223-224.

[30] Lawyer's Oath.

CANON 17 — A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

When Atty. Caringal indicated that he was MCLE-exempt in the pleadings and motions he filed, although in fact he was not, he engaged in dishonest conduct which was also disrespectful of the courts. He undoubtedly placed his clients at risk, given that pleadings with such false information produce no legal effect[31] and can result in the expunction of the same. Undeniably, he did not stay true to the cause of his clients and actually violated his duty to serve his clients with competence and diligence.

The Court had previously pronounced that "[t]he appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts."[32] Considering Atty. Caringal's willful statement of false MCLE details in his pleadings to the prejudice of his clients, aggravated, by his lack of diligence in fully and promptly complying with the MCLE requirements within the compliance period, and his seemingly defiant and unremorseful attitude, the Court deems it apt to adopt the recommendations of both the IBP Board of Governors and the OBC, and imposes upon Atty. Caringal the penalty of suspension from the practice of law for three years.

WHEREFORE, the instant petition is **DENIED**. Atty. Jose Mangaser Caringal is **SUSPENDED** from the practice of law for three (3) years.

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Jose M. Caringal as an attorney; to the Integrated Bar of the

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[31] *Mapalad, Sr. v. Atty. Echanez*, A.C. No. 10911, June 6, 2017, 826 SCRA 57, 64 citing *Intestate Estate of Jose Uy v. Atty. Maghari III*, 768 Phil. 10, 35 (2015).

[32] *Saunders v. Atty. Pagano-Calde*, 766 Phil. 341, 350 (2015).

Philippines; and to the Office of the Court Administrator for dissemination to all courts throughout the country for their guidance and information.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Carandang, and *Lazaro-Javier, JJ.*, concur.

EN BANC

[A.C. No. 12401. March 12, 2019]

NELITA S. SALAZAR, *complainant, vs.* **ATTY. FELINO R. QUIAMBAO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CONDITIONS REQUIRED FOR REMAINING A MEMBER OF GOOD STANDING OF THE BAR AND FOR ENJOYING THE PRIVILEGE TO PRACTICE LAW.— Adherence to rigid standards of mental fitness, maintenance of the highest degree of morality, faithful compliance with the rules of the legal profession, and regular payment of membership fees to the IBP are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law. Beyond question, any breach by a lawyer of any of these conditions makes him unworthy of the trust and confidence which the courts and clients must repose in him, and renders him unfit to continue in the exercise of his professional privilege. Both disbarment and suspension demonstrably operationalize this intent to protect the courts and the public from members of the bar who have become unfit and unworthy to be part of the esteemed and noble profession.

2. REMEDIAL LAW; EVIDENCE; SUBSTANTIAL EVIDENCE; PROPER EVIDENTIARY THRESHOLD IN DISCIPLINARY OR DISBARMENT CASES.— Recent jurisprudence states that the proper evidentiary threshold in disciplinary or disbarment cases is substantial evidence. It is defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." In *Billanes v. Latido*, the Court explained: [T]he evidentiary threshold of substantial evidence - as opposed to preponderance of evidence - is more in keeping with the primordial purpose of and essential considerations attending [to these types] of cases. As case law elucidates, "[d]isciplinary proceedings against lawyers *are sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor."

3. LEGAL ETHICS; ATTORNEYS; LAWYER'S OATH; REQUIRES EVERY LAWYER TO SERVE HIS CLIENT WITH COMPETENCE, AND TO ATTEND TO HIS CLIENT'S CAUSE WITH DILIGENCE, CARE AND DEVOTION; CASE AT BAR.— The Lawyer's Oath requires every lawyer to "delay no man for money or malice" and to act "according to the best of [his or her] knowledge and discretion, with all good fidelity as well to the courts as to [his or her] clients." A lawyer is duty-bound to serve his client with competence, and to attend to his client's cause with diligence, care and devotion. This is because a lawyer owes fidelity to his client's cause and must always be mindful of the trust and

confidence reposed on him. x x x Respondent was given an opportunity to controvert the allegations against him. However, he neither filed his answer nor attended the mandatory conference of the IBP Commission. Verily, respondent's acts and omissions violated the Lawyer's Oath because he delayed the case of his client for a period of eight (8) years without any justifiable reason.

4. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 16, RULES 16.01, 16.02 AND 16.03 REQUIRE THAT A LAWYER MUST DULY ACCOUNT ALL THE MONEYS AND PROPERTIES OF HIS OR HER CLIENT; CASE AT BAR.— Canon 16, Rules 16.01, 16.02, and 16.03 of the Code require that a lawyer must duly account all the moneys and properties of his client. x x x He also violated Canon 16, Rules 16.01, 16.02, and 16.03 of the Code because he received a substantial amount of money from his client, in the total sum of ₱170,000.00, to facilitate the transfer of the subject properties. However, he failed to comply with his obligation. Further, he could not explain where the money went. Manifestly, respondent utterly failed to account and safe-keep the hard-earned money of his client.

5. ID.; ID.; ID.; CANON 17, AND CANON 18, RULE 18.03 REQUIRE THAT A LAWYER EXERCISE FIDELITY, COMPETENCE AND DILIGENCE WHEN DEALING WITH HIS OR HER CLIENT; CASE AT BAR.— Canons 17, 18 and Rule 18.03 of the Code require that a lawyer exercise fidelity, competence and diligence when dealing with his or her client. x x x Respondent's acts and omissions further violated Canons 17 and 18, and Rule 18.03 of the Code because he failed to observe his duty to his client. Complainant, Diaz, and Urisantos engaged the services of respondent to facilitate, notarize, and process the sale and transfer of the titles of the subject properties to complainant. They even entrusted the important relevant documents to respondent. However, after a long period of time, respondent failed to comply with his duty because the titles were still under the name of the previous owners. When complainant sought the return of the important documents and the payments tendered, respondent simply ignored her pleas. These acts and omissions show respondent's wanton disregard and indifference to his client's cause.

6. ID.; ID.; A LAWYER OWES IT TO HIMSELF AND TO THE ENTIRE LEGAL PROFESSION TO EXHIBIT DUE RESPECT TOWARDS THE INTEGRATED BAR OF THE PHILIPPINES AS THE NATIONAL ORGANIZATION OF ALL MEMBERS OF THE LEGAL PROFESSION; CASE AT BAR.— [T]he Court finds that respondent disobeyed the orders of the IBP Commission. Even though he was duly notified, respondent failed to answer the complaint filed against him with the IBP Commission. He also did not attend the mandatory conference held on June 29, 2015 despite due notice. Respondent was even given a period of fifteen (15) days to file his position paper but he did not comply. Respondent's failure to follow the orders of the IBP without justifiable reason manifests his disrespect of judicial authorities. It must be underscored that respondent owed it to himself and to the entire Legal Profession of the Philippines to exhibit due respect towards the IBP as the national organization of all the members of the Legal Profession. His unexplained disregard of the orders issued to him by the IBP to answer comment and to appear in the administrative investigation of his misconduct revealed his irresponsibility as well as his disrespect for the IBP and its proceedings. He thereby exposed a character flaw that should not tarnish the nobility of the Legal Profession. He should always bear in mind that his being a lawyer demanded that he conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others. He should never forget that his duty to serve his clients with unwavering loyalty and diligence carried with it the corresponding responsibilities towards the Court, to the Bar, and to the public in general. For his disobedience of the orders of the IBP Commission, respondent must pay a fine of ₱10,000.00.

APPEARANCES OF COUNSEL

Leoncio Superio for complainant.

D E C I S I O N

GESMUNDO, *J.*:

This is a Complaint-Affidavit[1] filed by Nelita S. Salazar (*complainant*) against Atty. Felino R. Quiambao[2] before the Integrated Bar of the Philippines (*IBP*) Commission on Bar Discipline (*Commission*) for violation of the Lawyer's Oath and his professional duty as a notary public.

According to complainant, sometime in 2005, she entered into contracts of sale involving two (2) parcels of land located at Sitio Ulong Tubig, Brgy. Mabuhay, Carmona, Cavite. The subject lands were covered by Transfer Certificate of Title (*TCT*) CLOA Title No. 436, previously owned by Lorenzo Diaz (*Diaz*); and TCT CLOA Title No. 444, previously owned by Domingo Urisantos, as represented by his attorney-in-fact, Danilo Urisantos (*Urisantos*).

The sale of the subject lands was witnessed and assisted by respondent, who represented himself as a notary public. The sale was executed in respondent's law office located at Brgy. 2, Poblacion, San Jose St., Carmona, Cavite. Complainant, Diaz and Urisantos agreed to engage the services of respondent to facilitate, notarize, process the sale and transfer of titles of the subject properties to complainant. Thus, they entrusted the owner's duplicate copies of the two (2) titles, tax declarations, deeds of absolute sale, and other relevant documents to respondent.

On July 6[3] and 13, 2006, complainant personally gave respondent the amount of ₱170,000.00 as payment for the

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[1] *Rollo*, pp. 2-5.

[2] Also referred to as "Atty. Felino R. Quiambao III" which appears in Complaint-Affidavit (*id*. at 2-5); Acknowledgment Receipt dated July 5, 2006 (*id*. at 6 and 80); Acknowledgment Receipt dated July 13, 2006 (*id.* at 7 and 81); Letter dated July 7, 2014 (*id*. at 8-9 and 75-76); Letter dated July 22, 2014 (*id*. at 19-20 and 77-78); and *Katibayan Upang Makadulog sa Hukuman*, (*id*. at 79-80).

[3] However, in *rollo*, p. 6, it stated that the date of the first payment is July 5, 2006.

processing, transfer of titles, and other related fees, including the professional fees of respondent. The payments were evidenced by Receipts[4] signed by respondent.

According to complainant, on the same day of July 6, 2006, Urisantos also gave respondent the amount of ₱271,748.35 for payment of the capital gains tax of the properties so that these can be transferred under complainant's name.

After eight (8) years, complainant had not received any document processed by respondent. From the time that the original documents and payments were tendered to respondent, the latter had not performed any legal service for complainant.

Complainant attempted to follow-up the transfer of her lands but respondent was always out of reach. She went to respondent's office several times but all efforts were futile. On July 7, 2014, complainant sent a Demand Letter[5] to respondent reminding him of his legal undertaking but it was unheeded.

Desperate and disappointed with respondent, complainant went to the Registry of Deeds of Cavite to determine whether the titles of the subject properties were already transferred to her name. To her dismay, complainant discovered that the subject properties were still registered with the previous owners.[6]

On July 22, 2014, complainant sent respondent a Final Demand Letter[7] to surrender all the documents and to return the payments made. However, in spite of several opportunities given to respondent, he still failed to comply. On September 1, 2014, complainant also sought assistance from the IBP of Imus, Cavite over the conduct of respondent.

Hence, this instant complaint for disbarment alleging that respondent committed malicious breach of his professional duty to notarize the two contracts of sale within a reasonable period

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[4] *Id*. at 6-7.

[5] *Id*. at 8-9.

[6] *Id*. at 11-18.

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

of time; and inexcusable negligence to register the sales over a period of eight (8) years without any justifiable reason.

In spite of the due notice given by the IBP Commission, however, respondent neither filed his answer nor his position paper. He also did not attend the mandatory conference before the IBP Commission. Only complainant attended the said conference and filed her position paper alleging that respondent violated the Lawyer's Oath, and Canons 16, 17, and 18 of the Code of Professional Responsibility (*Code*).

Report and Recommendation

In its Report and Recommendation[8] dated March 24, 2017, the IBP Commission found that respondent indeed received several payments from complainant for the transfer of the subject properties but the former failed to comply with his terms of legal services engagement, violating his sworn duties as a lawyer. It also found that complainant sent respondent several demand letters but these were unheeded; complainant even sought assistance from the IBP of Imus, Cavite and the Punong Barangay of Carmona, Cavite to reach out to respondent, but to no avail. The IBP Commission found that these acts violated Canons 16, 17, and 18 of the Code and recommended that respondent be suspended from the practice of law for three (3) years.

In its Resolution[9] dated May 3, 2018, the IBP Board of Governors (*Board*) adopted with modification the penalty recommended against respondent of suspension from the practice of law for a period of (3) years; to return the amount of ₱170,000.00 to complainant; and to pay a fine of ₱10,000.00 for disobeying the order of the IBP Commission.

The Court's Ruling

The Court adopts the findings of the IBP Commission and the recommendations of the IBP Board.

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[8] *Id*. at 87-92.

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

Adherence to rigid standards of mental fitness, maintenance of the highest degree of morality, faithful compliance with the rules of the legal profession, and regular payment of membership fees to the IBP are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law. Beyond question, any breach by a lawyer of any of these conditions makes him unworthy of the trust and confidence which the courts and clients must repose in him, and renders him unfit to continue in the exercise of his professional privilege. Both disbarment and suspension demonstrably operationalize this intent to protect the courts and the public from members of the bar who have become unfit and unworthy to be part of the esteemed and noble profession.[10]

Recent jurisprudence states that the proper evidentiary threshold in disciplinary or disbarment cases is substantial evidence.[11] It is defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[12] In *Billanes v. Latido*,[13] the Court explained:

> [T]he evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending [to these types] of cases. As case law elucidates, "[d]isciplinary proceedings against lawyers *are sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the

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[10] *Goopio v. Atty. Maglalang*, A.C. No. 10555, July 31, 2018.

[11] *Canillo v. Atty. Angeles*, A.C. Nos. 9899, 9900, 9903-9905, 9901 & 9902, September 4, 2018; *Billanes v. Atty. Latido*, A.C. No. 12066, August 28, 2018; *Dimayuga v. Atty. Rubia*, A.C. No. 8854, July 3, 2018; *Zarcilla, et al. v. Atty. Quesada, Jr.*, A.C. No. 7186, March 13, 2018.

[12] *Peña v. Atty. Paterno*, 710 Phil. 582, 593 (2013).

[13] *Supra* note 11.

privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor."[14]

The Lawyer's Oath requires every lawyer to "delay no man for money or malice" and to act "according to the best of [his or her] know edge and discretion, with all good fidelity as well to the courts as to [his or her] clients."[15] A lawyer is duty-bound to serve his client with competence, and to attend to his client's cause with diligence, care and devotion. This is because a lawyer owes fidelity to his client's cause and must always be mindful of the trust and confidence reposed on him.[16]

Canon 16, Rules 16.01, 16.02, and 16.03 of the Code require that a lawyer must duly account all the moneys and properties of his client, to wit:

CANON 16 – A lawyer shall hold in trust all moneys and properties of his client that may come into his profession.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 – A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

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[14] *Id*., citing *Reyes v. Atty. Nieva*, 794 Phil. 360, 379-380 (2016).

[15] See Lawyer's Oath.

[16] See *Vda. de Dominguez v. Atty. Agleron, Sr.*, 728 Phil. 541, 544 (2014).

On the other hand, Canons 17, 18 and Rule 18.03 of the Code require that a lawyer exercise fidelity, competence and diligence when dealing with his or her client, *viz*.:

> CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.
>
> CANON 18 – A lawyer shall serve his client with competence and diligence.
>
> Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Respondent violated the Lawyer's Oath and the Code

In this case, respondent received the total amount of ₱170,000.00 from complainant for the processing, transfer of titles, and other related fees, including his professional fees, for the subject properties. Evidently, complainant gave respondent such amount to facilitate the transfer of titles of the subject properties under her name. Complainant, Diaz and Urisantos even gave respondent the owner's duplicate copies of the TCT of the two (2) subject properties, tax declarations, and duly signed deeds of absolute sale for the transfer of the said properties.

Since payments were tendered by complainant on July 6 and 13, 2006, until filing her instant complaint, or after a period of eight (8) years, respondent was remiss in his obligation of transferring the titles of the subject properties to complainant. It was not even confirmed whether respondent actually notarized the deeds of absolute sale for the subject properties. Complainant went to respondent's office several times to follow- up the transfer of the titles but the latter was always unavailable.

Due to respondent's inaction, on July 2, 2014, complainant went to the Registry of Deeds of Cavite to verify the status of the lands only to discover that the subject properties remained under the name of the previous owners. Demand letters dated

July 7, 2014 and July 22, 2014, respectively, were sent to respondent requiring the return of the original documents, as well as the amount of ₱170,000.00, but these were unheeded. Complainant even sought the assistance of the IBP of Imus, Cavite, where respondent is a member, and the Office of the Punong Barangay of the Municipality of Carmona, Cavite, but to no avail.

Respondent was given an opportunity to controvert the allegations against him. However, he neither filed his answer nor attended the mandatory conference of the IBP Commission. Verily, respondent's acts and omissions violated the Lawyer's Oath because he delayed the case of his client for a period of eight (8) years without any justifiable reason.

He also violated Canon 16, Rules 16.01, 16.02, and 16.03 of the Code because he received a substantial amount of money from his client, in the total sum of ₱170,000.00, to facilitate the transfer of the subject properties. However, he failed to comply with his obligation. Further, he could not explain where the money went. Manifestly, respondent utterly failed to account and safe-keep the hard-earned money of his client.

Respondent's acts and omissions further violated Canons 17 and 18, and Rule 18.03 of the Code because he failed to observe his duty to his client. Complainant, Diaz, and Urisantos engaged the services of respondent to facilitate, notarize, and process the sale and transfer of the titles of the subject properties to complainant. They even entrusted the important relevant documents to respondent. However, after a long period of time, respondent failed to comply with his duty because the titles were still under the name of the previous owners. When complainant sought the return of the important documents and the payments tendered, respondent simply ignored her pleas. These acts and omissions show respondent's wanton disregard and indifference to his client's cause.

Proper penalty

The Court finds that complainant established with substantial evidence that respondent: (1) was engaged by complainant, Diaz

and Urisantos to facilitate the transfer of the titles of the subject properties to complainant, which obligation, after eight years, respondent still failed to comply with; (2) respondent received the amount of ₱170,000.00 from complainant for the processing, transfer of title, and other related fees, including his professional fees, but he reneged on his obligation and failed to return the same to complainant; and (3) he received the owner's duplicate copy of the two titles, tax declarations, deeds of absolute sale, and other relevant documents from complainant but failed to process the title or return such documents to his client. As discussed above, these acts and omissions violate the Lawyer's Oath, Canons 16, 17, 18, and Rules 16.01, 16.02, 16.03, and 18.03 of the Code.

In *United Coconut Planters Bank v. Atty. Noel*,[17] the lawyer therein violated Canons 17, 18, and Rule 18.03 of the Code because he failed to file several pleadings and a motion for his client, resulting to an adverse judgment for his client. By committing inexcusable negligence, the Court suspended him for three (3) years from the practice of law.

In *Ramiscal, et al. v. Atty. Orro*,[18] the lawyer violated Canons 17, 18, and Rules 18.03, and 18.04 of the Code because he received ₱7,000.00 from his clients to file a motion for reconsideration but he did not file said motion. He also failed to regularly update his clients on the status of the case, particularly on the adverse result, thereby leaving them in the dark on the proceedings that were gradually turning against their interest. The Court suspended the lawyer therein for two (2) years from the practice of law.

Similarly, in *Pitcher v. Atty. Gagate*,[19] the lawyer violated Canons 17, 18, 19, and Rules 18.03, and 19.01 of the Code because he abandoned his clients during the pendency of the grave coercion case against them even though he received

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[17] A.C. No. 3951, June 19, 2018.

[18] 781 Phil. 318 (2016).

[19] 719 Phil. 82 (2013).

₱150,000.00 as his acceptance fee. For committing gross negligence, the Court suspended the lawyer therein for a period of three (3) years from the practice of law.

Verily, for failing to comply with his obligations and his failure to return the money and important documents of his client, respondent is meted the penalty of suspension of three (3) years from the practice of law with a stern warning that repetition of a similar violation will be dealt with even more severely.

Further, respondent is ordered to return the amount of ₱170,000.00 to complainant, which he received in his professional capacity for transfer of the titles, as well as the relevant documents given to him by his client. Disciplinary proceedings revolve around the determination of the respondent-lawyer's administrative liability, which must include those intrinsically linked to his professional engagement.[20] Respondent must return the aforesaid amount to complainant with interest at the legal rate of twelve percent (12%) *per annum* from their respective date of receipt until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full payment.[21]

Disobedience to the IBP

Finally, the Court finds that respondent disobeyed the orders of the IBP Commission. Even though he was duly notified, respondent failed to answer the complaint filed against him with the IBP Commission. He also did not attend the mandatory conference held on June 29, 2015 despite due notice. Respondent was even given a period of fifteen (15) days to file his position paper but he did not comply. Respondent's failure to follow the orders of the IBP without justifiable reason manifests his disrespect of judicial authorities.[22]

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[20] *Sison, Jr. v. Atty. Camacho*, 777 Phil. 1, 15 (2016).

[21] See *Chua v. Atty. Jimenez*, 801 Phil. 1, 12 (2016).

[22] *Ojales v. Atty. Villahermosa, III*, A.C. No. 10243, October 2, 2017, 841 SCRA 292, 299.

It must be underscored that respondent owed it to himself and to the entire Legal Profession of the Philippines to exhibit due respect towards the IBP as the national organization of all the members of the Legal Profession. His unexplained disregard of the orders issued to him by the IBP to answer comment and to appear in the administrative investigation of his misconduct revealed his irresponsibility as well as his disrespect for the IBP and its proceedings. He thereby exposed a character flaw that should not tarnish the nobility of the Legal Profession. He should always bear in mind that his being a lawyer demanded that he conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others. He should never forget that his duty to serve his clients with unwavering loyalty and diligence carried with it the corresponding responsibilities towards the Court, to the Bar, and to the public in general.[23]

For his disobedience of the orders of the IBP Commission, respondent must pay a fine of ₱10,000.00.

WHEREFORE, Atty. Felino R. Quiambao is **GUILTY** of violating Canons 16, 17, 18, and Rules 16.01, 16.02, 16.03, and 18.03 of the Code of Professional Responsibility and the Lawyer's Oath. He is hereby **SUSPENDED** from the practice of law for three (3) years with **STERN WARNING** that the repetition of a similar violation will be dealt with even more severely. He is **DIRECTED** to report the date of his receipt of this Decision to enable this Court to determine when his suspension shall take effect.

Further, Atty. Felino R. Quiambao is hereby **ORDERED** to return to complainant Nelita S. Salazar the amount of ₱170,000.00, with interest of twelve percent (12%) *per annum* reckoned from the respective date of receipt until June 30, 2013, and six percent (6%) *per annum* from July 1, 2013 until full payment, intended as payment for the processing, transfer of title, and other related fees, including his professional fees, as well as all relevant legal documents of the subject properties, within ninety (90) days from the finality of this Decision.

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[23] *Ramiscal, et al. v. Atty. Orro*, *supra* note 18, at 324.

Atty. Felino R. Quiambao is also hereby meted a **FINE** in the amount of ₱10,000.00 for disobedience to the orders of the Integrated Bar of the Philippines – Commission on Bar Discipline. Failure to comply with the foregoing directives will warrant the imposition of a more severe penalty.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into Atty. Felino R. Quiambao's records. Copies shall likewise be furnished to 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, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Reyes, J. Jr., Hernando, Carandang, and *Lazaro-Javier, JJ.*, concur.

EN BANC

[G.R. No. 186432. March 12, 2019]

THE HONORABLE SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM, THE DAR REGIONAL DIRECTOR, REGION VIII, THE PROVINCIAL AGRARIAN REFORM OFFICER OF PROVINCE OF LEYTE, MUNICIPAL AGRARIAN REFORM OFFICER OF TABANGO, LEYTE, THE REGISTER OF DEEDS OF LEYTE, *petitioners, vs.* **HEIRS OF REDEMPTOR and ELISA ABUCAY, namely: RENA B. ABUCAY, RHEA B. ABUCAY-BEDUYA, RIS B. ABUCAY-BUANTE, ELVER B. ABUCAY, REDELISA ABUCAY-AGUSTIN, RHOTA B. ABUCAY, herein represented by attorney-in-fact RENA B. ABUCAY,** *respondents.*

[G.R. No. 186964. March 12, 2019]

THE HONORABLE SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM, THE DAR REGIONAL DIRECTOR, REGION VIII, THE PROVINCIAL AGRARIAN REFORM OFFICER, PROVINCE OF LEYTE, *petitioners, vs.* **HEIRS OF REDEMPTOR and ELISA ABUCAY, namely: RENA B. ABUCAY, RHEA B. ABUCAY-BEDUYA, RIS B. ABUCAY-BUANTE, ELVER B. ABUCAY, REDELISA ABUCAY-AGUSTIN, RHOTA B. ABUCAY,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW), AS AMENDED; DEPARTMENT OF AGRARIAN REFORM SECRETARY; HAS EXCLUSIVE ORIGINAL JURISDICTION OVER ALL CASES INVOLVING THE CANCELLATION OF REGISTERED EMANCIPATION PATENTS, CERTIFICATES OF LAND OWNERSHIP AWARDS, AND OTHER TITLES ISSUED UNDER ANY AGRARIAN REFORM PROGRAM.— It is settled that the Regional Trial Courts, sitting as special agrarian courts, have original and exclusive jurisdiction over the determination of the value of just compensation. Nonetheless, the Department of Agrarian Reform still exercises primary jurisdiction to preliminarily determine this value. This is different from determining the validity of property transfer to the farmer-beneficiaries and, consequently, the validity of the certificates of title issued to them. When the issue in a case hinges on whether a beneficiary has made insufficient or no payments for the land awarded to him or her, primary administrative jurisdiction is under the Department of Agrarian Reform. Indeed, per the rules it has promulgated, the Department of Agrarian Reform has taken cognizance of cases involving either the issuance or cancellation of certificates of land ownership award and emancipation patents. Cases involving registered certificates of land ownership awards, emancipation patents, and titles emanating from them are agrarian reform disputes, of which the Department of Agrarian Reform

Adjudication Board takes cognizance. Meanwhile, cases involving unregistered ones are agrarian law implementation cases, put under the jurisdiction of the Regional Directors and the Secretary of the Department of Agrarian Reform. In 2009, however, Congress amended the Comprehensive Agrarian Reform Law through Republic Act No. 9700. Under the new Section 24, all cases involving the cancellation of registered emancipation patents, certificates of land ownership awards, and other titles issued under any agrarian reform program are now within the exclusive original jurisdiction of the Department of Agrarian Reform Secretary. He or she takes jurisdiction over cases involving the cancellation of titles issued under any agrarian reform program, whether registered with the Land Registration Authority or not.

2. ID.; ID.; THE 2003 RULES FOR AGRARIAN REFORM IMPLEMENTATION CASES; DEPARTMENT OF AGRARIAN REFORM SECRETARY; HAS JURISDICTION OVER AN OPERATION LAND TRANSFER PROTEST WHICH IS AN AGRARIAN LAW IMPLEMENTATION CASE; CASE AT BAR.— At the time of the Complaint's filing on April 26, 2004, the 2003 Department of Agrarian Reform Adjudication Board Rules of Procedure governed the jurisdiction of the Department of Agrarian Reform Adjudication Board. Rule II provided that adjudicators have exclusive original jurisdiction over registered certificates of land ownership award and emancipation patents, while the Department of Agrarian Reform Adjudication Board has appellate jurisdiction x x x. However, it is "not sufficient that the controversy [simply] involves the cancellation of a [certificate of land ownership award] already registered with the Land Registration Authority. What is of primordial consideration is the existence of an agrarian dispute between the parties." Section 3(d) of the Comprehensive Agrarian Reform Law defines agrarian dispute as those relating to tenurial arrangements, including leasehold and tenancy. x x x [T]he emancipation patents involved here have already been registered with the Land Registration Authority, and the grant of the Complaint filed by respondents will result in the cancellation of these registered emancipation patents. Nonetheless, respondents primarily assailed in their Complaint the land coverage under the Operation Land Transfer Program because the original owner, Cabahug, had not been properly notified of it. Specifically, they contended that the

notices were erroneously sent to Cabahug's father, Sotero Cabahug. The Complaint, therefore, is essentially an Operation Land Transfer protest, which is an agrarian law implementation case belonging to the Department of Agrarian Reform Secretary's jurisdiction.

3. **ID.; ID.; THE 2003 DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD RULES OF PROCEDURE; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD; CAN PROPERLY TAKE COGNIZANCE OF A CASE WHERE THE CONTROVERSY RELATES TO THE TENURIAL ARRANGEMENTS BETWEEN PARTIES.—** Tenancy is a real right that is attached to the land and survives the sale. As such, when Spouses Abucay purchased the land from Cabahug, they were subrogated to the rights and obligations of Cabahug as an agricultural landowner. Respondents, being the land buyers' heirs, were likewise subrogated to these rights and obligations. A tenancy relationship exists between respondents and the farmer-beneficiaries. Still, the controversy must relate to the tenurial arrangement between the parties for the Department of Agrarian Reform Adjudication Board to properly take cognizance of the case. Here, the controversy does not involve negotiating, fixing, maintaining, changing, or seeking to arrange the tenurial arrangement's terms or conditions. Respondents alleged that emancipation patents should not have been issued to begin with since no notice of coverage was sent to Cabahug. In other words, they contend that the property was not properly acquired through the Operation Land Transfer Program. The controversy involves the administrative implementation of the agrarian reform program, which, as mentioned, is under the Department of Agrarian Reform Secretary's jurisdiction.

4. **ID.; ID.; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW), AS AMENDED; CANCELLATION OF REGISTERED EMANCIPATION PATENTS; THE PETITION FOR CANCELLATION SHALL BE FILED BEFORE THE OFFICE OF THE PROVINCIAL AGRARIAN REFORM ADJUDICATOR, WHICH THEN UNDERTAKES THE CASE BUILDUP BEFORE FORWARDING IT TO THE DEPARTMENT OF AGRARIAN REFORM SECRETARY FOR DECISION.—** [W]ith the enactment of Republic Act No. 9700, the exclusive

and original jurisdiction over cases for cancellation of registered emancipation patents now belongs to the Department of Agrarian Reform Secretary. In line with this, the Department of Agrarian Reform has issued Administrative Order No. 07-14, which outlines in Article III the procedure for the cancellation of registered emancipation patents, certificates of land ownership awards, and other agrarian titles. The petition for cancellation shall be filed before the Office of the Provincial Agrarian Reform Adjudicator, which would then undertake the case buildup before forwarding it to the Department of Agrarian Reform Secretary for decision. Thus, under Administrative Order No. 07-14, the Complaint for cancellation of original certificates of title and emancipation patents filed by respondents should be referred to the Office of the Provincial Agrarian Reform Adjudicator of Leyte for case buildup. Then, the case shall be decided by the Department of Agrarian Reform Secretary.

PERLAS-BERNABE, *J.*, *concurring opinion*:

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; DEPARTMENT OF AGRARIAN REFORM; JURISDICTION.** — On July 22, 1987, then President Corazon C. Aquino issued Executive Order No. (EO) 229 vesting the **DAR** with: **(*a*)** the primary jurisdiction to determine and adjudicate **agrarian reform disputes (ARD)**; *and* **(*b*)** the exclusive original jurisdiction over all matters involving **agrarian law implementation (ALI)** except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR). x x x Subsequently, the DAR's primary adjudicatory jurisdiction over **ARD** cases was transferred to the **DARAB**, which was created pursuant to EO 129-A. Nevertheless, the exclusive original jurisdiction over **ALI** cases (except those falling under the exclusive jurisdiction of the DA and the DENR) was retained with the **DAR.**

2. **ID.; ID.; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW), AS AMENDED; AGRARIAN REFORM DISPUTE; REFERS TO ANY CONTROVERSY RELATING TO TENURIAL ARRANGEMENTS.—** [A]n **ARD** case **essentially** involves an agrarian dispute which, as defined by Section 3 (d) of RA 6657, as amended, refers "to

any **controversy relating to tenurial arrangements**, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements."

3. **ID.; ID.; ID.; AGRARIAN LAW IMPLEMENTATION CASE; PERTAINS TO MATTERS INVOLVING THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM LAW AND OTHER AGRARIAN LAWS.—** [A]n **ALI** case refers to matters involving the **administrative implementation** of RA 6657 and other agrarian laws as enunciated by pertinent rules and administrative orders, *i.e.*, matters relating to the scope of Comprehensive Agrarian Reform Program (CARP) coverage and the protests/oppositions/petitions for lifting/exemption/exclusion from such coverage, exercise of right of retention by landowners, and application for conversion of agricultural lands to non-agricultural uses, *etc*.

4. **ID.; ID.; ID.; DEPARTMENT OF AGRARIAN REFORM SECRETARY; HAS EXCLUSIVE AND ORIGINAL JURISDICTION OVER CASES INVOLVING CANCELLATION OF REGISTERED EMANCIPATION PATENTS, CERTIFICATES OF LAND OWNERSHIP AWARD, AND OTHER AGRARIAN TITLES, WHETHER RAISED IN AN AGRARIAN REFORM DISPUTE OR AN AGRARIAN LAW IMPLEMENTATION CASE.—** [A]n EP cancellation case (as in this case) may either be classified as an **ALI** or an **ARD** case. If the EP cancellation case relates to the scope of CARP coverage or the protests/oppositions/petitions for lifting/exemption/exclusion from such coverage, exercise of right of retention by landowners, or application for conversion of agricultural lands to non-agricultural uses, then the case is classified as an **ALI** case; on the other hand, if the EP cancellation case relates to an agrarian dispute x x x, then the case is classified as an **ARD** case. x x x With the passage on August 7, 2009 of RA 9700, further amending RA 6657, as amended, cases involving cancellation of ***registered*** EPs, CLOAs, and other agrarian titles, whether raised in an **ALI** or an **ARD** case, are now within the **exclusive and original jurisdiction** of the DAR Secretary. x x x At the time of the filing of the *cancellation case*, the DARAB had the primary and exclusive jurisdiction

over cases that involve the issuance, correction, and cancellation of registered EPs, CLOAs, and other agrarian titles, *provided that the same **relates** to an agrarian dispute between landowner and tenants*. If the complainant *fails to properly allege an agrarian dispute*, a case involving a registered EP, CLOA or other agrarian title would fall within the jurisdiction of the DAR Regional Director. In this case, while there is admittedly a tenurial arrangement between the parties, considering respondents' subrogation to the rights and substitution to the obligations of the original owner, Guadalupe, ***the controversy does not relate to the tenurial arrangement*** between respondents and the FBs in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangement. The herein *cancellation case* is essentially an OLT protest, which is an agrarian law implementation (ALI) case, and there exists no agrarian dispute (ARD) nor an agrarian reform matter so as to situate the jurisdiction thereon with the DARAB (particularly, the RARAD). x x x At that time, the proper office was the Office of the DAR Regional Director, which has primary jurisdiction over all ALI cases. However, this case had already been overtaken by the enactment of RA 9700, vesting the exclusive and original jurisdiction over cases involving cancellation of *registered* EPs, CLOAs, and other agrarian titles, whether raised in an **ALI** or an **ARD** case, to the DAR Secretary, which is correspondingly covered by DAR AO No. 07-14. Consequently, the *ponencia* correctly **referred the case to the Office of the PARAD for case buildup and decision by the DAR Secretary pursuant to the procedure under DAR AO No. 07-14**.

APPEARANCES OF COUNSEL

Seares-del Rosario Mangubat & Seares Law Firm for respondents.

D E C I S I O N

LEONEN, *J.*:

The jurisdiction over the administrative implementation of agrarian laws exclusively belongs to the Department of Agrarian

Reform Secretary. This is true even if the dispute involves the cancellation of registered emancipation patents and certificates of title, which, before Republic Act No. 9700 amended Republic Act No. 6657 or the Comprehensive Agrarian Reform Law, was cognizable by the Department of Agrarian Reform Adjudication Board.

This resolves the consolidated[1] Petitions for Review on Certiorari separately filed by the Department of Agrarian Reform Regional Director for Region VIII[2] and the Provincial Agrarian Reform Officer of Leyte,[3] both assailing the Court of Appeals September 26, 2008 Decision[4] and January 30, 2009 Resolution[5] in CA-G.R. CEB-SP No. 02637. The Court of Appeals reversed and set aside the May 10, 2006 Decision[6] of the Department of Agrarian Reform Adjudication Board and reinstated the June 16, 2005 Decision[7] of the Regional Agrarian Reform Adjudicator

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[1] *Rollo* (G.R. No. 186432), p. 129 and *rollo* (G.R. No. 186964), p. 175. Resolution dated June 15, 2009.

[2] *Rollo* (G.R. No. 186432), pp. 12-46. Docketed as G.R. No. 186432.

[3] *Rollo* (G.R. No. 186964), pp. 14-40. Docketed as G.R. No. 186964.

[4] *Rollo* (G.R. No. 186432), pp. 47-61 and *rollo* (G.R. No. 186964), pp. 137-150. The Decision was penned by Associate Justice Amy C. Lazaro-Javier (now an Associate Justice of this Court), and concurred in by Associate Justices Francisco P. Acosta and Edgardo L. De Los Santos of the Twentieth Division, Court of Appeals, Cebu City.

[5] *Rollo* (G.R. No. 186432), pp. 62-67 and *rollo* (G.R. No. 186964) pp. 166-171. The Resolution was penned by Associate Justice Amy C. Lazaro-Javier (now an Associate Justice of this Court), and concurred in by Associate Justices Francisco P. Acosta and Edgardo L. De Los Santos of the Former Twentieth Division, Court of Appeals, Cebu City.

[6] *Rollo* (G.R. No. 186432), pp. 112-121 and *rollo* (G.R. No. 186964), pp. 77-89. The Decision was penned by Assistant Secretary Edgar A. Igano, and was concurred in by Officer-in-Charge Secretary Nasser C. Pangandaman, Assistant Secretary Augusto P. Quijano, Officer-in-Charge Undersecretary Narciso B. Nieto, Undersecretary Nestor R. Acosta, Acting Assistant Secretary Ma. Patricia Rualo-Bello, and Assistant Secretary Delfin B. Samson of the Department of Agrarian Reform Adjudication Board.

[7] *Rollo* (G .R. No. 186432), pp. 105-108. The Decision was penned by Regional Adjudicator Felixberto M. Diloy of the Office of the Regional Adjudicator, Tacloban City.

for Region VIII, which voided the emancipation patents issued to the farmer-beneficiaries in this case.

On October 14, 1983, the Spouses Redemptor and Elisa Abucay (Spouses Abucay) purchased[8] a 182-hectare parcel of land from Guadalupe Cabahug (Cabahug). The property is located in Leyte and is covered by Transfer Certificate of Title No. T-9814.[9] The Deed of Absolute Sale provided that the property "consists of various classifications, and is untenanted except for 39.459 hectares, and per certification of the Agrarian Reform Team No. 08-28-231 appears to be within the coverage of Operation Land Transfer as to the tenanted area of over 39 hectares."[10]

Sometime in 1986, 22.8409 hectares of the lot were declared covered under the Operation Land Transfer Program pursuant to Presidential Decree No. 27.[11] Emancipation patents were then issued to the farmer-beneficiaries.[12] Later, the Register of Deeds issued original certificates of title in their names.[13]

On June 28, 2002, Rena B. Abucay, Rhea B. Abucay-Beduya, Ris B. Abucay-Buante, Elver B. Abucay, Redelisa Abucay-Agustin, and Rhota B. Abucay (collectively, the Heirs of Spouses Abucay) filed before the Regional Agrarian Reform Adjudicator a Complaint[14] for the proper determination of just compensation.

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[8] *Rollo* (G.R. No. 186432), pp. 88-89 and *rollo* (G.R. No. 186964), pp. 44-45. Deed of Absolute Sale dated October 14, 1983.

[9] *Rollo* (G.R. No. 186964), pp. 41-43.

[10] *Rollo* (G.R. No. 186432), p. 89 and *rollo* (G.R. No. 186964), p. 45.

[11] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Rhem the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor.

[12] The farmer-beneficiaries were Florencio V. Cartagenas, Renato V. Cartagenas, Tomas G. Cartagenas, Manuel V. Ceneza, Abraham C. Cuervo, Federico H. Cuervo, Francisco H. Cuervo, Ricardo H. Cuervo, Lope Q. Damayo, Bartolome P. Dondon, Amparo C. Erejer, Gregorio Ihada, Victoria Malamdag, Jesus I. Noynay, Juanito M. Ostera, Rufino Quimson, Leon Rivera, Gregoria B. Tero, Frederico N. Velasco, and Francisco Velasco.

[13] *Rollo* (G.R. No. 186432), pp. 50-51 and *rollo* (G.R. No. 186964), pp. 139-140.

[14] *Rollo* (G.R. No. 186432), pp. 90-95 and *rollo* (G.R. No. 186964), pp. 46-50.

The Heirs of Spouses Abucay alleged that they inherited the 182-hectare property upon their parents' death and enjoyed its ownership and possession. They claimed that they did not receive any just compensation for the 22 hectares of the property that was placed under the Operation Land Transfer Program. The Certificate of Deposit worth ₱103,046.47 — issued in 2001 by the Land Bank of the Philippines as compensation-was not only inadequate, but was also issued to Cabahug, the property's previous owner.[15] Thus, they prayed, among others, that they be paid ₱2,000,000.00 as just compensation.[16]

In his March 8, 2004 Decision,[17] Regional Agrarian Reform Adjudicator Felixberto M. Diloy (Regional Adjudicator Diloy) held that there was no proper valuation of the property to determine just compensation. He found that the Final Notification Letter was not sent to the property's then registered owner, Cabahug, but to her father, the deceased Sotero Cabahug. Thus, administrative due process was not followed, which nullified the coverage of the 22-hectare property under the Operation Land Transfer program.[18] Regional Adjudicator Diloy declared the emancipation patents issued to the farmer-beneficiaries void.[19]

The dispositive portion of the Decision read:

WHEREFORE, premises considered, judgment is hereby ordered[:]

1. NULLIFYING the coverage of the subject landholding in the name of Guadalupe Cabahug for lack of administrative due process;

2. DIRECTING the PARO of Leyte thru the MARO of Tabango, Leyte to effect the coverage of the property in question under P.D.

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[15] *Rollo* (G.R. No. 186432), pp. 91-93 and *rollo* (G.R. No. 186964), pp. 47-49.

[16] *Rollo* (G.R. No. 186432), p. 94 and *rollo* (G.R. No. 186964), p. 50.

[17] *Rollo* (G.R. No. 186432), pp. 96-104 and *rollo* (G.R. No. 186964), pp. 51-59.

[18] *Rollo* (G.R. No. 186432), pp. 98 and 100 and *rollo* (G.R. No. 186964), pp. 53 and 55.

[19] *Rollo* (G.R. No. 186432), p. 103 and *rollo* (G.R. No. 186964), p. 58.

No. 27/R.A. 6657 thru the herein complainants who are subrogated to the rights of their deceased parents and the original owner, Guadalupe Cabahug[;]

3. DECLARING the Original Certificates of Title/Emancipation Patents issued to the following farmer-beneficiaries of the subject landholding null and void, . . .

. . . . . .

with the further advi[c]e to parties to file the necessary petition for the cancellation of the said titles.

SO ORDERED.[20]

Following this, the Heirs of Spouses Abucay filed another Complaint[21] dated April 26, 2004 for the cancellation of original certificates of title and emancipation patents. This time, they also impleaded the farmer-beneficiaries as respondents.[22]

In his June 16, 2005 Decision,[23] Regional Adjudicator Diloy similarly canceled the original certificates of title and voided the emancipation patents issued to the farmer-beneficiaries. The dispositive portion of his Decision read:

WHEREFORE, premises considered, judgment is hereby rendered,

1. Declaring the following OCTs/EPs issued to private respondents [farmer-beneficiaries] null and void and without force and effect:

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[20] *Rollo* (G.R. No. 186432), pp. 102-104 and *rollo* (G.R. No. 186964), pp. 57-59.

[21] *Rollo* (G.R. No. 186432), pp. 82-87 and *rollo* (G.R. No. 186964), pp. 60-65.

[22] The impleaded farmer-beneficiaries were Eliaquim V. Cartagenas, Florencio V. Cartagenas, Renato V. Cartagenas, Roman G. Cartagenas, Manuel V. Ceneza, Abraham C. Cuervo, Federico H. Cuervo, Francisco H. Cuervo, Ricardo H. Cuervo, Lope Q. Damayo, Bartolome P. Dondon, Amparo C. Erejer, Gregorio Ihada, Loreto Ihado, Victorio Malamdag, Jesus J. Noynay, Juanito M. Ostera, Rufino Quimson, Leon F. Revira, Gregorio B. Tero, Silvino L. Tero, Federico M. Velasco, and Francisco Velasco. *See rollo* (G.R. No. 186432), p. 81 and *rollo* (G.R. No. 186964), p. 60.

[23] *Rollo* (G.R. No. 186432), pp. 105-108.

. . . . . .

2. Ordering the Register of Deeds for Leyte to effect the said cancellation of the aforementioned titles issued to private respondents;

3. Ordering the private respondents to return the owners duplicate of titles to the MARO of Tabango, Leyte;

4. In the meantime that the correct titles ([T]ransfer Certificate of Titles) (*sic*) are not yet issued, private respondents are ordered to pay the corresponding rentals to complainants subject however to the provision of E.O. No. 328 and other applicable agrarian laws and rules.

SO ORDERED.[24]

In its May 10, 2006 Decision,[25] the Department of Agrarian Reform Adjudication Board reversed Regional Adjudicator Diloy's June 16, 2005 Decision and declared itself wanting of jurisdiction over the appeal.[26] It found that the nature of the action filed by the Heirs of Spouses Abucay was an Operation Land Transfer protest,[27] an agrarian law implementation case under the primary jurisdiction of the Regional Director[28] of

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[24] *Rollo* (G.R. No. 186432), pp. 107-108.

[25] *Rollo* (G.R. No. 186432), pp. 112-121 and *rollo* (G.R. No. 186964), pp. 77-89.

[26] *Rollo* (G.R. No. 186432), p. 120 and *rollo* (G.R. No. 186964), p. 88.

[27] *Rollo* (G.R. No. 186432), p. 116; and *Rollo* (G.R. No. 186964), p. 87. Department of Agrarian Reform Adm. Order No. 03 (2003), Rule I, Sec. 2(2.1) provides:

SECTION 2. *ALI cases*. These Rules shall govern all cases arising from or involving:

2.1. Classification and identification of landholdings for coverage under the agrarian reform program and the initial issuance of Certificate of Land Ownership Awards (CLOAs) and Emancipation Patents (EPs), including protests or oppositions thereto and petitions for lifting of such coverage[.]

[28] DAR Administrative Order No. 03 (2003), Rule II, Sec. 8 provides:

SECTION 8. *Jurisdiction over protests or petitions to lift coverage*. The Regional Director shall exercise primary jurisdiction over protests against CARP coverage or petitions to lift notice of coverage. If the ground for the protest or petition to lift CARP coverage is exemption or exclusion of the

the Department of Agrarian Reform and the consequent appeal, to the Department of Agrarian Reform Secretary.[29]

The Department of Agrarian Reform Adjudication Board also found that when Cabahug sold the property in 1983, the farmer-beneficiaries had already owned the property they tilled pursuant to Presidential Decree No. 27. Therefore, the Heirs of Spouses Abucay were not the proper parties to question the agrarian reform coverage of the 22-hectare property.[30]

The dispositive portion of the Department of Agrarian Reform Adjudication Board Decision read:

WHEREFORE, premises considered[,] the assailed decision dated 16 June 2005 is hereby **REVERSED** and **SET ASIDE** [and] a new judgment is hereby issued **DISMISSING** the instant complaint for lack of merit and for lack of jurisdiction without prejudice.

SO ORDERED.[31] (Emphasis in the original)

The Heirs of Spouses Abucay filed a Motion for Reconsideration, which the Department of Agrarian Reform Adjudication Board denied in its February 27, 2007 Resolution.[32]

Hence, the Heirs of Spouses Abucay filed a Petition for Review[33] before the Court of Appeals.

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subject land from CARP coverage, the Regional Director shall either resolve the same if he has jurisdiction, or refer the matter to the Secretary if jurisdiction over the case belongs to the latter.

[29] DAR Administrative Order No. 03 (2003), Rule II, Sec. 10 provides:

SECTION 10. *Appellate Jurisdiction*. The Secretary shall exercise appellate jurisdiction over all ALI cases, and may delegate the resolution of appeals to any Undersecretary.

[30] *Rollo* (G.R. No. 186432), pp. 119-120 and *rollo* (G.R. No. 186964), pp. 87-88.

[31] *Rollo* (G.R. No. 186432), p. 120 and *rollo*, (G.R. No. 186964), p. 88.

[32] *Rollo* (G.R. No. 186964), pp. 93-95. The Resolution was penned by Assistant Secretary Edgar A. Igano, and was concurred in by Officer-in-Charge Secretary Nasser C. Pangandaman, Assistant Secretary Augusto P. Quijano, Undersecretary Narciso B. Nieto, Undersecretary Nestor R. Acosta, Acting Assistant Secretary Ma. Patricia Rualo-Bello, and Assistant Secretary Delfin B. Samson of the Department of Agrarian Reform Adjudication Board.

[33] *Rollo* (G.R. No. 186964), pp. 96-125.

In its September 26, 2008 Decision,[34] the Court of Appeals reversed the rulings of the Department of Agrarian Reform Adjudication Board. Citing the 2003 Rules of Procedure for Agrarian Law Implementation Cases, it held that the Regional Director had primary jurisdiction over complaints for the cancellation of emancipation patents only if these were *not yet* registered with the Register of Deeds.[35] Since the emancipation patents had already been registered with the Register of Deeds of Leyte, jurisdiction over the Complaint properly belonged to the Regional Agrarian Reform Adjudicator.[36] Consequently, the appeal's jurisdiction lies with the Department of Agrarian Reform Adjudication Board[37] under the 2003 Department of Agrarian Reform Adjudication Board Rules of Procedure.[38]

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[34] *Rollo* (G.R. No. 186432), pp. 47-61 and *rollo* (G.R. No. 186964), pp. 137-150.

[35] DAR Administrative Order No. 03 (2003), Rule I, Sec. 2(2.4) provides:

SECTION 2. *ALI cases*. These Rules shall govern all cases arising from or involving:

2.4. Recall, cancellation or provisional lease rentals, Certificates of Land Transfers (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including the issuance, recall, or cancellation of Emancipation Patents (EPs) or Certificates of Land Ownership Awards (CLOAs) not yet registered with the Register of Deeds[.]

[36] DARAB Rules of Procedure (2003), Rule II, Sec. 1(1.6) provides:

SECTION 1. *Primary and Exclusive Original Jurisdiction*. — The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

. . . . . .

1.6 Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority[.]

[37] DARAB Rules of Procedure (2003), Rule II, Sec. 2 provides:

SECTION 2. *Appellate Jurisdiction of the Board*. — The Board shall have exclusive appellate jurisdiction to review, reverse, modify, alter, or affirm resolutions, orders, and decisions of its Adjudicators.

No order of the Adjudicators on any issue, question, matter, or incident raised before them shall be elevated to the Board until the hearing shall have been terminated and the case decided on the merits.

[38] *Rollo* (G.R. No. 186432), pp. 54-57 and *rollo* (G.R. No. 186964), pp. 143-146.

In addition, the Court of Appeals held that the Heirs of Spouses Abucay were the proper parties to file the Complaint for cancellation of original certificates of title and emancipation patents. It explained that since Cabahug had not yet been fully paid just compensation for the property in 1983, she was still its owner when she sold it to Spouses Abucay. Moreover, Cabahug validly transferred her title to the property to Spouses Abucay which, upon their death, was later transferred to their children.[39]

Essentially agreeing with Regional Adjudicator Diloy's Decision, the Court of Appeals held that Cabahug was not afforded due process during the acquisition proceedings. Thus, it declared void the property's distribution to the farmer-beneficiaries and the issuance of emancipation patents and original certificates of title.[40]

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, the *Decision* dated May 10, 2006 and the *Resolution* dated February 27, 2007 of the Department of Agrarian Reform Adjudication Board (DARAB), in DARAB Case No. 13978 are **REVERSED and SET ASIDE**. The Decision dated June 16, 2005 of the Regional Adjudicator is **REINSTATED**. Accordingly, the OLT coverage of petitioners' property and the corresponding emancipation patents and original certificates of title issued relative thereto are declared **NULL AND VOID**. No costs.

SO ORDERED.[41] (Citations omitted)

The Department of Agrarian Reform Regional Director for Region VIII and the Provincial Agrarian Reform Officer of Leyte separately filed their Motions for Reconsideration, both of which were denied in the Court of Appeals January 30, 2009 Resolution.[42]

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[39] *Rollo* (G.R. No. 186432), pp. 57-59 and *rollo* (G.R. No. 186964), pp. 146-148.

[40] *Rollo* (G.R. No. 186432), pp. 59-60 and *rollo* (G.R. No. 186964), pp. 148-149.

[41] *Rollo* (G.R. No. 186432), p. 60 and *rollo* (G.R. No. 186964), p. 149.

[42] *Rollo* (G.R. No. 186432), pp. 62-67 and *rollo* (G.R. No. 186964), pp. 166-171.

Two (2) Petitions for Review on Certiorari were filed before this Court on April 7, 2009. One (1)[43] was filed by the Department of Agrarian Reform Regional Director for Region VIII, docketed as G.R. No. 186432. The other[44] was filed by the Provincial Agrarian Reform Officer of Leyte, docketed as G.R. No. 186964.

Since both Petitions assail the same Court of Appeals Decision, this Court resolved[45] to consolidate G.R. Nos. 186432 and 186964. Respondents, the Heirs of Spouses Abucay, then filed a Joint Comment[46] on the consolidated Petitions, after which only the Provincial Agrarian Reform Officer filed a Reply.[47]

Petitioners maintain that respondents' Complaint for cancellation of original certificates of title and emancipation patents is essentially an Operation Land Transfer protest that assails the coverage of the 22-hectare property under the Operation Land Transfer Program. The case, therefore, is an agrarian reform law implementation case under the exclusive original jurisdiction of the Regional Director; the appellate jurisdiction, under the Department of Agrarian Reform Secretary. Petitioners assert that the Department of Agrarian Reform Adjudication Board correctly refused to take cognizance of the appeal and dismissed the Complaint.[48]

Petitioners further argue that respondents had no legal personality to file the Complaint for cancellation of original certificates of title and emancipation patents. Upon the effectivity of Presidential Decree No. 27, ownership of tenanted agricultural lands was automatically transferred to the farmer-beneficiaries.

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[43] *Rollo* (G.R. No. 186432), pp. 12-46.

[44] *Rollo* (G.R. No. 186964), pp. 14-40.

[45] *Rollo* (G.R. No. 186432), pp. 129-130 and *rollo* (G.R. No. 186964), pp. 175-176.

[46] *Rollo* (G.R. No. 186432), pp. 141-171.

[47] *Rollo* (G.R. No. 186432), pp. 188-201 and *rollo* (G.R. No. 186964), pp. 180-193.

[48] *Rollo* (G.R. No. 186432), pp. 24-31 and *rollo* (G.R. No. 186964), pp. 32-35.

It follows that Cabahug had no authority to transfer the ownership of the 22-hectare parcel of land covered by Operation Land Transfer Program to the Spouses Abucay. Thus, respondents did not inherit the 22-hectare property from their parents.[49]

Petitioners further assail the Court of Appeals' finding that Cabahug was not accorded due process during the acquisition proceedings, arguing that she was properly notified of the coverage of the 22-hectare property. The Deed of Absolute Sale executed between her and Spouses Abucay expressly provided that portions of the 182-hectare property being sold "appears to be within the coverage of Operation Land Transfer[.]"[50] Further, petitioners claim that the Court of Appeals erred in finding that no just compensation had been paid for the property, since a Certificate of Deposit worth ₱103,046.47 was deposited in cash and bonds in Cabahug's name on December 13, 2001.[51]

For their part, respondents argue that the Petitions must be dismissed for being filed without authority. They contend that it is the Office of the Solicitor General, under Book IV, Title III, Chapter 12 of the Administrative Code of 1987,[52] which has the authority to represent before this Court the Department

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[49] *Rollo* (G.R. No. 186432), pp. 31-36 and *rollo* (G.R. No. 186964), pp. 25-28.

[50] *Rollo* (G.R. No. 186432), p. 39.

[51] *Rollo* (G.R. No. 186432), pp. 32-33 and 36-40; and *rollo* (G.R. No. 186964), pp. 28-32.

[52] ADM. CODE, Book IV, Title III, Chapter 12, Sec. 35(1) provides:

SECTION 35. *Powers and Functions*. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers

of Agrarian Reform Regional Director for Region VIII and the Provincial Agrarian Reform Officer of Leyte.[53]

On the merits, respondents maintain that the Department of Agrarian Reform Adjudication Board had jurisdiction over the Complaint for cancellation of original certificates of title and emancipation patents. Here, the emancipation patents issued to the farmer-beneficiaries have already been registered with the Register of Deeds. Citing Section 50 of the Comprehensive Agrarian Reform Law and the 2003 Department of Agrarian Reform Adjudication Board Rules of Procedure, respondents point out that the Department of Agrarian Reform Adjudication Board has primary and exclusive original jurisdiction over actions for cancellation of emancipation patents *registered* with the Land Registration Authority.[54]

According to respondents, petitioners in both cases, the Regional Director and the Provincial Agrarian Reform Officer, are already estopped from questioning the jurisdiction of Regional Adjudicator Diloy and the Department of Agrarian Reform Adjudication Board as they failed to do so at the level of the Adjudicator or even on appeal before the Board.[55]

Assuming that the Department of Agrarian Reform Adjudication Board had no jurisdiction over the case, respondents argue that it should have instead referred the case to the Department of Agrarian Reform Secretary under Rule I, Section 6 of the 2003 Rules for Agrarian Law Implementation Cases.[56]

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in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

[53] *Rollo* (G.R. No. 186432), pp. 152-153.

[54] *Rollo* (G.R. No. 186432), pp. 153-156.

[55] *Id*. at 157.

[56] *Rollo* (G.R. No. 186432), pp. 158-159.

DAR Administrative Order No. 03, Series of 2003, Rule I, Sec. 6 provides:

SECTION 6. *Referral of cases*. When a party erroneously files a case under Section 2 hereof before the DARAB, the receiving official shall refer

On the issue of their legal personality to file the Complaint for cancellation of original certificates of title and emancipation patents, respondents maintain that they acquired a valid title to the 22-hectare property from their parents. In contrast, the property was not properly acquired through the Operation Land Transfer Program due to lack of notice and nonpayment of just compensation to Cabahug. Cabahug, then, had remained the owner of the property until she sold it to Spouses Abucay in 1983.[57]

The issues for this Court's resolution are:

First, whether or not Regional Agrarian Reform Adjudicator Felixberto Diloy and the Department of Agrarian Reform Adjudication Board have jurisdiction over the Complaint for cancellation of original certificates of title and emancipation patents filed by respondents, the Heirs of Redemptor and Elisa Abucay;

Second, whether or not respondents had legal personality to file the Complaint before the Regional Adjudicator; and

Finally, whether or not the acquisition proceedings involving the 22-hectare property were void for lack of administrative due process.

The Petitions are granted.

I

It is settled that the Regional Trial Courts, sitting as special agrarian courts,[58] have original and exclusive jurisdiction over the determination of the value of just compensation. Nonetheless, the Department of Agrarian Reform still exercises primary

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the case to the proper DAR office for appropriate action within five (5) working days after determination that said case is within the jurisdiction of the Secretary. Likewise, when a party erroneously files a case under Section 3 hereof before any office other than the DARAB or its adjudicators, the receiving official shall, within five (5) working days, refer the case to the DARAB or its adjudicators.

[57] *Rollo* (G.R. No. 186432), pp. 162-166.

[58] Rep. Act No. 6657 (1988), Sec. 57.

jurisdiction to preliminarily determine this value.[59] This is different from determining the validity of property transfer to the farmer-beneficiaries and, consequently, the validity of the certificates of title issued to them. When the issue in a case hinges on whether a beneficiary has made insufficient or no payments for the land awarded to him or her, primary administrative jurisdiction is under the Department of Agrarian Reform.

Indeed, per the rules it has promulgated, the Department of Agrarian Reform has taken cognizance of cases involving either the issuance or cancellation of certificates of land ownership award and emancipation patents. Cases involving registered certificates of land ownership awards, emancipation patents, and titles emanating from them are agrarian reform disputes, of which the Department of Agrarian Reform Adjudication Board takes cognizance.[60] Meanwhile, cases involving unregistered ones are agrarian law implementation cases, put under the jurisdiction of the Regional Directors and the Secretary of the Department of Agrarian Reform.[61]

In 2009, however, Congress amended the Comprehensive Agrarian Reform Law through Republic Act No. 9700.[62] Under the new Section 24, all cases involving the cancellation of registered emancipation patents, certificates of land ownership awards, and other titles issued under any agrarian reform program

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[59] See *Alfonso v. Land Bank of the Philippines*, 801 Phil. 217 (2016) [Per *J.* Jardeleza, *En Banc*].

[60] See DARAB Rules of Procedure (2003), Rule II, Sec. 1, now the 2009 DARAB Rules of Procedure, Rule II, Sec. 1. See also 2003 Rules of Procedure for ALI Cases, Rule I, Sec. 3.

[61] See the 2003 Rules of Procedure for ALI Cases, Rule I, Sec. 2, now 2017 Rules of Procedure for ALI Cases, Rule I, Sec. 2. See also 2003 DARAB Rules of Procedure, Rule II, Sec. 3.

[62] An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending The Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending For the Purpose Certain Provisions of Republic Act No. 6657, otherwise known as The Comprehensive Agrarian Reform Law of 1988, as amended, and Appropriating Funds Therefor.

are now within the exclusive original jurisdiction of the Department of Agrarian Reform Secretary.[63] He or she takes jurisdiction over cases involving the cancellation of titles issued under any agrarian reform program, whether registered with the Land Registration Authority or not.

Here, the doctrine should be read amid the ambient facts and without prejudice to a future case that will deal with transfer certificates of title, considering the relevant statutes,[64] as well as the equal protection[65] and social justice provisions of the Constitution.[66]

II

At the time of the Complaint's filing on April 26, 2004, the 2003 Department of Agrarian Reform Adjudication Board Rules of Procedure governed the jurisdiction of the Department of Agrarian Reform Adjudication Board. Rule II provided that adjudicators have exclusive original jurisdiction over registered certificates of land ownership award and emancipation patents, while the Department of Agrarian Reform Adjudication Board has appellate jurisdiction:

RULE II
Jurisdiction of the Board and its Adjudicators

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[63] Rep. Act No. 9700 (2009), Sec. 24 provides:

SEC. 24. *Award to Beneficiaries*. — . . .

. . . . . .

All cases involving the cancellation of registered emancipation patents, certificates of land ownership award, and other titles issued under any agrarian reform program are within the exclusive and original jurisdiction of the Secretary of the DAR. (Emphasis supplied)

[64] Presidential Decree No. 1529 (1978). Property Registration Decree.

[65] CONST., Art. III, Sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[66] CONST., Art. XIII, Secs. 4, 6, 7, and 8 are devoted to agrarian and natural resources reform.

SECTION 1. *Primary and Exclusive Original Jurisdiction*. — The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

. . . . . .

1.6 Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority[;]

. . . . . .

SECTION 2. *Appellate Jurisdiction of the Board*. — The Board shall have exclusive appellate jurisdiction to review, reverse, modify, alter, or affirm resolutions, orders, and decisions of its Adjudicators.

No order of the Adjudicators on any issue, question, matter, or incident raised before them shall be elevated to the Board until the hearing shall have been terminated and the case decided on the merits.

However, it is "not sufficient that the controversy [simply] involves the cancellation of a [certificate of land ownership award] already registered with the Land Registration Authority. What is of primordial consideration is the existence of an agrarian dispute between the parties."[67] Section 3(d) of the Comprehensive Agrarian Reform Law defines agrarian dispute as those relating to tenurial arrangements, including leasehold and tenancy. Thus:

SECTION 3. *Definitions*. — For the purpose of this Act, unless the context indicates otherwise:

. . . . . .

(d) Agrarian Dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements.

It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer

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[67] See *Sutton v. Lim*, 700 Phil. 67, 74 (2012) [Per *J*. Perlas-Bernabe, Second Division].

of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

Indeed, the emancipation patents involved here have already been registered with the Land Registration Authority, and the grant of the Complaint filed by respondents will result in the cancellation of these registered emancipation patents. Nonetheless, respondents primarily assailed in their Complaint the land coverage under the Operation Land Transfer Program because the original owner, Cabahug, had not been properly notified of it. Specifically, they contended that the notices were erroneously sent to Cabahug's father, Sotero Cabahug. The Complaint, therefore, is essentially an Operation Land Transfer protest, which is an agrarian law implementation case belonging to the Department of Agrarian Reform Secretary's jurisdiction.[68]

Tenancy is a real right that is attached to the land and survives the sale.[69] As such, when Spouses Abucay purchased the land

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[68] The 2003 Rules for Agrarian Reform Implementation Cases, Rule II, Secs. 7, 8, and 10 provide:

SECTION 7. *General Jurisdiction*. The Regional Director shall exercise primary jurisdiction over all agrarian law implementation cases except when a separate special rule vests primary jurisdiction in a different DAR office.

SECTION 8. *Jurisdiction over protests or petitions to lift coverage*. The Regional Director shall exercise primary jurisdiction over protests against CARP coverage or petitions to lift notice of coverage. If the ground for the protest or petition to lift CARP coverage is exemption or exclusion of the subject land from CARP coverage, the Regional Director shall either resolve the same if he has jurisdiction, or refer the matter to the Secretary if jurisdiction over the case belongs to the latter.

. . . . . .

SECTION 10. *Appellate Jurisdiction*. The Secretary shall exercise appellate jurisdiction over all ALI cases, and may delegate the resolution of appeals to any Undersecretary.

[69] Rep. Act No. 3844 (1963), Sec. 10 provides:

SECTION 10. *Agricultural Leasehold Relation Not Extinguished By Expiration of Period, etc.* — The agricultural leasehold relation under this Code

from Cabahug, they were subrogated to the rights and obligations of Cabahug as an agricultural landowner. Respondents, being the land buyers' heirs, were likewise subrogated to these rights and obligations. A tenancy relationship exists between respondents and the farmer-beneficiaries.

Still, the controversy must relate to the tenurial arrangement between the parties for the Department of Agrarian Reform Adjudication Board to properly take cognizance of the case. Here, the controversy does not involve negotiating, fixing, maintaining, changing, or seeking to arrange the tenurial arrangement's terms or conditions. Respondents alleged that emancipation patents should not have been issued to begin with since no notice of coverage was sent to Cabahug. In other words, they contend that the property was not properly acquired through the Operation Land Transfer Program. The controversy involves the administrative implementation of the agrarian reform program, which, as mentioned, is under the Department of Agrarian Reform Secretary's jurisdiction.

Since the Complaint filed by respondents involves an agrarian law implementation case, Regional Adjudicator Diloy had no jurisdiction to take cognizance of it. At that time, he should have referred the case to the proper office of the Department of Agrarian Reform for appropriate action as provided in Rule I, Section 6 of the Department of Agrarian Reform Administrative Order 03-03.[70]

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shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.

[70] DAR Administrative Order No. 03-03 (2003), Rule I, Sec. 6 provides:

SECTION 6. *Referral of cases*. When a party erroneously files a case under Section 2 hereof before the DARAB, the receiving official shall refer the case to the proper DAR office for appropriate action within five (5) working days after determination that said case is within the jurisdiction of the Secretary. Likewise, when a party erroneously files a case under Section 3 hereof before any office other than the DARAB or its adjudicators, the

However, with the enactment of Republic Act No. 9700, the exclusive and original jurisdiction over cases for cancellation of registered emancipation patents now belongs to the Department of Agrarian Reform Secretary.[71]

In line with this, the Department of Agrarian Reform has issued Administrative Order No. 07-14, which outlines in Article III the procedure for the cancellation of registered emancipation patents, certificates of land ownership awards, and other agrarian titles. The petition for cancellation shall be filed before the Office of the Provincial Agrarian Reform Adjudicator, which would then undertake the case buildup before forwarding it to the Department of Agrarian Reform Secretary for decision.

Thus, under Administrative Order No. 07-14, the Complaint for cancellation of original certificates of title and emancipation patents filed by respondents should be referred to the Office of the Provincial Agrarian Reform Adjudicator of Leyte for case buildup. Then, the case shall be decided by the Department of Agrarian Reform Secretary.

This Court makes no determination of whether the area can still be covered by agrarian reform. The character of the land as agricultural is not affected. We leave the issue of the propriety of the coverage to the executive branch for its own determination.

WHEREFORE, the Petitions for Review on Certiorari are **GRANTED**. The September 26, 2008 Decision of the Court of Appeals in CA-G.R. CEB-SP No. 02637, the May 10, 2006 Decision and February 27, 2007 Resolution of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 13978, and the June 16, 2005 Decision of the Regional Agrarian Reform Adjudicator in DARAB Case No. R-0800-0015-04 are all **SET ASIDE**. The Complaint for cancellation of original certificates of title and emancipation patents dated April 26,

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receiving official shall, within five (5) working days, refer the case to the DARAB or its adjudicators.

[71] Rep. Act No. 9700 (2009), Sec. 9, amending Rep. Act No. 6657 (1988), Sec. 24.

2004 is **REFERRED** to the Office of the Provincial Agrarian Reform Adjudicator of Leyte for case buildup and decision by the Department of Agrarian Reform Secretary.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, and *Carandang, JJ.*, concur.

Perlas-Bernabe, J., see concurring opinion.

Jardeleza, J., joins the concurring opinion of *J.* Perlas-Bernabe.

Lazaro-Javier, J., no part.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

The Facts

This case stemmed from a Complaint[1] for Cancellation of Original Certificates of Title (OCTs) denominated as Emancipation Patents (EPs) with payment of back rentals (*cancellation case*) filed by respondents Heirs of Redemptor and Elisa Abucay (Spouses Abucay), namely: Rena B. Abucay, Rhea B. Abucay-Beduya, Ris B. Abucay-Buante, Elver B. Abucay, Redelisa Abucay-Agustin, and Rhota B. Abucay (respondents), before the Office of the Regional Agrarian Reform Adjudicator in Tacloban City (RARAD) dated April 26, 2004,[2] docketed as **DARAB Case No. R-0800-0015-04**, assailing the coverage of the 22.8409 hectare (ha.)-portion (subject land) of their 182.9698 ha.-property located in Brgy. Campokpok, Tabango, Leyte covered by Transfer Certificate of Title (TCT)

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[1] *Rollo* (G.R. No. 186432), pp. 82-87; and *rollo* (G.R. No. 186964), pp. 60-65.

[2] The petitions and the CA Decision erroneously indicated that said Complaint was filed on April 6, 2004 (see *rollo* [G.R. No. 186432], pp. 18 and 51-52). On the other hand, the DARAB, in its Decision, maintained that the same was filed on Apri1 26, 2004 (see *id*. at 114).

No. T-9814[3] in the name of its previous owner, Guadalupe Cabahug (Guadalupe), which had been placed under the government's Operation Land Transfer Program (OLT). Respondents claimed to be the heirs of Spouses Abucay who had acquired the subject land from Guadalupe on October 14, 1983.[4] However, when the land was subjected to OLT coverage in 1986,[5] the initial up to the final notices of coverage and/or acquisition, valuation and documentation were sent to Guadalupe's father, Sotero Cabahug (Sotero), who was not the registered owner, and had been dead as early as August 31, 1970.[6] Nonetheless, the farmer-beneficiaries (FBs) were issued EPs which were thereafter registered as OCTs (EP titles) with the Register of Deeds (RD) of Leyte (RD-Leyte) pursuant to an erroneous subdivision survey despite having emanated from a TCT.[7]

In a Decision[8] dated June 16, 2005, the RARAD granted the complaint, thereby declaring the EP titles issued to the FBs as null and void, and without force and effect, and ordering, among others, the RD-Leyte to effect the cancellation of the said titles.[9]

On appeal, docketed as DARAB Case No. 13978,[10] the Department of Agrarian Reform Adjudication Board (DARAB), however, declared[11] that it had no jurisdiction over the subject

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[3] *Rollo* (G.R. No. 186964), pp. 41-43; including dorsal portions.

[4] *Rollo* (G.R. No. 186432), p. 83.

[5] *Id*. at 84.

[6] See *id*. at 59 and 146.

[7] *Id*. at 84-85.

[8] *Id*. at 105-108. Penned by Regional Adjudicator Felixberto M. Diloy.

[9] See *id*. at 107-108.

[10] See *id*. at 21, 52 and 112.

[11] See Decision dated May 10, 2006, penned by Assistant Secretary Edgar A. Igano with Assistant Secretary Augusto P. Quijano, Undersecretary Nestor R. Acosta, Acting Assistant Secretary Ma. Patricia Rualo-Bello, and Assistant Secretary Delfin B. Samson, concurring. OIC Secretary and Chairman Nasser C. Pangandaman and OIC-Undersecretary Narciso B. Nieto did not take part (*rollo* [G.R. No. 186432], pp. 112-121; and *rollo* [G.R. No. 186964], pp. 77-89).

matter, holding that the same involves an OLT protest, which is an agrarian law implementation case that falls under the primary jurisdiction of the Regional Director of the Department of Agrarian Reform (DAR), and consequently, appealable to the DAR Secretary.[12] The DARAB likewise declared that respondents were not the proper parties to question the agrarian reform coverage of the subject land because the concerned FBs already owned the land pursuant to Presidential Decree No. (PD) 27,[13] otherwise known as the "Tenants Emancipation Decree," as amended, when Guadalupe sold[14] the same to Spouses Abucay in 1983.[15]

Respondents' motion for reconsideration[16] having been denied,[17] they filed a petition for review[18] before the Court of Appeals (CA), docketed as CA-G.R. CEB-SP No. 02637.

In a Decision[19] dated September 26, 2008, the CA reversed the DARAB Decision,[20] ruling that the jurisdiction over complaints for cancellation of registered EP titles belongs to

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[12] See *rollo* (G.R. No. 186432), pp. 118-119.

[13] Entitled "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR," approved on October 21, 1972.

[14] See Deed of Absolute Sale dated October 14, 1983; *rollo* (G.R. No. 186432), pp. 188-189.

[15] See *id*. at 119-120.

[16] Not attached to the *rollos*.

[17] See Resolution dated February 27, 2007 penned by Assistant Secretary Edgar A. Igano with Assistant Secretary Augusto P. Quijano, Acting Assistant Secretary Ma. Patricia Rualo-Bello, and Assistant Secretary Delfin B. Samson, concurring. OIC Secretary and Chairman Nasser C. Pangandaman, Undersecretary Narciso B. Nieto, and Undersecretary Nestor R. Acosta did not take part; *rollo* (G.R. No. 186964), pp. 93-95.

[18] Dated May 2, 2007. *Id*. at 96-125.

[19] *Rollo* (G.R. No. 186432), pp. 47-61. Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court) with Associate Justices Francisco P. Acosta and Edgardo L. De Los Santos concurring.

[20] See *id*. at 60.

the RARAD whose decision shall be appealable to the DARAB pursuant to the DARAB 2003 Rules of Procedure.[21] It likewise held that respondents were the proper parties to file the complaint because Guadalupe has not been fully paid the just compensation for the subject land in 1983, and as such, remained the owner of the subject land at the time she sold the same to Spouses Abucay, whose title was transferred to respondents upon their death.[22]

The CA further ruled that Guadalupe was not afforded due process during the acquisition process which rendered the issuance of EP titles to the PBs as null and void.[23]

Dissatisfied, the DAR Regional Director-Region VIII and the Provincial Agrarian Reform Officer of Leyte (PARO) filed separate motions for reconsideration[24] which were both denied in a Resolution[25] dated January 30, 2009. Hence, the instant petitions for review on *certiorari*[26] filed before this Court on April 7, 2009, which were thereafter consolidated.[27]

The *ponencia* granted the petitions, and accordingly, referred the *cancellation case* to the Office of the Provincial Agrarian Reform Adjudicator of Leyte (PARAD) for case buildup and decision by the DAR Secretary.[28]

I concur. May I just add the following observations:

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[21] Adopted and promulgated on January 17,2003. See *id*. at 56-57.

[22] See *id*. at 57-59.

[23] See *id*. at 59-60.

[24] See motion for reconsideration dated October 23, 2008 filed by the DAR Regional Director-Region VIII; *rollo* (G .R. No. 186432), pp. 68-73; and motion for reconsideration dated October 28, 2008 filed by the PARO; *rollo* (G.R. No. 186964), pp. 151-164.

[25] *Rollo* (G.R. No. 186432), pp. 62-67; and *rollo* (G.R. No. 186964), pp. 166-171.

[26] *Rollo* (G.R. No. 186432), pp. 12-41; and *rollo* (G.R. No. 186964), pp. 14-36.

[27] See Minute Resolution dated June 15, 2009; *rollo* (G.R. No. 186432), pp. 129-130; and *rollo* (G.R. No. 186964), pp. 175-176.

[28] See *ponencia*, p. 15.

A. DAR'S JURISDICTION OVER AGRARIAN REFORM CASES.

On July 22, 1987, then President Corazon C. Aquino issued Executive Order No. (EO) 229[29] vesting the **DAR** with:

(*a*) the primary jurisdiction to determine and adjudicate **agrarian reform disputes (ARD)**; *and*

(*b*) the exclusive original jurisdiction over all matters involving **agrarian law implementation (ALI)** except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).[30]

To be sure, an **ARD** case **essentially** involves an agrarian dispute which, as defined by Section 3 (d) of RA 6657, as amended, refers "to any **controversy relating to tenurial arrangements**, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements."[31]

On the other hand, an **ALI** case refers to matters involving the **administrative implementation** of RA 6657 and other agrarian laws as enunciated by pertinent rules and administrative orders,[32] *i.e.*, matters relating to the scope of Comprehensive Agrarian Reform Program (CARP) coverage and the protests/oppositions/petitions for lifting/exemption/exclusion from such coverage, exercise of right of retention by landowners, and

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[29] Entitled "PROVIDING THE MECHANISMS FOR THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM," issued on July 22, 1987.

[30] See also Section 50, Chapter XII of Republic Act No. (RA) 6657, entitled "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES," otherwise known as the COMPREHENSIVE AGRARIAN REFORM LAW OF 1988," approved on June 10, 1988.

[31] Emphasis supplied.

[32] See Section 3, Rule I of the DARAB 2003 RULES OF PROCEDURE.

application for conversion of agricultural lands to non-agricultural uses, *etc*.

Subsequently, the DAR's primary adjudicatory jurisdiction over **ARD** cases was transferred to the **DARAB**, which was created[33] pursuant to EO 129-A.[34] Nevertheless, the exclusive original jurisdiction over **ALI** cases (except those falling under the exclusive jurisdiction of the DA and the DENR) was retained with the **DAR**.[35]

B. THE JURISDICTION OF THE DAR AND THE DARAB.

Pursuant to its power to issue rules and regulations, substantive and procedural, to carry out the objects and purposes of RA 6657, as amended,[36] the DAR adopted its **Rules for ALI Cases**. Accordingly, the DAR assigned to the **Regional Director** the task of resolving ALI cases at the first level, except when a

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[33] Section 13 of EO 129-A provides:

Section 13. *Agrarian Reform Adjudication Board*. — There is hereby created an Agrarian Reform Adjudication Board under the Office of the Secretary. The Board shall be composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the Secretary, the Assistant Secretary for Legal Affairs, and three (3) others to be appointed by the President upon the recommendation of the Secretary as members. A Secretariat shall be constituted to support the Board. **The Board shall assume the powers and functions with respect to the adjudication of agrarian reform cases under Executive Order No. 229 and this Executive Order.** These powers and functions may be delegated to the regional offices of the Department in accordance with rules and regulations to be promulgated by the Board. (Emphasis supplied)

[34] Entitled "MODIFYING ORDER NO. 129 REORGANIZING AND STRENGTHENING THE DEPARTMENT OF AGRARIAN REFORM AND FOR OTHER PURPOSES" (July 26, 1987).

[35] RA 6657 was thereafter passed in 1988 reinforcing the DAR's powers. See Section 50, Chapter XII of RA 6657.

[36] Section 49, Chapter XI of RA 6657, as amended, provides:

Section 49. *Rules and Regulations*. — The PARC and the DAR shall have the **power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act**. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation. (Emphasis supplied)

separate special rule vests primary jurisdiction in a different DAR office.[37] The ruling of the Regional Director was expressly made appealable to the **DAR Secretary**, who, however, may delegate the resolution of such appeals to any Undersecretary.[38]

For its part, the DARAB adopted its Rules of Procedure delegating to **the RARADs and the PARADs (DARAB Adjudicators)** the authority to hear, determine and adjudicate all **ARD** cases, and incidents in connection therewith, arising within their assigned territorial jurisdiction,[39] and reserved for itself the appellate jurisdiction over the DARAB Adjudicators' resolution, decision or final order that completely disposes of the case.[40]

C. Jurisdiction Over Cases Involving The Cancellation Of EPs, Certificates Of Land Ownership Award (CLOAs), And Other Agrarian Titles.

Based on the circumstances asserted, an EP cancellation case (as in this case) may either be classified as an **ALI** or an **ARD** case. If the EP cancellation case relates to the scope of CARP coverage or the protests/oppositions/petitions for lifting/exemption/exclusion from such coverage, exercise of right of retention by landowners, or application for conversion of

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[37] Pursuant to Section 7, Rule II of DAR Administrative Order No. 03, Series of 2003 (DAR AO No. 03-03), re: 2003 Rules for Agrarian Law Implementation Cases, known as the "2003 Rules Of Procedure For ALI Cases" (issued on January 16, 2003), now Section 6, Rule II DAR Administrative Order No. 03-17; re: 2017 Rules for Agrarian Law Implementation (ALI) Cases, known as the "2017 Rules Of Procedure For ALI Cases" (issued on May 22, 2017), which amended the 2003 Rules Of Procedure For ALI Cases.

[38] Pursuant to Section 10, Rule II of the 2003 Rules Of Procedure For ALI Cases, now Section 9, Rule II of the 2017 Rules Of Procedure For ALI Cases.

[39] See Section 2, Rule II of the 1989 Darab Revised Rules Of Procedure or the "Revised Rules Of The Darab," (February 6, 1989) and Section 2, Rule II of the "Darab New Rules Of Procedure" (June 22, 1994).

[40] See Section 1, Rule XIV of the DARAB 2003 Rules of Procedure.

agricultural lands to non-agricultural uses, then the case is classified as an **ALI** case; on the other hand, if the EP cancellation case relates to an agrarian dispute as defined above, then the case is classified as an **ARD** case.

The foregoing was the jurisdictional setup at the time the *cancellation case* was filed before the RARAD. With the passage on August 7, 2009 of RA 9700,[41] further amending RA 6657, as amended, cases involving cancellation of ***registered*** EPs, CLOAs, and other agrarian titles, whether raised in an **ALI** or an **ARD** case, are now within the **exclusive and original jurisdiction** of the DAR Secretary. Section 24 of RA 6657, as amended by RA 9700, pertinently provides:

> Section 24. *Award to Beneficiaries*. — The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land. Such award shall be completed in not more than one hundred eighty (180) days from the date of registration of the title in the name of the Republic of the Philippines: *Provided*, That the emancipation patents, the certificates of land ownership award, and other titles issued under any agrarian reform program shall be indefeasible and imprescriptible after one (1) year from its registration with the Office of the Registry of Deeds, subject to the conditions, limitations and qualifications of this Act, the property registration decree, and other pertinent laws. The emancipation patents or the certificates of land ownership award being titles brought under the operation of the torrens system, are conferred with the same indefeasibility and security afforded to all titles under the said system, as provided for by Presidential Decree No. 1529, as amended by Republic Act No. 6732.
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> **All cases involving the cancellation of registered emancipation patents, certificates of land ownership award, and other titles issued under any agrarian reform program are within the exclusive**

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[41] Entitled "AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL AGRICULTURAL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657."

and original jurisdiction of the Secretary of the DAR. (Section 9 of RA 9700; emphasis and underscoring supplied)

Nonetheless, the issue of jurisdiction in this case shall be settled under the statute and rules in force at the time of the commencement of the *cancellation case*.[42]

D. Application To The Case At Bar.

At the time of the filing of the *cancellation case*, the DARAB had the primary and exclusive jurisdiction over cases that involve the issuance, correction, and cancellation of registered EPs, CLOAs, and other agrarian titles, *provided that the same **relates** to an agrarian dispute between landowner and tenants*. If the complainant *fails to properly allege an agrarian dispute*, a case involving a registered EP, CLOA or other agrarian title would fall within the jurisdiction of the DAR Regional Director.

In this case, while there is admittedly a tenurial arrangement between the parties, considering respondents' subrogation to the rights and substitution to the obligations[43] of the original owner, Guadalupe, ***the controversy does not relate to the tenurial arrangement*** between respondents and the FBs in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangement. The herein *cancellation case* is essentially an OLT protest, which is an agrarian law implementation (ALI) case, and there exists no agrarian dispute (ARD) nor an agrarian reform matter so as to situate the

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[42] The jurisdiction of a tribunal or quasi-judicial body over the subject matter is determined by the averments of the complaint/petition and the law extant at the time of the commencement of the suit/complaint/petition. See *Pasong Bayabas Farmers Association, Inc. v. Court of Appeals*, 473 Phil. 64, 97 (2004). See also *Anama v. Citibank, N.A.*, G.R. No. 192048, December 13, 2017.

[43] See Section 10 of RA 3844, entitled "An Act To Ordain The Agricultural Land Reform Code And To Institute Land Reforms In The Philippines, Including The Abolition Of Tenancy And The Channeling Of Capital Into Industry, Provide For The Necessary Implementing Agencies, Appropriate Funds Therefor And For Other Purposes," otherwise known as the "Agricultural Land Reform Code" (August 8, 1963), as amended.

jurisdiction thereon with the DARAB (particularly, the RARAD). Section 3, Rule II of the DARAB 2003 Rules of Procedure clearly provides that "[t]he Adjudicator or the Board shall have no jurisdiction over matters involving the administrative implementation of RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules and administrative orders[.]" Thus, as correctly pointed out by the *ponencia*,[44] the RARAD had no jurisdiction to take cognizance of the case, and should have referred the case to the proper DAR office for appropriate action pursuant to Section 6, Rule I of DAR AO No. 03-03.

At that time, the proper office was the Office of the DAR Regional Director, which has primary jurisdiction over all ALI cases.[45] However, this case had already been overtaken by the enactment of RA 9700, vesting the exclusive and original jurisdiction over cases involving cancellation of *registered* EPs, CLOAs, and other agrarian titles, whether raised in an **ALI** or an **ARD** case, to the DAR Secretary, which is correspondingly covered by DAR AO No. 07-14.[46] Consequently, the *ponencia* correctly **referred the case to the Office of the PARAD**[47] **for**

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[44] See *ponencia*, p. 14.

[45] *I.e.*, except when a separate special rule vests primary jurisdiction in a different DAR office. See Section 7, Rule 11 of the DARAB 2003 Rules of Procedure.

[46] Entitled "RE: 2014 RULES AND PROCEDURES GOVERNING THE CANCELLATION OF REGISTERED EMANCIPATION PATENTS (EPS), CERTIFICATES OF LAND OWNERSHIP AWARD (CLOAS), AND OTHER TITLES ISSUED UNDER THE AGRARIAN REFORM PROGRAM," issued on September 15, 2014.

[47] Section 7, Article III of DAR AO No. 07-14 pertinently provides:

Section 7. *Initiation of a Cancellation Case.* — A cancellation case shall be initiated by the filing of a verified Petition for Cancellation and the payment of the filing fee, if necessary.

The verified Petition shall be filed with the Office of the PARAD who has jurisdiction over the place where the land covered by the EPs, CLOAs, or other titles sought to be cancelled is located.

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See also Section 22, Article III of the same AO.

case buildup and decision by the DAR Secretary[48] **pursuant to the procedure under DAR AO No. 07-14**.

ACCORDINGLY, I vote to **GRANT** the petitions.

EN BANC

[G.R. No. 203242. March 12, 2019]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **LUCY GRACE and ELMA GLORIA FRANCO, represented by attorney-in-fact VICENTE GUSTILLO, JR.,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW); AGRARIAN REFORM; DEFINED.— In 1988, the Congress enacted the Comprehensive Agrarian Reform Law, which further strengthened the State's policy toward agrarian reform. The

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[48] Under the Rules, after the case folder buildup, preliminary hearing, on-site inspection, clarificatory hearing, submission of position papers and report by the *PARAD* or *RARAD*, the case folder shall be transmitted to the *Bureau of Agrarian Legal Assistance* for its review, finding, and recommendation. Thereafter, the case folder shall be transmitted to the *Office of the Assistant Secretary for Legal Affairs* for further review, finding, and recommendation, before the same will be transmitted to the **DAR Secretary** for decision.

To note, while the case should have been filed before the DAR Regional Secretary during the old jurisdictional setup on April 26, 2014, the supervening passage of RA 9700 on August 7, 2009 and the new Rules of Procedure mandate that the case be first referred to Office of the PARAD only for case buildup, to be ultimately resolved by the DAR Secretary who now has jurisdiction over cases involving the cancellation of all registered EPS, whether involved in an ARD or an ALI case, as it is here.

law provided an exact definition of the phrase "agrarian reform," thus: Agrarian Reform means the redistribution of lands, regardless of crops or fruits produced to farmers and regular farmworkers who are landless, irrespective of tenurial arrangement, to include the totality of factors and support services designed to lift the economic status of the beneficiaries and all other arrangements alternative to the physical redistribution of lands, such as production or profit-sharing, labor administration, and the distribution of shares of stocks, which will allow beneficiaries to receive a just share of the fruits of the lands they work.

2. ID.; ID.; SPECIAL AGRARIAN COURT; REGIONAL TRIAL COURTS; SITTING AS SPECIAL AGRARIAN COURTS, HAVE ORIGINAL AND EXCLUSIVE JURISDICTION OVER ALL PETITIONS FOR THE DETERMINATION OF JUST COMPENSATION TO LANDOWNERS, AS WELL AS THE PROSECUTION OF ALL CRIMINAL OFFENSES UNDER THE COMPREHENSIVE AGRARIAN REFORM LAW; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD ONLY HAS PRELIMINARY ADMINISTRATIVE DETERMINATION OF JUST COMPENSATION.— Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980, vested in regional trial courts exclusive and original jurisdiction of civil actions and special proceedings under the exclusive and original jurisdiction of the courts of agrarian relations. Section 56, in relation to Section 57 of the Comprehensive Agrarian Reform Law, confers "special jurisdiction" on special agrarian courts. Regional trial courts, sitting as special agrarian courts, have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, as well as the prosecution of all criminal offenses under the Comprehensive Agrarian Reform Law. In contrast to the special agrarian courts, the Department of Agrarian Reform Adjudication Board only has preliminary administrative determination of just compensation. x x x Special agrarian courts are not merely given appellate jurisdiction over the findings of administrative agencies. The law has explicitly vested them with jurisdiction to make a final and binding determination of just compensation.

3. ID.; ID.; ID.; JUST COMPENSATION; DEFINED AS THE FULL AND FAIR EQUIVALENT OF THE PROPERTY

TAKEN FROM ITS OWNER BY THE EXPROPRIATOR; SETTLEMENT OF THE VALUE THEREOF IS JUDICIAL IN NATURE.— Just compensation is "the full and fair equivalent of the property taken from its owner by the expropriator." The measure of the taking "is not the taker's gain but the owner's loss." The term "just" intensifies the term "compensation" to obtain a real, substantial, full, and ample equivalent for the property taken.

4. ID.; ID.; ID.; ID.; IN THE DETERMINATION OF JUST COMPENSATION, COURTS ARE NOT STRICTLY BOUND TO APPLY THE FORMULA OF THE DEPARTMENT OF AGRARIAN REFORM.— Administrative Order No. 5 provides a comprehensive formula that considers several factors present in determining just compensation. However, as this Court held in *Apo Fruits Corporation and Hijo Plantation, Inc. v. The Honorable Court of Appeals and Land Bank of the Philippines*, and *Export Processing Zone Authority*, it is not adequate to merely use the formula in an administrative order of the Department of Agrarian Reform or rely on the determination of a land assessor to show a final determination of the amount of just compensation. Courts are still tasked with considering all factors present, which may be stated in formulas provided by administrative agencies. In *Land Bank v. Yatco Agricultural Enterprises* this Court held that when acting within the bounds of the Comprehensive Agrarian Reform Law, special agrarian courts "are not strictly bound to apply the [Department of Agrarian Reform] formula to its minute detail, particularly when faced with situations that do not warrant the formula's strict application; they may, in the exercise of their discretion, relax the formula's application to fit the factual situations before them." In *Apo Fruits Corporation v. Land Bank*, this Court held that Section 17 of the Comprehensive Agrarian Reform Law merely provides for guideposts to ascertain the value of properties. Courts are not precluded from considering other factors that may affect the value of property. While administrative issuances are entitled to great respect, their application must always be in harmony with the law they seek to interpret. x x x Thus, while the formula prescribed by the Department of Agrarian Reform requires due consideration, the determination of just compensation shall still be subject to the final decision of the special agrarian court.

5. ID.; ID.; ID.; INCENTIVES FOR VOLUNTARY OFFERS FOR SALE; FIVE PERCENT (5%) CASH INCENTIVE UNDER SECTION 19, IN RELATION TO SECTION 18 THEREOF, NOT IN ADDITION TO THE AMOUNT OF JUST COMPENSATION, AWARDED BY THE COURTS BUT APPLIES ONLY TO THE CASH PAYMENT TO BE AWARDED; CASE AT BAR.— The five percent (5%) cash incentive under Section 19, in relation to Section 18 of the Comprehensive Agrarian Reform Law, is *not* in addition to the amount of just compensation awarded by the courts. The incentive only applies to the *cash* payment to be awarded. x x x Aside from cash payment, the Comprehensive Agrarian Reform Law provides for three (3) more modes of payment. Section 19 must be interpreted to mean that while the additional five percent (5%) cash payment is an incentive to owners-sellers to expedite the agrarian reform program, the incentive given to these land owners should not be to the detriment of the government. If, as respondents have argued, the additional five percent (5%) is indeed to be paid on top of the awarded just compensation for the property, then the law would not have put "cash" before "payment" in Section 19, in turn modifying the kind of payment to be given to the owners-sellers. The landowner shall receive 35% of the just compensation in cash, while the remaining 65% shall be paid in bonds if the aggregate area acquired by the Department of Agrarian Reform is below 24 hectares. However, if the landowner voluntarily offers their land to the Department of Agrarian Reform, as in this case, the landowner shall be entitled to an additional five percent (5%) only on the cash portion. Therefore, instead of receiving only 35% in cash, the landowner shall now receive 40% in cash and 60% in bonds.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Edgardo J. Gil for respondents.

D E C I S I O N

LEONEN, *J.*:

The final determination of just compensation is vested in courts. In the recent case of *Alfonso v. Land Bank*,[1] this Court, through Associate Justice Francis H. Jardeleza, ruled that courts may deviate from the basic formula provided by administrative agencies if it finds, in its discretion, that other factors must be taken into account in the determination of just compensation. Deviation, however, must be grounded on a reasoned explanation based on the evidence on record. Absent this, the deviation will be considered as grave abuse of discretion.[2]

For this Court's resolution is a Petition for Review on Certiorari[3] assailing the Court of Appeals January 20, 2011 Decision[4] and August 8, 2012 Resolution[5] in CA-G.R. SP No. 03225. The Court of Appeals affirmed the September 18, 2007 Decision[6] of the Special Agrarian Court, which fixed the value of just compensation for the lands appropriated at ₱1,024,115.49.

Lucy Grace Franco and Elma Gloria Franco (the Francos) were the registered owners of parcels of agricultural land in Barangay

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[1] *Alfonso v. Land Bank of the Philippines*, 801 Phil. 217 (2016) [Per *J.* Jardeleza, *En Banc*].

[2] *Id*.

[3] *Rollo*, pp. 9-40.

[4] *Id*. at 41-47. The Decision was penned by Associate Justice Eduardo B. Peralta, Jr., and concurred in by Associate Justices Edgardo L. Delos Santos and Agnes Reyes Carpio of the Twentieth Division, Court of Appeals, Cebu City.

[5] *Id*. at 51-54. The Resolution was penned by Associate Justice Edgardo L. Delos Santos, and concurred in by Associate Justices Ramon Paul L. Hernando (now a member of this Court) and Gabriel T. Ingles of the Nineteenth Division, Court of Appeals, Cebu City.

[6] *Id*. at 64-77. The Decision, in Civil Case No. 00-26367, was penned by Judge Ma. Yolanda M. Panaguiton-Gaviño of Branch 34, Regional Trial Court, Iloilo City.

Maquina, Dumangas, Iloilo, covered by Transfer Certificate of Title Nos. T-62209, T-62210, T-62212, and T-51316.[7]

The Francos offered the parcels of land for sale to the Department of Agrarian Reform under the Voluntary Offer to Sell of the Comprehensive Agrarian Reform Program in 1995.[8] Of the 14.444 hectares of the property, 12.5977 hectares were acquired and distributed to qualified agrarian reform beneficiaries.[9]

During the summary proceedings before the Department of Agrarian Reform, the parcels of land were valued at ₱714,713.78.[10] The Francos did not agree with the initial valuation. Upon a Petition for Review, the Department of Agrarian Reform Adjudication Board raised the amount to ₱739,461.43,[11] which the Francos then withdrew from the Land Bank of the Philippines (Land Bank).[12]

Still dissatisfied with the amount, the Francos on August 3, 2000 filed before the Regional Trial Court, sitting as the Special Agrarian Court, a Complaint for the determination of just compensation.[13] Subsequently, they filed an Amended Petition against Land Bank, the Secretary of Agrarian Reform, and other tenant-beneficiaries who were not included in the original Complaint.

In its September 18, 2007 Decision,[14] the Special Agrarian Court fixed the just compensation for the 12.5977 hectares of land area actually taken by the government in the amount of ₱1,024,115.49.[15] It ordered Land Bank to pay the remaining

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[7] *Id*. at 41.

[8] *Id*. at 14 and 41-42.

[9] *Id*.

[10] *Id*. at 42.

[11] *Id*.

[12] *Id*. at 65.

[13] *Id*.

[14] *Id*. at 64-77.

[15] *Id*. at 76. In the table provided on the same page, the total area actually taken by the government was erroneously written as 12.59977 hectares.

balance of ₱288,115.49 with legal interest at 12% per annum from April 25, 1996 until full payment.[16] Moreover, it held that under Section 19[17] of Republic Act No. 6657, or the Comprehensive Agrarian Reform Law, the Francos were also entitled to an additional five percent (5%) cash payment by way of incentive for voluntarily offering their lots for sale.[18] In arriving at the amount, the Special Agrarian Court reasoned that:

> [T]he Court finds the total valuation by the LBP and the DAR in the amount of ₱739,461.43 to be unrealistically low and therefore is not the just compensation of the subject lot. On the other hand, the valuation of the petitioners is likewise cumbersomely high for the government and the farmer-beneficiaries considering that the valuation of ₱300,000.00 per hectare they initially asked in 1998 were based only on assumptions of facts unsupported by credible evidence. This offer of ₱300,000.00 was reiterated by Mr. Gustilo during the hearing and clearly, this offer is based on his own declarations but this was not adequately substantiated and therefore inconclusive. Thus, the Court in the exercise of its judicial prerogatives, must consider the needs of both parties and should be guided by several factors in order to arrive at a just compensation which is fair, reasonable and acceptable to the parties.
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> *The Supreme Court has ruled that (sic) in several cases that the determination of just compensation is a function addressed to the Courts*. It may not be usurped by any other branch or official of the government. The Courts are unanimous in decrying mathematical formulas or method "where even a grade school pupil could substitute for a judge for fixing just compensation. These methods are considered impermissible encroachments on judicial prerogatives. They tend to render the court inutile in a matter which under the [C]onstitution is reserved to the courts for final determination". Thus, pure mathematical

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[16] *Id*.

[17] Rep. Act No. 6657 (1988), Sec. 19:

> SECTION 19. *Incentives for Voluntary Offers for Sales.* — Landowners, other than banks and other financial institutions, who voluntarily offer their lands for sale shall be entitled to an additional five percent (5%) cash payment.

[18] *Rollo*, p. 77.

approaches to valuation will not be tolerated by the courts, whose hands remain free and untied in arriving at just compensation.

Thus, in determining just compensation, the Court will take into consideration the factors, like the price set by the plaintiffs when they first offered the subject land for voluntary acquisition (₱300,000.00 per hectare; Date of Offer - January 30, 1995) and those provided under Section 17 of R.A. 6657, to wit: a) the cost of acquisition of the land; b) the current value of like properties; c) the sworn valuation by the owner; d) the tax declarations and assessments; e) the assessments made by government assessors; f) the social and economic benefits contributed by the farmers and the farm workers and by the government to the property; and g) the non-payment of taxes or loans secure from any government financing institution on the said land.

The petitioners herein presented the four (4) Tax Declarations for 1996 of the subject lots wherein the assessor fixed the market value per hectare of the bamboo land at ₱45,200.00 (total area - 0.5000 Has.); for rice land irrigated at ₱60,830.00 (total area - 1.5716 hectares); for coconut land at ₱45,000.00 (total area - 0.2000 hectares); and for sugar land at ₱122,000.00 (total area - 8.2318 hectares) or a total market value of ₱1,131,479.60.

Although the market value appearing in the tax declaration is usually lower than the actual value of the property, the court will consider the said amount since no evidence was presented by the plaintiffs to prove a higher amount.

In evaluating the subject lot in the case at bar, the Court will take into account the amount of ₱31,789.80 per hectare of bamboo land consisting of 0.4855 hectares; ₱59,871.97 per hectare of rice unirrigated consisting of 8.9920 hectare[s]; and ₱59,502.19 per hectare of rice unirrigated consisting of 3.1202 hectares, *which was arrived at using the mathematical formula provided under DAR Administrative Order No. 5, Series of 1998 and the market value of the property as shown in the tax declarations* which are as follows: for bamboo land consisting of 0.5000 hectares, the market value is ₱22,600.00; for coconut land consisting of 0.2000 hectares, the market value is ₱9,000.00; for rice irrigated consisting of 1.5716 hectares, the market value is ₱95,600.00 per hectare; and for sugar land consisting of 8.2318 hectares, the market value is ₱1,004,279.60 or a total market value of ₱1,131,479.60. *The average of these amounts will be considered the just compensation of the subject lot. Such method of valuation is intended to take into account all the factors previously*

*discussed.*Therefore, the average of these two figures will result in the following valuation per hectare:

	Per Hectare	Area Actually Taken	Value
Bambooland	₱38,494.50	0.4855 Has.	₱18,689.08
Rice unirrigated	₱90,935.96	8.9920 Has.	817,696.15
Rice unirrigated	₱60,166.10	3.1202 Has.	187,730.26
		[12.5977] has.	₱1,024,118.49

From the foregoing computations, this Court finds and so hold (*sic*) that the just compensation or land value of the subject lot located at Brgy. Maquina, Dumangas, Iloilo covered by TCT Nos. T-62209, T-622010, T-62212 and T-51376 and registered in the name of Lucy Grace Franco married to Jose Mandoriao, Jr. and Elma Gloria Franco is ₱1,024,115.40 for the 12.5977 hectares actually taken by the government and transferred in favor of the qualified farmer-beneficiaries.

. . . . . .

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" for the property owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[19] (Emphasis supplied)

Land Bank filed a Motion for Reconsideration, but it was denied by the Special Agrarian Court in a November 14, 2007 Order.[20]

Land Bank filed before the Court of Appeals a Petition for Review under Rule 42 of the Rules of Court, arguing that the Special Agrarian Court's determination of just compensation was inconsistent with Department of Agrarian Reform Administrative Order No. 5, series of 1998 (Administrative Order No. 5).[21]

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

[20] *Id*. at 43.

[21] *Id*. at 17, Petition for Review on *Certiorari*.

In its January 20, 2011 Decision,[22] the Court of Appeals, citing *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*,[23] affirmed the ruling of the Special Agrarian Court and held that the determination of just compensation is judicial in nature:

> Settled is the principle that the determination of just compensation is judicial in nature. Hence, contrary to petitioner's assertion, the court *a quo* may properly determine for itself the amount of just compensation to be awarded to private respondents. . . . The transaction involved the taking of the property of private respondents under R.A. 6657 which was an exercise of the State's power of eminent domain. As such, *the valuation of property or determination of just compensation is vested with the courts and not with administrative agencies. Thus, even though there might have been an acceptance by the landowner of the valuation of the DAR, this acceptance does not bar resort to the courts for the final determination of just compensation*.
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> > "R.A. 6657 does not make DAR's valuation absolutely binding as the amount payable by petitioner. A reading of Section 18 of R.A. 6657 shows that the courts, and not the DAR, make the final determination of just compensation. It is well-settled that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. The courts will still have the right to review with finality the determination in the exercise of what is admittedly a judicial function."
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> Moreover, to sustain petitioner's position that the court *a quo* cannot re-evaluate the DAR's valuation, would modify the Special Agrarian Court's function to determine just compensation to an appellate one, instead of the original and exclusive jurisdiction vested upon it by R.A. 6657.
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> *Admittedly, certain factors have to be considered in the determination of just compensation. As opposed to petitioner's claim, however, it appeared that the court a quo considered these factors*

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[22] *Id*. at 41-47. The Decision was penned by Eduardo B. Peralta, Jr. and concurred in by Associate Justices Edgardo L. Delos Santos (Chair) and Agnes Reyes Carpio of the Twentieth Division.

[23] 634 Phil. 9 (2010) [Per *J*. Carpio, Second Division].

when it awarded the sum of ₱1,024,115.49 to private respondents as compensation for their property taken under the CARP. Aside from the evidence submitted by petitioner, the court a quo likewise gave due consideration to private respondents' evidence, particularly as to the market value of the subject parcels of land. In fact, the court a quo utilized the same values as determined by DAR using the mathematical formula provided under DAR Administrative Order No. 5, Series of 1998 which embodied the criteria laid down in Section 17 of R.A. 6657. Thus, it cannot be said that the court *a quo* disregarded the rules and principles established by law and jurisprudence on the fixing of just compensation.[24] (Emphasis supplied, citations omitted)

The Court of Appeals, however, modified the Special Agrarian Court Decision by deleting the imposition of the 12% legal interest on the outstanding amount. In doing so, it explained that the delay in the delivery of payment has not been established.[25]

Land Bank filed a Motion for Partial Reconsideration, but it was denied by the Court of Appeals in its August 8, 2012 Resolution.[26] Hence, this Petition for Review on Certiorari[27] was filed.

Petitioner argues that in determining just compensation, the Special Agrarian Court expanded the basic general formula in Administrative Order No. 5 by taking the average between its valuation and the market value of the properties based on its respective tax declarations.[28] For reference, the basic general formula is:

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[24] *Rollo*, pp. 44-45.

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

[26] *Id*. at 51-54.

[27] *Id*. at 9-40. Comment (*rollo*, pp. 98-111) was filed on January 11, 2013 while Reply (*rollo*, pp. 113-121) was filed on January 21, 2013. Parties were ordered to submit their respective Memoranda (*rollo*, pp. 131-156 and 160-170) on June 10, 2013 (*rollo*, pp. 127-128).

[28] *Id*. at 139-141.

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration[29]

Petitioner contends that the Special Agrarian Court expanded the formula to LV = [(CNI x 0.6) + (CS x 0.3) + (MV x 0.1)] + 1996 tax declaration) / 2 x area, which it claims was contrary to Administrative Order No. 5.[30] It argues that in a long line of cases, this Court "has demonstrated judicial fealty to the applicable formula and guidelines which [the Department of Agrarian Reform] issued through several administrative orders."[31] It cites *Land Bank of the Philippines v. Spouses Banal*,[32] where the Special Agrarian Court was reminded that "the exercise of judicial discretion in fixing just compensation must be made within the bounds of [Republic Act] No. 6657 and the administrative rules issued by [the Department of Agrarian Reform]."[33]

Petitioner posits that the five percent (5%) cash incentive under Section 19[34] in relation to Section 18[35] of Republic Act

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[29] DAR Administrative Order No. 5 (1998).

[30] *Rollo*, p. 141.

[31] *Id*. at 143.

[32] 478 Phil. 701 (2004) [Per *J*. Sandoval-Gutierrez, Third Division].

[33] *Rollo*, p. 143, Memorandum for Petitioner.

[34] Rep. Act No. 6657 (1988), Sec. 19 provides:

SECTION 19. Incentives for Voluntary Offers for Sales. — Landowners, other than banks and other financial institutions, who voluntarily offer their lands for sale shall be entitled to an additional five percent (5%) cash payment.

[35] Rep. Act No. 6657 (1988), Sec. 18 provides:

SECTION 18. Valuation and Mode of Compensation. — The LBP shall compensate the landowner in such amounts as may be agreed upon by the

No. 6657 refers to the mode of payment on the cash portion, but not to an additional award of five percent (5%) on top of the full amount of just compensation. It submits that considering that the properties acquired were below 24 hectares and were voluntarily offered for sale, the landowner, instead of receiving 35% in cash and 65% in agrarian reform bonds, should receive 40% in cash and 60% in agrarian reform bonds as just compensation.[36]

Respondents, on the other hand, counter that the Special Agrarian Court has original and exclusive jurisdiction over all petitions for the determination of just compensation. They emphasize that this Court has already ruled that determination of just compensation is a judicial prerogative.[37]

Respondents likewise assert that the five percent (5%) cash incentive in Republic Act No. 6657, Section 19 refers to an

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landowner and the DAR and the LBP, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land.

The compensation shall be paid on one of the following modes, at the option of the landowner:

(1) Cash payment, under the following terms and conditions;

(a) For lands above — Twenty-five percent fifty (50) hectares, insofar (25%) cash, the balance to as the excess hectarage is be paid in government concerned financial instruments negotiable at any time.

(b) For lands above — Thirty percent (30%) cash, twenty-four (24) hectares the balance to be paid in and up to fifty (50) hectares. Government financial instruments negotiable at any time.

(c) For lands twenty-four — Thirty-five percent (35%) (24) hectares and below cash, the balance to be paid in government financial instruments negotiable at any time.

(2) Shares of stock in government-owned or controlled corporations, LBP preferred shares, physical assets or other qualified investments in accordance with guidelines set by the PARC;

(3) Tax credits which can be used against any tax liability;

(4) LBP bonds, which shall have the following features[.]

[36] *Rollo*, pp. 149-152.

[37] *Id*. at 163-166.

additional monetary award on the entire amount of just compensation in favor of the land owners who voluntarily offered their lands for sale.[38] They argue that the "cash incentive entices or stimulates landowners to voluntarily sell their lands subject of eminent domain in favor of the government."[39]

This Court is asked to resolve the following issues:

First, whether or not the Court of Appeals erred in affirming the Special Agrarian Court's valuation of just compensation using a variation of the basic general formula provided for in Department of Agrarian Reform Administrative Order No. 5, series of 1998; and

Second, whether or not the five percent (5%) cash incentive under Section 19 of the Comprehensive Agrarian Reform Law refers only to the mode of payment of the cash portion, not to an increase in the total amount of just compensation.

I

Agrarian Reform, as subsumed under social justice in this jurisdiction, is enshrined in the Constitution:

AGRARIAN AND NATURAL RESOURCES REFORM

SECTION 4. The State shall, by law, *undertake 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*. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and *subject to the payment of just compensation*. In determining retention limits, the State shall respect the right of small landowners. *The State shall further provide incentives for voluntary land-sharing*.[40] (Emphasis supplied)

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[38] *Id*. at 166.

[39] *Id*. at 166-167.

[40] CONST., Art. XIII, Sec. 4.

Several laws were enacted to ensure that the State's policy toward agrarian reform is properly carried out. These laws are outlined in A*ssociation of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*:[41]

R.A. No. 3844, otherwise known as the Agricultural Land Reform Code, had already been enacted by the Congress of the Philippines on August 8, 1963, in line with the above-stated principles. This was substantially superseded almost a decade later by P.D. No. 27, which was promulgated on October 21, 1972, along with martial law, to provide for the compulsory acquisition of private lands for distribution among tenant-farmers and to specify maximum retention limits for landowners.

The people power revolution of 1986 did not change and indeed even energized the thrust for agrarian reform. Thus, on July 17, 1987, President Corazon C. Aquino issued E.O. No. 228, declaring full land ownership in favor of the beneficiaries of P.D. No. 27 and providing for the valuation of still unvalued lands covered by the decree as well as the manner of their payment. This was followed on July 22, 1987 by Presidential Proclamation No. 131, instituting a comprehensive agrarian reform program (CARP), and E.O. No. 229, providing the mechanics for its implementation.[42]

In 1988, the Congress enacted the Comprehensive Agrarian Reform Law, which further strengthened the State's policy toward agrarian reform.[43] The law provided an exact definition of the phrase "agrarian reform," thus:

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[41] 256 Phil. 777 (1989) [Per *J*. Cruz, *En Banc*].

[42] *Id*. at 787-788.

[43] Rep. Act No. 6657 (1988), Sec. 2 provides:

SECTION 2. Declaration of Principles and Policies. — It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture.

To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to

Agrarian Reform means the redistribution of lands, regardless of crops or fruits produced to farmers and regular farmworkers who are landless, irrespective of tenurial arrangement, to include the totality of factors and support services designed to lift the economic status of the beneficiaries and all other arrangements alternative to the physical redistribution of lands, such as production or profit-sharing, labor administration, and the distribution of shares of stocks, which will allow beneficiaries to receive a just share of the fruits of the lands they work.[44]

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the ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

The agrarian reform program is 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 farm workers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to the priorities and retention limits set forth in this Act, having taken into account ecological, developmental, and equity considerations, and subject to the payment of just compensation. The State shall respect the right of small landowners, and shall provide incentives for voluntary land-sharing.

. . . . . .

The State shall apply the principles of agrarian reform, or stewardship, whenever applicable, in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain, under lease or concession, suitable to agriculture, subject to prior rights, homestead rights of small settlers and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farmworkers in its own agricultural estates, which shall be distributed to them in the manner provided by law.

By means of appropriate incentives, the State shall encourage the formation and maintenance of economic-size family farms to be constituted by individual beneficiaries and small landowners.

. . . . . .

The State shall be guided by the principles that land has a social function and land ownership has a social responsibility. Owners of agricultural lands have the obligation to cultivate directly or through labor administration the lands they own and thereby make the land productive.

The State shall provide incentives to landowners to invest the proceeds of the agrarian reform program to promote industrialization, employment

In light of these developments, Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980, vested in regional trial courts exclusive and original jurisdiction of civil actions and special proceedings under the exclusive and original jurisdiction of the courts of agrarian relations.[45] Section 56,[46] in relation to Section 57[47] of the Comprehensive Agrarian Reform Law, confers "special jurisdiction" on special agrarian courts.

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and privatization of public sector enterprises. Financial instruments used as payment for lands shall contain features that shall enhance negotiability and acceptability in the marketplace.

The State may lease undeveloped lands of the public domain to qualified entities for the development of capital intensive farms, and traditional and pioneering crops especially those for exports subject to the prior rights of the beneficiaries under this Act.

[44] Rep. Act No. 6657 (1988), Sec. 3(a).

[45] Batas Pambansa Blg. 129 (1981), Sec. 19.

[46] Rep. Act No. 6657 (1988), Sec. 56 provides:

SECTION 56. Special Agrarian Court. — The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court.

The Supreme Court may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation, the Supreme Court shall give preference to the Regional Trial Courts which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations.

The Regional Trial Court (RTC) judges assigned to said courts shall exercise said special jurisdiction in addition to the regular jurisdiction of their respective courts.

The Special Agrarian Courts shall have the powers and prerogatives inherent in or belonging to the Regional Trial Courts.

[47] Rep. Act No. 6657 (1988), Sec. 57 provides:

SECTION 57. Special Jurisdiction. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.

The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

Regional trial courts, sitting as special agrarian courts, have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, as well as the prosecution of all criminal offenses under the Comprehensive Agrarian Reform Law.[48] In contrast to the special agrarian courts, the Department of Agrarian Reform Adjudication Board only has preliminary administrative determination of just compensation.[49]

Just compensation is "the full and fair equivalent of the property taken from its owner by the expropriator."[50] The measure of the taking "is not the taker's gain but the owner's loss."[51] The term "just" intensifies the term "compensation" to obtain a real, substantial, full, and ample equivalent for the property taken.[52] The jurisdiction of the trial courts, sitting as special agrarian courts, is "not any less 'original' and 'exclusive'"[53] because the Department of Agrarian Reform passes upon the question of just compensation first.[54] "[J]udicial proceedings are not a continuation of the administrative determination ... the law may provide that the decision of the [Department of Agrarian Reform] is final and unappealable. Nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action."[55]

This Court has long held that settlement of the value of just compensation is judicial in nature.

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[48] *Machete v. Court of Appeals*, 320 Phil. 227 (1995) [Per *J.* Bellosillo, First Division].

[49] See *Land Bank of the Philippines v. Suntay*, 678 Phil. 879 (2011) [Per *J.* Bersamin, First Division] citing *Land Bank v. Suntay*, 561 Phil. 711 (2007) [Per *J.* Sandoval-Gutierrez, First Division].

[50] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 812 (1989) [Per *J.* Cruz, *En Banc*].

[51] *Id*.

[52] *Id*.

[53] *Philippine Veterans Bank v. Court of Appeals*, 379 Phil. 141, 149 (2000) [Per *J.* Mendoza, Second Division].

[54] *Id*.

[55] *Id*.

In *Export Processing Zone Authority v. Dulay*,[56] this Court categorically held that the determination of just compensation is a judicial function:

> The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[57]

In *Heirs of Lorenzo and Carmen Vidad*,[58] this Court reaffirmed the judicial determination of just compensation:

> LBP's valuation of lands covered by the CARP Law is considered only as an initial determination, which is not conclusive, as it is the RTC, sitting as a SAC, that could make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of RA 6657 and the applicable DAR regulations. LBP's valuation has to be substantiated during an appropriate hearing before it could be considered sufficient in accordance with Section 17 of RA 6657 and the DAR regulations.[59] (Citation omitted)

Moreover, in *Land Bank of the Philippines v. Montalvan*,[60] this Court ruled on the finality of the Special Agrarian Court's jurisdiction as provided for under Section 57 of Republic Act No. 6657:

> It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials (*sic*) original jurisdiction

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[56] 233 Phil. 313 (1987) [Per *J.* Gutierrez, Jr., *En Banc*].

[57] *Id*. at 326.

[58] 634 Phil. 9 (2010) [Per *J.* Carpio, Second Division].

[59] *Id*. at 38.

[60] 689 Phil. 641 (2012) [Per *J.* Sereno, Second Division].

in compensation cases and make the RTC an appellate court for the review of administrative decisions. Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to Sec. 57 and therefore would be void.[61] (Emphasis omitted)

A statute's provisions should be read in its entirety.[62] Section 57 of the Comprehensive Agrarian Reform Law, on the exclusive and original jurisdiction of special agrarian courts, must be read with Section 16(f), which provides that:

SECTION 16. Procedure for Acquisition of Private Lands. — For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the government and surrenders the Certificate of Title and other monuments of title.

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[61] *Id*. at 652.

[62] See *Civil Service Commission v. Joson, Jr*., 473 Phil. 844 (2004) [Per *J.* Callejo, Sr., *En Banc*].

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) *Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation*. (Emphasis supplied)

The use of the word "*final*" makes the intent of the law clear. Special agrarian courts are not merely given appellate jurisdiction over the findings of administrative agencies. The law has explicitly vested them with jurisdiction to make a final and binding determination of just compensation.[63]

The previous Section 17[64] of Republic Act No. 6657 identifies the factors to be considered for the determination of just compensation:

SECTION 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, *the current value of like properties, its nature, actual use and income,*

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[63] See *Land Bank of the Philippines v. Yatco Agricultural Enterprises*, 724 Phil. 276 (2014) [Per *J.* Brion, Second Division].

[64] Section 17 has since been amended by Republic Act No. 9700.

the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Emphasis supplied)

To implement Section 17, Administrative Order No. 5[65] provided the following formula:

There shall be one basic formula for the valuation of lands covered by VOS[66] or CA:[67]

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant, and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

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[65] Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657.

[66] Voluntary Offer to Sell.

[67] Compulsory Acquisition.

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder.

A.4 When the land planted to permanent crops is not yet productive or not yet fruit-bearing at the time of Field Investigation (FI), the land value shall be equivalent to the value of the land plus the cumulative development cost (CDC) of the crop from land preparation up to the time of FI. In equation form:

LV = (MV x 2) + CDC

where:

1. MV to be used shall be the applicable UMV classification of idle land.
2. CDC shall be grossed-up from the date of FI up to the date of LBP Claim Folder (CF) receipt for processing but in no case shall the grossed-up CDC exceed the current CDC data based on industry.

In case the CDC data provided by the landowner could not be verified, DAR and LBP shall secure the said data from concerned agency/ies or, in the absence thereof, shall establish the same.

In no case, however, shall the resulting land value exceed the value of productive land similar in terms of crop and plant density within the estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of CF.

In case where CS is relevant or applicable, the land value shall be computed in accordance with Item II.A.2 where MV shall be based on the lowest productivity classification of the land.

A.5 When the land is planted to permanent crops introduced by the farmer-beneficiaries (FBs) which are not yet productive or not yet fruit-bearing, the land value shall be computed by using the applicable UMV classification of idle land. In equation form:

LV = MV x 2

In no case, however, shall the resulting land value exceed the value of productive land similar in terms of crop and plant density within the estate under consideration or within the same *barangay*

or municipality (in that order) approved by LBP within one (1) year from receipt of CF.

In case where CS is relevant or applicable, the land value shall be computed in accordance with Item II.A.2 where MV shall be based on the applicable classification of idle land.

A.6 The value of lands planted to permanent crops which are no longer productive or ready for cutting shall be determined by using the applicable UMV classification of idle land plus the salvage value of the standing trees at the time of the FI. In equation form:

LV = (MV x 2) + Salvage Value

In no case, however, shall the resulting land value exceed the value of productive land similar in terms of crop and plant density within the estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of CF.

In case where CS is relevant or applicable, the land value shall be computed in accordance with Item II.A.2 where MV shall be based on the lowest productivity classification of the land.

A.7 In all of the above, the computed value using the applicable formula shall in no case exceed the LO's offer in case of VOS.

The LO's offer shall be grossed up from the date of the offer up to the date of receipt of CF by LBP from DAR for processing.

A.8 For purposes of this Administrative Order, the date of receipt of CF by LBP from DAR shall mean the date when the CF is determined by the LBP-LVLCO to be complete with all the required documents and valuation inputs duly verified and validated, and ready for final computation/processing.

Should LBP need any of the documents listed under Paragraph C, Annex B of DAR Administrative Order No. 1, Series of 1993, as amended by DAR Administrative Order No. 2, Series of 1996, to facilitate processing under Paragraph IV, Step 14 to 17, of the same Order, the DAR shall assist the LBP in securing the same.

A.9 The basic formula in the grossing-up of valuation inputs such as LO's Offer, Sales Transaction (ST), Acquisition Cost (AC), Market Value Based on Mortgage (MVM) and Market Value per Tax Declaration (MV) shall be:

Grossed-up Valuation Input = Valuation Input x Regional Consumer Price Index (RCPI) Adjustment Factor

The RCPI Adjustment Factor shall refer to the ratio of the most recent available RCPI for the month issued by the National Statistics Office as of the date when the CF was received by LBP from DAR for processing and the RCPI for the month as of the date/effectivity/registration of the valuation input. Expressed in equation form:

$$\text{RCPI Adjustment Factor} = \frac{\text{Most Recent RCPI for the Month as of the Date of Receipt of CF by LBP from DAR}}{\text{RCPI for the Month Issued as of the Date/Effectivity/Registration of the Valuation Input}}$$

B. Capitalized Net Income (CNI) — This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%.

Expressed in equation form:

$$\text{CNI} = \frac{(\text{AGP} \times \text{SP}) - \text{CO}}{0.12}$$

Where:

CNI = Capitalized Net Income

AGP = Annual Gross Production corresponding to the latest available 12-months' gross production immediately preceding the date of FI.

SP = The average of the latest available 12-months' selling prices prior to the date of receipt of the CF by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered for the *barangay* or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO =	Cost of Operations Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of FI shall continue to use the assumed NIR of 70% DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP.
0.12 =	Capitalization Rate[68] (Emphasis supplied)

Administrative Order No. 5 provides a comprehensive formula that considers several factors present in determining just compensation.

However, as this Court held in *Apo Fruits Corporation and Hijo Plantation, Inc. v. The Honorable Court of Appeals and Land Bank of the Philippines*,[69] and *Export Processing Zone Authority*,[70] it is not adequate to merely use the formula in an administrative order of the Department of Agrarian Reform or rely on the determination of a land assessor to show a final determination of the amount of just compensation. Courts are still tasked with considering all factors present, which may be stated in formulas provided by administrative agencies.

In *Land Bank v. Yatco Agricultural Enterprises*[71] this Court held that when acting within the bounds of the Comprehensive Agrarian Reform Law, special agrarian courts "are not strictly bound to apply the [Department of Agrarian Reform] formula to its minute detail, particularly when faced with situations that do not warrant the formula's strict application; they may, in the exercise of their discretion, relax the formula's application to fit the factual situations before them."[72]

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[68] DAR Admin. Order No. 05-98 (1998), Part II.

[69] 543 Phil. 497 (2007) [Per *J.* Chico-Nazario, *En Banc*].

[70] 233 Phil. 313 (1987) [Per *J.* Gutierrez, Jr., *En Banc*].

[71] 724 Phil. 276 (2014) [Per *J.* Brion, Second Division].

[72] *Id.* at 287-288.

In *Apo Fruits Corporation v. Land Bank*,[73] this Court held that Section 17 of the Comprehensive Agrarian Reform Law merely provides for guideposts to ascertain the value of properties. Courts are not precluded from considering other factors that may affect the value of property.[74]

While administrative issuances are entitled to great respect, their application must always be in harmony with the law they seek to interpret. In *Land Bank v. Obias*:[75]

> [A]dministrative issuances or orders, though they enjoy the presumption of legalities, are still subject to the interpretation by the Supreme Court pursuant to its power to interpret the law. *While rules and regulation[s] issued by the administrative bodies have the force and effect of law and are entitled to great respect, courts interpret administrative regulations in harmony with the law that authorized them and avoid as much as possible any construction that would annul them as invalid exercise of legislative power*.[76] (Emphasis supplied, citation omitted)

Thus, while the formula prescribed by the Department of Agrarian Reform requires due consideration, the determination of just compensation shall still be subject to the final decision of the special agrarian court. Most recently, in *Alfonso v. Land Bank*:[77]

> For the guidance of the bench, the bar, and the public, we reiterate the rule: Out of regard for the DAR's expertise as the concerned implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before

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[73] 647 Phil. 251 (2010) [Per *J.* Brion, *En Banc*].

[74] *Id*.

[75] 684 Phil. 296 (2012) [Per *J.* Perez, Second Division].

[76] *Id*. at 302.

[77] 801 Phil. 217 (2016) [Per *J.* Jardeleza, *En Banc*].

them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, courts of law possess the power to make a final determination of just compensation.[78] (Citation omitted)

The special agrarian court sitting in a condemnation action may adopt the value computed using the guidelines promulgated by the Department of Agrarian Reform. In its exercise of original jurisdiction, the special agrarian court may deviate from the formulas if it can show that the value is not equivalent to the fair market value at the time of the taking. However, an allegation is not enough. The landowner must allege and prove why the formula provided by the Department of Agrarian Reform does not suffice.

Nonetheless, having original and exclusive jurisdiction does not mean that our courts should be removed from the realities that confront the entire government bureaucracy and, in so doing, become impervious to the guidelines issued by our administrative agencies.

In *Land Bank v. Palmares*,[79] this Court affirmed the validity of the basic formula developed by the Department of Agrarian Reform. There, the respondents voluntarily offered their 19.98-hectare agricultural land for sale to the government under the agrarian reform program. The Department of Agrarian Reform offered ₱440,355.92 as just compensation, which the respondents rejected. Thus, the Department of Agrarian Reform Adjudication Board commenced summary proceedings to determine just compensation. It resolved to adopt the Land Bank's valuation, which prompted the respondents to file a petition to determine just compensation before the Regional Trial Court of Iloilo City, sitting as the Special Agrarian Court.

After the trial court had ordered a re-computation, Land Bank arrived at the amount of ₱503,148.97. With the respondents still rejecting the amount, the trial court made its own computation

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[78] *Id*. at 321-322.

[79] 711 Phil. 336 (2013) [Per *J*. Perlas-Bernabe, Second Division].

of just compensation by averaging the price of the land per hectare, as computed based on the Department of Agrarian Reform guidelines and the market value of the land per hectare as shown in the 1997 tax declaration covering the property. It arrived at the amount of ₱669,962.53, which would later be upheld by the Court of Appeals.

However, this Court reversed the judgments, finding that the trial court's computation was against the mandate of the law. It first discussed Section 17 of the Comprehensive Agrarian Reform Law, which enumerated the factors for determining just compensation.[80] It then declared that the Department of Agrarian Reform, in accordance with its rule-making power, translated these factors into a basic formula:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where:	LV	=	Land Value
	CNI	=	Capitalized Net Income
	CS	=	Comparable Sales
	MV	=	Market Value per Tax Declaration[81]

Still in *Palmares*, this Court found that the Land Bank had already factored in the property's market value as appearing in the 1995 tax declaration in computing the value of just compensation. By averaging the price of the land, as computed based on the Department guidelines, and the land's market value as appearing in the 1997 tax declaration, the special agrarian

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[80] Rep. Act No. 6657 (1988), Sec. 17 originally provided:

SECTION 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

This provision has since been amended by Republic Act No. 9700.

[81] DAR Administrative Order No. 5 (1998).

court did a "double take up" of the market value per tax declaration of the property. Such double take up, this Court held, destroyed the affordability of the land to the farmer-beneficiaries. In the end, the case was ordered remanded to the trial court for a re-computation of the just compensation, per Section 17 and the Department of Agrarian Reform's applicable administrative orders.

The validity of the Department of Agrarian Reform's basic formula in determining just compensation was affirmed in *Land Bank v. Hababag, Sr.*[82] There, this Court affirmed the Court of Appeals' computation for adhering to the basic formula. It set aside the special agrarian court's computation for having been arrived at using the income productivity approach, which it found to be "off-tangent with the governmental purpose behind the acquisition of agricultural lands."[83] This Court explained:

> [C]ase law states that agricultural lands are not acquired for investment purposes but for redistribution to landless farmers in order to lift their economic status by enabling them to own directly or collectively the lands they till or to receive a just share of the fruits thereof. In this regard, farmer-beneficiaries are not given those lands so they can live there but so that they can till them. Since they generally live on a hand-to-mouth existence, their source of repaying the just compensation is but derived out of their income from their cultivation of the land. Hence, in order to be just, the compensation for the land must be what the farmer-beneficiaries can reasonably afford to pay based on what the land can produce. It would therefore be highly inequitable that in the 30-year allowable period to pay the annual amortizations for the lands, farmer-beneficiaries would be required to pay for the same income they expect to earn therefrom on top of the computed market value of the landholdings. Such could not have been the intent of the State's agrarian reform program. In fine, the Court cannot sustain the RTC's application of the Income Productivity Approach used as one of its bases in arriving at its decreed valuation. Not only is the same aversive to the jurisprudential concept of "market value," but it also deviates from the factors laid down in Section 17

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[82] 769 Phil. 687 (2015) [Per *J.* Perlas-Bernabe, First Division].

[83] *Id*. at 701.

of RA 6657 and thus, remains legally baseless and unfounded.[84] (Citations omitted)

Here, the Special Agrarian Court found that a slight deviation was in order. It held that there were other factors present that must also be taken into account, deeming petitioner's valuation to be "unrealistically low":

> [T]he Court finds the total valuation by the LBP and the DAR in the amount of ₱739,461.43 to be unrealistically low and therefore is not the just compensation of the subject lot. On the other hand, the valuation of the petitioners is likewise cumbersomely high for the government and the farmer-beneficiaries considering that the valuation of ₱300,000.00 per hectare they initially asked in 1998 were based only on assumptions of facts unsupported by credible evidence. This offer of ₱300,000.00 was reiterated by Mr. Gustilo during the hearing and clearly, this offer is based on his own declarations but this was not adequately substantiated and therefore inconclusive. Thus, the Court in the exercise of its judicial prerogatives, must consider the needs of both parties and should be guided by several factors in order to arrive at a just compensation which is fair, reasonable and acceptable to the parties.[85]

The Special Agrarian Court proceeded to compute just compensation according to the factors in Administrative Order No. 5 and the market value of the property as shown in the tax declarations:

> *Thus, in determining just compensation, the Court will take into consideration the factors, like the price set by the plaintiffs when they first offered the subject land for voluntary acquisition (₱300,000.00 per hectare; Date of Offer - January 30, 1995) and those provided under Section 17 of R.A. 6657, to wit: a) the cost of acquisition of the land; b) the current value of like properties; c) the sworn valuation by the owner; d) the tax declarations and assessments; e) the assessments made by government assessors; f) the social and economic benefits contributed by the farmers and the farm workers and by the government to the property; and g) the non-payment of*

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[84] *Id*. at 701-703.

[85] *Rollo*, p. 74.

taxes or loans secure from any government financing institution on the said land.

The petitioners herein presented the four (4) Tax Declarations for 1996 of the subject lots wherein the assessor fixed the market value per hectare of the bamboo land at ₱45,200.00 (total area - 0.5000 Has.); for rice land irrigated at ₱60,830.00 (total area - 1.5716 hectares); for coconut land at ₱45,000.00 (total area - 0.2000 hectares); and for sugar land at ₱122,000.00 (total area - 8.2318 hectares) or a total market value of ₱1,131,479.60.

Although the market value appearing in the tax declaration is usually lower than the actual value of the property, the court will consider the said amount since no evidence was presented by the plaintiffs to prove a higher amount.

In evaluating the subject lot in the case at bar, the Court will take into account the amount of ₱31,789.80 per hectare of bamboo land consisting of 0.4855 hectares; ₱59,871.97 per hectare of rice unirrigated consisting of 8.9920 hectare[s]; and ₱59,502.19 per hectare of rice unirrigated consisting of 3.1202 hectares, *which was arrived at using the mathematical formula provided under DAR Administrative Order No. 5, Series of 1998 and the market value of the property as shown in the tax declarations* which are as follows: for bamboo land consisting of 0.5000 hectares, the market value is ₱22,600.00; for coconut land consisting of 0.2000 hectares, the market value is ₱9,000.00; for rice irrigated consisting of 1.5716 hectares, the market value is ₱95,600.00 per hectare; and for sugar land consisting of 8.2318 hectares, the market value is ₱1,004,279.60 or a total market value of ₱1,131,479.60. *The average of these amounts will be considered the just compensation of the subject lot. Such method of valuation is intended to take into account all the factors previously discussed.*Therefore, the average of these two figures will result in the following valuation per hectare:

	Per Hectare	Area Actually Taken	Value
Bambooland	₱38,494.50	0.4855 Has.	₱18,689.08
Rice unirrigated	₱90,935.96	8.9920 Has.	817,696.15
Rice unirrigated	₱60,166.10	3.1202 Has.	187,730.26
		[12.5977] has.	₱1,024,118.49

From the foregoing computations, this Court finds and so hold (*sic*) that the just compensation or land value of the subject lot located at Brgy. Maquina, Dumangas, Iloilo covered by TCT Nos. T-62209, T-622010, T-62212 and T-51376 and registered in the name of Lucy Grace Franco married to Jose Mandoriao, Jr. and Elma Gloria Franco is ₱1,024,115.40 for the 12.5977 hectares actually taken by the government and transferred in favor of the qualified farmer-beneficiaries.[86] (Emphasis supplied)

As this Court held in *Alfonso v. Land Bank*, any deviation to the basic formula made in the exercise of judicial discretion must be "supported by a reasoned explanation grounded on the evidence on record."[87] A computation by a court made in "utter and blatant disregard of the factors spelled out by law and by the implementing rules"[88] amounts to grave abuse of discretion. It must be struck down.

Here, the Special Agrarian Court's computation of just compensation resulted in a "double take up" of the market value per tax declaration of the property. This method of valuation has already been considered in *Palmares* as a departure from the mandate of law and basic administrative guidelines.

II

The five percent (5%) cash incentive under Section 19, in relation to Section 18 of the Comprehensive Agrarian Reform Law, is *not* in addition to the amount of just compensation awarded by the courts. The incentive only applies to the *cash* payment to be awarded.

Section 19 provides:

SECTION 19. Incentives for Voluntary Offers for Sale. — Landowners, other than banks and other financial institutions, who voluntarily offer their lands for sale shall be entitled to an additional five percent (5%) *cash payment.* (Emphasis supplied)

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[86] *Id*. at 75-76.

[87] *Id*. at 322.

[88] *Land Bank of the Philippines v. Yatco Agricultural Enterprises*, 724 Phil. 276, 288 (2014) [Per *J.* Brion, Second Division].

It is elementary that a statutory provision must be construed in relation to other parts of the statute.[89] Thus, Section 19 should be read in connection with Section 18, which provides:

SECTION 18. Valuation and Mode of Compensation. — The LBP shall compensate the landowner in such amounts as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Sections 16 and 17 and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land.

The compensation shall be paid in one of the following modes, at the option of the landowner:

(1) *Cash payment*, under the following terms and conditions;

a) For lands above fifty (50) hectares, insofar as the excess hectarage is concerned.	—	Twenty-five percent fifty (50) hectares, insofar (25%) cash, the balance to be paid in government financial instruments negotiable at any time.
(b) For lands above twenty-four (24) hectares and up to fifty (50) hectares.	—	Thirty percent (30%) cash, the balance to be paid in government financial instruments negotiable at any time.
c) For lands twenty-four (24) hectares and below.	—	Thirty-five percent (35%) cash, the balance to be paid in government financial instruments negotiable at any time.

(2) Shares of stock in government-owned or controlled corporations, LBP preferred shares, physical assets or other qualified investments in accordance with guidelines set by the PARC;

(3) Tax credits which can be used against any tax liability;

(4) *LBP bonds*, which shall have the following features:

(a) Market interest rates aligned with 91-day treasury bill rates. Ten percent (10%) of the face value of the bonds shall mature

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[89] See *Civil Service Commission v. Joson, Jr.*, 473 Phil. 844 (2004) [Per *J.* Callejo, Sr., *En Banc*].

every year from the date of issuance until the tenth (10th) year: Provided, That should the landowner choose to forego the cash portion, whether in full or in part, he shall be paid correspondingly in LBP bonds;

(b) Transferability and negotiability. Such LBP bonds may be used by the landowner, his successors in interest or his assigns, up to the amount of their face value, for any of the following:

(i) Acquisition of land or other real properties of the government, including assets under the Asset Privatization Program and other assets foreclosed by government financial institutions in the same province or region where the lands for which the bonds were paid are situated;

(ii) Acquisition of shares of stock of government-owned or controlled corporations or shares of stocks owned by the government in private corporations;

(iii) Substitution for surety or bail bonds for the provisional release of accused persons, or performance bonds;

(iv) Security for loans with any government financial institution, provided the proceeds of the loans shall be invested in an economic enterprise, preferably in a small- and medium-scale industry, in the same province or region as the land for which the bonds are paid;

(v) Payment for various taxes and fees to government; *Provided*, That the use of these bonds for these purposes will be limited to a certain percentage of the outstanding balance of the financial instruments: Provided, further, That the PARC shall determine the percentage mentioned above;

(vi) Payment for tuition fees of the immediate family of the original bondholder in government universities, colleges, trade schools, and other institutions;

(vii) Payment for fees of the immediate family of the original bondholder in government hospitals; and

(viii) Such other uses as the PARC may from time to time allow.

In case of extraordinary inflation, the PARC shall take appropriate measures to protect the economy. (Emphasis supplied)

Meanwhile, Article XIII, Section 8 of the Constitution provides:

> SECTION 8. The State shall provide incentives to landowners to invest the proceeds of the agrarian reform program to promote industrialization, employment creation, and privatization of public sector enterprises. Financial instruments used as payment for their lands shall be honored as equity in enterprises of their choice.

Aside from cash payment, the Comprehensive Agrarian Reform Law provides for three (3) more modes of payment. Section 19 must be interpreted to mean that while the additional five percent (5%) cash payment is an incentive to owners-sellers to expedite the agrarian reform program, the incentive given to these land owners should not be to the detriment of the government.

If, as respondents have argued, the additional five percent (5%) is indeed to be paid on top of the awarded just compensation for the property, then the law would not have put "cash" before "payment" in Section 19, in turn modifying the kind of payment to be given to the owners-sellers.

The landowner shall receive 35% of the just compensation in cash, while the remaining 65% shall be paid in bonds if the aggregate area acquired by the Department of Agrarian Reform is below 24 hectares. However, if the landowner voluntarily offers their land to the Department of Agrarian Reform, as in this case, the landowner shall be entitled to an additional five percent (5%) only on the cash portion. Therefore, instead of receiving only 35% in cash, the landowner shall now receive 40% in cash and 60% in bonds.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals January 20, 2011 Decision and August 8, 2012 Resolution in CA-G.R. SP. No. 03225, which affirmed with modification the September 18, 2007 Decision of the Regional Trial Court, Branch 34, Iloilo City, sitting as Special Agrarian Court in Civil Case No. 00-26367, are **REVERSED AND SET ASIDE**.

The just compensation to be paid to respondents Lucy Grace Franco and Elma Gloria Franco is Seven Hundred Thirty-Nine Thousand Four Hundred Sixty-One Pesos and Forty-Three Centavos (₱739,461.43), as computed by petitioner Land Bank of the Philippines and the Department of Agrarian Reform with legal interest of twelve percent (12%) from the time of taking until June 30, 2013, and legal interest of six percent (6%) from July 1, 2013 until its full satisfaction.[90]

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, and *Lazaro-Javier, JJ.*, concur.

EN BANC

[G.R. No. 210631. March 12, 2019]

SOLITO TORCUATOR, General Manager, Polomolok Water District and EMPLOYEES OF POLOMOLOK WATER DISTRICT, represented by CECIL MIRASOL, *petitioners, vs.* **COMMISSION ON AUDIT, and POLOMOLOK WATER DISTRICT AUDIT TEAM LEADER ALIA ARUMPAC-MASBUD,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989 (R.A. NO. 6758); SECTION 12 OF R.A. NO. 6758 CLEARLY STATES THAT ALL ALLOWANCES AND BENEFITS RECEIVED BY GOVERNMENT OFFICIALS AND EMPLOYEES ARE DEEMED INTEGRATED IN

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

THEIR SALARIES; THE PROVISION IS VALID AND SELF-EXECUTORY.— [T]he Court has consistently held that Sec. 12 of R.A. No. 6758 is valid and self-executory even without the implementing rules of DBM-CCC No. 10. The said provision clearly states that all allowances and benefits received by government officials and employees are deemed integrated in their salaries. As applied in this case, the COLA, medical, food gift, and rice allowances are deemed integrated in the salaries of the PWD officers and employees. Petitioners could not cite any specific implementing rule, stating that these are non-integrated allowances. Thus, the general rule of integration shall apply.

2. **ID.; ID.; ID.; ID.; THE RULING IN *PPA EMPLOYEES* DOES NOT APPLY IN THIS CASE; PETITIONERS CANNOT INVOKE THE LEGAL LIMBO OF DBM-CCC NO. 10 BECAUSE THE INTEGRATION OF ALLOWANCES UNDER SECTION 12 IS SELF-EXECUTORY.—** In *PPA Employees,* the crux of the issue was whether it was appropriate to **distinguish between employees hired before and after July 1, 1989** in allowing the back payment of the COLA. In the said case, the Court ruled that there was no substantial difference between employees hired before July 1, 1989 and those hired thereafter to warrant the exclusion of the latter from COLA back payment. It is important to highlight that, in *PPA Employees*, the COLA was paid on top of the salaries received by the employees therein before it was discontinued. x x x In this case, however, the PWD officers and employees that received the disallowed benefits were uniformly hired **after July 1, 1989**. Thus, *PPA Employees* does not apply in all fours in the present case. Sec. 12 of R.A. No. 6753 should be applied to the said officers and employees. At the time they were hired, there was no diminution of benefits as these benefits were deemed integrated in the standardized salaries. To reiterate, petitioners cannot invoke the legal limbo of DBM-CCC No. 10 because the integration of allowances under Sec. 12 is self-executory even without any implementing rule.

3. **ID.; ID.; ID.; ID.; THERE WAS SUFFICIENT REASON FOR CHOOSING JULY 1, 1989 AS THE CUT-OFF POINT OF THE GRANT OF ALLOWANCES OR FRINGE BENEFITS; THE DBM LETTERS CANNOT BE INVOKED TO CHANGE THE SPECIFIC DATE PROVIDED BY LAW.—**

Sec. 12 of R.A. No. 6753 sets July 1, 1989 as the date when employees should be considered "incumbents," because that was the date when the law took effect. Thus, there was sufficient reason for choosing such date as the cut-off point of the grant of allowances or fringe benefits. Verily, DBM is constrained to abide by the explicit provision of the law that July 1, 1989 is the reckoning point, pursuant to R.A. No. 6753, when allowances or fringe benefits may be granted to incumbent officers and employees. After the said date, the general rule of integration shall apply to allowances and benefits. Consequently, the DBM letters cited by petitioners cannot be invoked to change the specific date provided by the law. Glaringly, the said letters did not even state any justification for disregarding July 1, 1989, as stated under R.A. No. 6753, and upholding December 1, 1999 as the reckoning period. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature.

4. **ID.; ID.; ID.; SINCE PETITIONERS ACTED IN GOOD FAITH IN GRANTING THE QUESTIONED ALLOWANCES AND BENEFITS, THEY NEED NOT PAY THE DISALLOWED AMOUNT.—** [G]ood faith may be appreciated in favor of petitioners because at the time that they made the disallowed disbursement of COLA, medical, food gift, and rice allowances, there was still no definitive ruling or jurisprudence regarding the inclusion of these benefits; they merely relied on the DBM letters in good faith; and jurisprudence had consistently held that good faith may be appreciated to the government officers and employees that approved and received the disallowed benefits. In conclusion, it is unfair to penalize public officials based on overly stretched and strained interpretations of rules, which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. A contrary rule would be counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade others from joining the government. When government service becomes unattractive, it could only have adverse consequences for society. x x x [T]he disallowed amount in Notice of Disallowance Nos. 07-001-(06) and 07-004-(06) dated October 4, 2007, need not be paid by petitioners.

APPEARANCES OF COUNSEL

Levy T. Saligumba for petitioners PWD and PWD employees.
The Solicitor General for Commission on Audit.

R E S O L U T I O N

GESMUNDO, *J.*:

This is a petition for *certiorari* seeking to annul and set aside the November 26, 2012 Decision[1] and November 20, 2013 Resolution[2] of the Commission on Audit (*COA*) in Decision No. 2012-222 and Resolution No. 2013-194, respectively. The COA affirmed the Decision[3] of the COA Regional Office XII (*Region XII*) in COA XII Decision No. 09-05 dated March 16, 2009 which affirmed Notice of Disallowance (*ND*) Nos. 07-001-(06), 07-002-(06), 07-003-(06), and 07-004-(06)[4] dated October 4, 2007.

Polomolok Water District (*PWD*) is a government-owned and controlled corporation organized under Presidential Decree No. 198, as amended. Prior to November 1, 1989, the employees of PWD were receiving medical, food and rice allowances, and cost of living allowance (*COLA*). However, these benefits were discontinued under Republic Act (*R.A.*) No. 6758.[5]

To implement R.A. No. 6758, the Department of Budget and Management (*DBM*) issued Corporate Compensation Circular (*CCC*) No. 10. It provided, among others, the discontinuance of all allowances and fringe benefits, including COLA, of

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[1] *Rollo*, pp. 26-36; concurred by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

[2] *Id*. at 37-39; concurred by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Rowena V. Guanzon.

[3] *Id*. at 97; penned by Atty. Usmin P. Diamel, Regional Director.

[4] *Id*. at 98-113.

[5] Also known as the Compensation and Position Classification Act of 1989.

government officers and employees over and above their basic salaries starting July 1, 1989.

On the basis of DBM-CCC No. 10, PWD stopped paying its officers and employees COLA and other fringe benefits. However, on August 12, 1998, the Court promulgated *De Jesus v. Commission on Audit*[6] (*De Jesus*) stating that DBM-CCC No. 10 was ineffective due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country, as required by law. Subsequently, DBM-CCC No. 10 dated February 15, 1999, was re-issued and properly published.[7]

In its Letter[8] dated November 8, 2000, the DBM stated that local water districts shall be allowed to continue the grant of allowances/fringe benefits that are found to be an established practice as of December 31, 1999. In another Letter[9] dated April 27, 2001, the DBM reiterated that the grant of allowances and fringe benefits that have been established and granted as of December 31, 1999 shall form part of the compensation being regularly received by the local water district personnel.

Thus, PWD issued Board Resolution No. 02-27 authorizing the payment of COLA and other allowances for the inclusive period of 1992-1999, pursuant to the ruling in *De Jesus*. In 2006, the COLA, medical, food gift, and rice allowances were released to the officers and employees on staggered basis.

The Notice of Disallowance

On October 4, 2007, the COA Audit Team Leader assigned to PWD issued the following NDs:

1. ND No. 07-001-(06) disallowing the amount of ₱832,000.00 representing the payment of medical, food gift, and rice allowances contrary to Section 5.6 of DBM-CCC No. 10 dated February 15, 1999, Section 12 of

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[6] 355 Phil. 584 (1998).

[7] See *rollo*, p. 28.

[8] *Id*. at 57-59.

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

R.A. No. 6758, and COA Resolution No. 2004-006 dated September 14, 2004;

2. ND No. 07-002-(06) disallowing the amount of ₱28,720.00 representing payment of year-end financial assistance, cash gift and extra cash gift for calendar year 2005, contrary to Section 8, Article IX(B) of the Constitution, Section 4 of Presidential Decree (*P.D.*) No. 1445, and Resolution No. 239-05 dated December 20, 2005 of the Local Water Utilities Administration (*LWUA*);

3. ND No. 07-003-(06) disallowing the amount of ₱111,737.04 for the payment to a certain Victor Dignadice for the recovery of his down payment of one unit L-300 van contrary to Section 4(6) of P.D. No. 1445 and Section 168 of the Government Accounting and Auditing Manual, Volume I; and

4. ND No. 07-004-(06) disallowing the amount of ₱728,953.92 for the payment of the COLA contrary to Paragraph 6.0 of the DBM Budget Circular No. 2001-03 dated November 12, 2001, Paragraph 5.0 of DBM National Budget Circular No. 2005-502 dated October 26, 2005, and Paragraph 5.6 of DBM-CCC No. 10 dated February 15, 1999.[10]

The NDs held that those who approved the transactions, certified the documents, payees, and the recipients, were liable to settle the disallowance.

Aggrieved, the affected officers and employees of PWD, collectively referred to as petitioners, appealed ND Nos. 07-001-(06), 07-003-(06), and ND No. 07-004-(06) to the COA Region XII.

The COA Region XII Ruling

In its Decision[11] dated February 3, 2009, the COA Region XII affirmed the disallowances. It held that the subject expenses

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[10] See *id*. at 27-28.

[11] *Id*. at 96.

were illegal expenditures and devoid of legal basis because they were prohibited allowances and benefits under Sec. 5.6 of DBM-CCC No. 10, Sec. 12 of R.A. No. 6758, COA Resolution No. 2004-06. The COA Region XII concluded that the appeal could not be given due course.

Petitioners moved for reconsideration but it was denied by the COA Region XII in its decision dated March 16, 2009. Thus, the appeal was transmitted to the COA pursuant to Section 6, Rule VI of the 1997 Revised Rules of Procedure of the COA.

The COA Ruling

In its decision dated November 26, 2012, the COA denied the appeal. It held that under Sec. 12 of R.A. No. 6758, the payment of separate benefits to employees hired after July 1, 1989, as in this case, should be withheld because they are deemed integrated in the government employee's salary. The COA cited *Gutierrez, et al. v. DBM, et al.*[12] (*Gutierrez*), which stated that COLA and other benefits are deemed integrated in the standardized salary rates of government employees under the general rule of integration. It also stated that the non-publication of DBM-CCC No. 10 did not nullify the integration of COLA and other benefits into the standardized rates upon effectivity of R.A. No. 6758.

Petitioners filed a motion for reconsideration but it was denied by the COA in its resolution dated November 20, 2013.

Hence, this petition seeking to overturn ND No. 07-001-(06) for the payment of medical, food gift, and rice allowances in 2006; and ND No. 07-00-4-(06) for the payment of COLA in 2006.[13]

ISSUES

I.

THE COMMISSION ON AUDIT ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF COA

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[12] 630 Phil. 1 (2010).

[13] *Rollo*, p. 22.

FIELD AUDITORS IN ND NO. 07-001-(06), DISALLOWING PAYMENT OF MEDICAL, FOOD GIFT AND RICE ALLOWANCES TO THE EMPLOYEES OF POLOMOLOK WATER DISTRICT IN 2006 DESPITE CLEARANCE FROM THE DEPARTMENT [OF] BUDGET AND MANAGEMENT;

II.

THE COMMISSION ON AUDIT ERRED AND GRAVELY ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF COA FIELD AUDITORS IN ND NO. 07-004-(06), DISALLOWING PAYMENT OF COLA TO THE EMPLOYEES OF POLOMOLOK WATER DISTRICT FOR THE YEARS 1992 THROUGH 1999 DESPITE THE PREVAILING CASE LAW AT THE TIME OF PAYMENT IN 2006;

III.

THE COMMISSION ON AUDIT ERRED AND GRAVELY ABUSED ITS DISCRETION IN RETROACTIVELY APPLYING THE 2010 DECISION IN THE CASE OF *GUTIERREZ V. DBM* IN THE ACTUAL DISBURSEMENT IN 2006 AND IN MISAPPLYING THE SAME TO A GOVERNMENT[-]OWNED AND CONTROLLED CORPORATION.[14]

In their Memorandum,[15] petitioners assert that since *De Jesus* invalidated DBM-CCC No. 10 for non-publication, then there was no implementing rule that determined the benefits incorporated in the salaries of government employees until said circular was re-published in 1999. Thus, they argue that PWD sufficiently relied on *De Jesus* when it released the COLA, medical, food gift, and rice allowances of the employees for the inclusive years of 1992 to 1999. They also aver that *De Jesus* was reiterated in *Philippine Ports Authority Employees Hired after July 1, 1989 v. Commission on Audit, et al.*[16] (*PPA Employees*), which stated that employees of Government-Owned and Controlled Corporations (*GOCCs*) are entitled to COLA

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[14] *Id*. at 13.

[15] *Id*. at 221-232.

[16] 506 Phil. 382 (2005).

and other fringe benefits during the time that DBM-CCC No. 10 was in legal limbo.

Petitioners further contend that *Gutierrez* is inapplicable because at the time the auditors issued the subject NDs, it was not yet promulgated by the Court. In addition, they stress that they merely relied on the DBM letters stating that local water districts shall be allowed to continue the grant of allowances/ fringe benefits that are found to be an established practice as of December 31, 1999.

In their Memoranda,[17] COA and Audit Team Leader for PWD (*respondents*) countered that Sec. 12 of R.A. No. 6758 clearly states that benefits shall be deemed integrated in the standard salary of government employees; that it was not necessary for an implementing rule from the DBM to execute the said provision of the law; and also emphasized that in *Gutierrez*, the non-publication of DBM-CCC No. 10 did not nullify the integration of COLA into the standardized rates upon effectivity of R.A. No. 6758.

Respondents also argue that Sec. 12 of R.A. No. 6758 mandates that additional compensation not integrated in the salary shall only be received by incumbent employees as of July 1, 1989 and not thereafter. Thus, petitioners cannot rely on the letters of the DBM, stating that local water district employees may receive allowances/fringe benefits that are found to be an established practice until December 31, 1999.

The Court's Ruling

The petition is partially meritorious.

Sec. 12 of R.A. No. 6758 is self-executory

R.A. No. 6758 standardized the salaries received by government officials and employees. Sec. 12 thereof states:

SECTION 12. Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation

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[17] *Rollo*, pp. 184-199 and 211-219.

allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

In *Maritime Industry Authority v. Commission on Audit*[18] (*MIA*) the Court explained the provision of Sec. 12, to wit:

The clear policy of Section 12 is "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Thus, the general rule is that all allowances are deemed included in the standardized salary. However, there are allowances that may be given in addition to the standardized salary. These non-integrated allowances are specifically identified in Section 12, to wit:

1. representation and transportation allowances;
2. clothing and laundry allowances;
3. subsistence allowance of marine officers and crew on board government vessels;
4. subsistence allowance of hospital personnel;
5. hazard pay; and
6. allowances of foreign service personnel stationed abroad.

In addition to the non-integrated allowances specified in Sec. 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.[19]

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[18] 750 Phil. 288 (2015).

[19] *Id*. at 314-315.

Pursuant to R.A. No. 6758, DBM-CCC No. 10 was issued, which provided, among others, the discontinuance without qualification of all allowances and fringe benefits, including COLA, of government employees over and above their basic salaries.[20] In 1998, the Court declared in the case of *De Jesus* that DBM-CCC No. 10 is without force and effect on account of its non-publication in the Official Gazette or in a newspaper of general circulation, as required by law. In 1999, DBM re-issued its DBM-CCC No. 10 in its entirety and submitted it for publication in the Official Gazette.

Thus, petitioners chiefly argue that since DBM-CCC No. 10 was invalidated and was re-published only in 1999, then the officers and employees of PWD may receive COLA and other fringe benefits for the period of 1992 to 1999.

The Court is not convinced.

As early as *Philippine International Trading Corporation v. Commission on Audit*,[21] the Court held that the nullification of DBM-CCC No. 10 in *De Jesus* does not affect the validity of R.A. No. 6758, to wit:

> There is no merit in the claim of PITC that R.A. No. 6758, particularly Section 12 thereof is void because DBM-Corporate Compensation Circular No. 10, its implementing rules, was nullified in the case of *De Jesus v. Commission on Audit*, for lack of publication. The basis of COA in disallowing the grant of SFI was Section 12 of R.A. No. 6758 and not DBM-CCC No. 10. **Moreover, the nullity of DBM-CCC No. 10, will not affect the validity of R.A. No. 6758. It is a cardinal rule in statutory construction that statutory provisions control the rules and regulations which may be issued pursuant thereto.** Such rules and regulations must be consistent with and must not defeat the purpose of the statute. The validity of R.A. No. 6758 should not be made to depend on the validity of its implementing rules.[22] (emphasis supplied; citations omitted)

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[20] See *rollo*, p. 9.

[21] 461 Phil. 737 (2003).

[22] *Id*. at 749-750.

In *NAPOCOR Employees Consolidated Union, et al. v. National Power Corporation, et al.*,[23] the Court reiterated that while DBM-CCC No. 10 was nullified in *De Jesus*, there is nothing in that decision suggesting or intimating the suspension of the effectivity of R.A. No. 6758 pending the publication of DBM-CCC No. 10 in the Official Gazette.

In *Gutierrez*, the Court definitively ruled that COLA is integrated in the standard salary of government officials and employees under Sec. 12 of R.A. No. 6758, to wit:

> The drawing up of the above list is consistent with Section 12 above. R.A. [No.] 6758 did not prohibit the DBM from identifying for the purpose of implementation what fell into the class of "all allowances." With respect to what employees' benefits fell outside the term apart from those that the law specified, the DBM, said this Court in a case, needed to promulgate rules and regulations identifying those excluded benefits. This leads to the inevitable conclusion that until and unless the DBM issues such rules and regulations, the enumerated exclusions in items (1) to (6) remain exclusive. **Thus so, not being an enumerated exclusion, COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration.**
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> Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.[24] (emphasis supplied; citations omitted)

In *MIA*, the Court emphasized that R.A. No. 6758 deems **all allowances and benefits received by government officials**

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[23] 519 Phil. 372 (2006).

[24] *Supra* note 12, at 16-17.

and employees as incorporated in the standardized salary, unless excluded by law or an issuance by the DBM. The integration of the benefits and allowances is by legal fiction.[25]

It was also discussed therein that "[o]ther than those specifically enumerated in [Sec] 12, non-integrated allowances, incentives, or benefits, may still be identified and granted to government employees. This is categorically allowed in [R.A.] No. 6758. This is also in line with the President's power of control over executive departments, bureaus, and offices. These allowances, however, cannot be granted indiscriminately. Otherwise, the purpose and mandate of [R.A.] No, 6758 will be defeated."[26]

More recently, in *Zamboanga City Water District, et al. v. Commission on Audit*[27] (*ZCWD*), it was declared by the Court that, in accordance with the *MIA* ruling, the COLA and Amelioration Allowance (*AA*) are already deemed integrated in the standardized salary, particularly, in local water districts.

Verily, the Court has consistently held that Sec. 12 of R.A. No. 6758 is valid and self-executory even without the implementing rules of DBM-CCC No. 10. The said provision clearly states that all allowances and benefits received by government officials and employees are deemed integrated in their salaries. As applied in this case, the COLA, medical, food gift, and rice allowances are deemed integrated in the salaries of the PWD officers and employees. Petitioners could not cite any specific implementing rule, stating that these are non-integrated allowances. Thus, the general rule of integration shall apply.

The ruling in PPA Employees is inapplicable

Petitioners insist that the ruling in *PPA Employees* is applicable herein. In said case, the Court stated that during the period that DBM-CCC No. 10 was in legal limbo, the COLA and other

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[25] *Supra* note 18, at 332.

[26] *Id*. at 320.

[27] 779 Phil. 225 (2016).

allowances were not effectively integrated into the standardized salaries.

The argument fails.

In *PPA Employees*, the crux of the issue was whether it was appropriate to **distinguish between employees hired before and after July 1, 1989** in allowing the back payment of the COLA. In the said case, the Court ruled that there was no substantial difference between employees hired before July 1, 1989 and those hired thereafter to warrant the exclusion of the latter from COLA back payment. It is important to highlight that, in *PPA Employees*, the COLA was paid on top of the salaries received by the employees therein before it was discontinued.[28]

In *Republic, et al. v. Cortez, et al.*,[29] the Court affirmed that the *PPA Employees* ruling cannot be invoked during the period of legal limbo and applies only when there is a necessity to distinguish between employees hired before and after July 1, 1989:

> In order to settle any confusion, we abandon any other interpretation of our ruling in *Philippine Ports Authority (PPA) Employees Hired after July 1, 1989* with regard to the entitlement of the NAPOCOR officers and employees to the back payment of COLA and AA during the period of legal limbo. To grant any back payment of COLA and AA despite their factual integration into the standardized salary would cause salary distortions in the Civil Service. It would also provide unequal protection to those employees whose COLA and AA were proven to have been factually discontinued from the period of Republic Act No. 6758's effectivity.
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> Furthermore, *Philippine Ports Authority (PPA) Employees Hired after July 1, 1989* only applies if the compensation package of those hired before the effectivity of Republic Act No. 6758 actually decreased; or in the case of those hired after, if they received a lesser compensation package as a result of the deduction of COLA or AA.[30]

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[28] *Metropolitan Naga Water District, et al. v. COA*, 782 Phil. 281, 290 (2016).

[29] 805 Phil. 294 (2017).

[30] *Id*. at 338-339.

In this case, however, the PWD officers and employees that received the disallowed benefits were uniformly hired **after July 1, 1989**.[31] Thus, *PPA Employees* does not apply in all fours in the present case. Sec. 12 of R.A. No. 6753 should be applied to the said officers and employees. At the time they were hired, there was no diminution of benefits as these benefits were deemed integrated in the standardized salaries. To reiterate, petitioners cannot invoke the legal limbo of DBM-CCC No. 10 because the integration of allowances under Sec. 12 is self-executory even without any implementing rule.

Petitioners cannot invoke the letters of the DBM

Petitioners insist that the DBM letters, which state that local water districts shall be allowed to continue the grant of allowances/fringe benefits found to be an established practice as of December 31, 1999, justify the grant of COLA, medical, food gift, and rice allowances for the inclusive years of 1992 to 1999.

Again, the argument fails.

Sec. 12 of R.A. No. 6753 sets July 1, 1989 as the date when employees should be considered "incumbents," because that was the date when the law took effect. Thus, there was sufficient reason for choosing such date as the cut-off point of the grant of allowances or fringe benefits.[32]

Verily, DBM is constrained to abide by the explicit provision of the law that July 1, 1989 is the reckoning point, pursuant to R.A. No. 6753, when allowances or fringe benefits may be granted to incumbent officers and employees. After the said date, the general rule of integration shall apply to allowances and benefits.

Consequently, the DBM letters cited by petitioners cannot be invoked to change the specific date provided by the law.

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[31] *Rollo*, pp. 111-113.

[32] *Id*. at 196.

Glaringly, the said letters did not even state any justification for disregarding July 1, 1989, as stated under R.A. No. 6753, and upholding December 1, 1999 as the reckoning period. The implementing rules and regulations of a law cannot extend the law or expand its coverage, as the power to amend or repeal a statute is vested in the legislature.[33]

Petitioners exercised good faith

Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."[34]

In *Development Bank of the Philippines v. Commission on Audit*,[35] the Court ruled that good faith may be appreciated in favor of the responsible officers under the ND provided they comply with the following requisites: (1) that they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same.

In this case, the Court finds that petitioners exercised good faith in granting COLA, medical, food gift, and rice allowances for the inclusive years of 1992 to 1999, due to the following reasons:

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[33] *The Public Schools District Supervisors Association v. De Jesus, et al.*, 524 Phil. 366, 386 (2006).

[34] *Maritime Industry Authority v. Commission on Audit*, *supra* note 18 at 337, citing *Philippine Economic Zone Authority v. Commission on Audit*, 690 Phil. 104, 115 (2012).

[35] G.R. No. 221706, March 13, 2018.

First, when petitioners disbursed the disallowed benefits in 2006, there was no existing rule or jurisprudence regarding the integration of COLA, medical, food gift, and rice allowances. It was only on March 18, 2010, that the Court promulgated *Gutierrez*, which stated that COLA was deemed integrated in the salaries of government officers and employees under R.A. No. 6753.

On the other hand, it was only on January 13, 2015, that *MIA* was promulgated, which definitively settled that all allowances and benefits received by government officials and employees were incorporated in the standardized salary, unless excluded by law or an issuance by the DBM. This included the medical, food gift, and rice allowances, which are the subjects of the present case.

Manifestly, at the time that petitioners authorized, certified and released the disallowed COLA, medical, food gift, and rice allowances, there was no decisive guiding principle to prohibit such allowances.

Second, when petitioners released the said benefits, they relied on good faith on the letters of the DBM, dated November 8, 2008 and April 27, 2001, respectively. In those letters, it was expressly stated that local water districts shall be allowed to continue the grant of allowances/fringe benefits that are found to be an established practice as of December 31, 1999. While these letters are invalid because they contravene the provisions of R.A. No. 6753, petitioners cannot be blamed for relying thereon because these were issued by the implementing agency of the law. Petitioners had no fault in giving faith and credence to the opinion of the DBM with respect to local water districts.

Third, as to the grant of COLA and other allowances such as medical, food gift, and rice allowances, the Court recognizes that good faith may be appreciated to excuse the payment of the disallowed benefits.

In *MIA*, the Court held that with regard to the disallowance of salaries, emoluments, benefits, and allowances of government employees, prevailing jurisprudence provides that recipients

or payees need not refund these disallowed amounts when they received these in good faith. Government officials and employees who received benefits or allowances, which were disallowed, may keep the amounts received if there is no finding of bad faith and the disbursement was made in good faith.[36]

Thus, in that case, except for the unexplainable amount given to one employee, the government officers and employees therein were declared in good faith for the other benefits. Those who received the disallowed benefits were presumed to have acted in good faith when they allowed and/or received them.

Subsequently, in *ZCWD*, which involves a local water district, the Court held that the payees therein were not required to pay the disallowed COLA and AA benefits on the basis of good faith, to wit:

> Second, the back payment of the COLA and AA need not be refunded because at the time they were paid, there was no similar ruling like the MIA case, where it was held that integration was the general rule and, therefore, benefits were deemed integrated notwithstanding the absence of a DBM issuance. Prior to MIA, there had been no categorical pronouncement that, by virtue of Section 12 of the SSL, benefits were deemed integrated, without a need of a subsequent issuance from the DBM. Consequently, the officers who authorized the back payment of the COLA and AA and the employees who received them believing to be entitled thereto need not refund the same. They were in good faith as they were oblivious that the said payments were improper.[37]

Recently, in *Metropolitan Naga Water District v. Commission on Audit*,[38] which also deals with a local water district, it was ruled that the employees need not refund the amounts corresponding to the COLA they received because they had no participation in the approval thereof and were mere passive recipients without knowledge of any irregularity. Further, good

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[36] See *supra* note 18, at 342.

[37] *Supra* note 27, at 250.

[38] *Supra* note 28.

faith was also appreciated in favor of the officers who approved the same because they merely acted in accordance with the resolution passed by its board authorizing the back payment of COLA to the employees. Moreover, at the time the disbursements were made, no ruling similar to *MIA* was yet made declaring that the COLA was deemed automatically integrated into the salary notwithstanding the absence of a DBM issuance.

Based on the foregoing, good faith may be appreciated in favor of petitioners because at the time that they made the disallowed disbursement of COLA, medical, food gift, and rice allowances, there was still no definitive ruling or jurisprudence regarding the inclusion of these benefits; they merely relied on the DBM letters in good faith; and jurisprudence had consistently held that good faith may be appreciated to the government officers and employees that approved and received the disallowed benefits.

In conclusion, it is unfair to penalize public officials based on overly stretched and strained interpretations of rules, which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. A contrary rule would be counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade others from joining the government. When government service becomes unattractive, it could only have adverse consequences for society.[39]

WHEREFORE, the petition is **PARTIALLY GRANTED**. The November 26, 2012 Decision and the November 20, 2013 Resolution of the Commission on Audit in Decision No. 2012-222 and Resolution No. 2013-194, respectively, are **AFFIRMED with MODIFICATION** in that the disallowed amount in Notice of Disallowance Nos. 07-001-(06) and 07-004-(06) dated October 4, 2007, need not be paid by petitioners.

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[39] *Philippine Economic Zone Authority v. Commission on Audit, et al.*, 797 Phil. 117, 142 (2016).

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Reyes, A. Jr., Reyes, J. Jr., Hernando, Carandang, and *Lazaro-Javier, JJ.*, concur.

Jardeleza, J., no part.

EN BANC

[G.R. No. 217158. March 12, 2019]

GIOS-SAMAR, INC., represented by its Chairperson GERARDO M. MALINAO, *petitioner, vs.* **DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS and CIVIL AVIATION AUTHORITY OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF THE BUNDLING OF GOVERNMENT PROJECTS; THE BUNDLING OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC) PROJECTS ASSAILED IN THE PRESENT CASE DOES NOT VIOLATE THE CONSTITUTIONAL PROVISIONS ON MONOPOLIES; PETITIONER FAILED TO STATE A CAUSE OF ACTION THAT BUNDLING WILL CREATE MONOPOLY.— [W]e find that the grant of a concession agreement to an entity, as a winning bidder, for the exclusive development, operation, and maintenance of any or all of the Projects, does not *by itself* create a monopoly violative of the provisions of the Constitution. *Anglo-Fil Trading Corporation* teaches that exclusivity is inherent in the grant of a concession to a private entity to deliver a public service, where Government chooses not to undertake

such service. Otherwise stated, while the grant may result in a monopoly, it is a type of monopoly *not violative of law*. This is the essence of the policy decision of the Government to enter into concessions with the private sector to build, maintain and operate what would have otherwise been government-operated services, such as airports. In any case, the law itself provides for built-in protections to safeguard the public interest, foremost of which is to require public bidding. x x x [P]etitioner has not alleged ultimate facts to support its claim that bundling will create a monopoly, in violation of the Constitution. By merely stating legal conclusions, petitioner did not present any sufficient allegation upon which the Court could grant the relief petitioner prayed for. In *Zuñiga-Santos v. Santos-Gran*, we held that "[a] pleading should state the ultimate facts essential to the rights of action or defense asserted, as distinguished from mere conclusions of fact, or conclusions of law. General allegations that a contract is valid or legal, or is just, fair, and reasonable, are mere conclusions of law. Likewise, allegations that a contract is void, voidable, invalid, illegal, *ultra vires*, or against public policy, without stating facts showing its invalidity, are mere conclusions of law." The present action should thus be dismissed on the ground of failure to state cause of action.

2. ID.; ID.; ID.; NEITHER WAS THE BUNDLING OF THE DOTC PROJECTS VIOLATES THE CONSTITUTIONAL PROSCRIPTION ON COMBINATIONS IN RESTRAINT OF TRADE; PETITIONER LIKEWISE FAILED TO PLEAD ULTIMATE FACTS TO SUPPORT ITS CONCLUSION IN THIS REGARD.— Similar to its assertion that bundling will create a monopoly prohibited by law, we find that petitioner, again, utterly failed to sufficiently state a cause of action, by failing to plead ultimate facts to support its conclusion that bundling, as an arrangement, is in restraint of trade or results in unfair competition under the provisions of RA No. 10667.

3. ID.; ADMINISTRATIVE LAW; PHILIPPINE COMPETITION ACT (RA NO. 10667); THE LAW DOES NOT STATE WHAT CONSTITUTES A "MONOPOLY" BUT IT PROHIBITS AN ENTITY TO ENGAGE IN CONDUCT IN ABUSE OF ITS DOMINANT POSITION IN A RELEVANT MARKET; RA NO. 10667 DOES NOT ALSO DEFINE WHAT A "COMBINATION IN RESTRAINT OF TRADE"

IS BUT IT PENALIZES ANTI-COMPETITIVE AGREEMENTS. — RA No. 10667 does not define what constitutes a "monopoly." Instead, it prohibits one or more entities which has/have acquired or achieved a "dominant position" in a "relevant market" from "abusing" its dominant position. In other words, an entity is not prohibited from, or held liable for prosecution and punishment for, simply securing a dominant position in the relevant market in which it operates. It is only when that entity engages in conduct *in abuse* of its dominant position that it will be exposed to prosecution and possible punishment. x x x Similarly, RA No. 10667 does not define what a "combination in restraint of trade" is. What it does is penalize anti-competitive *agreements*. Agreement refers to "any type of form or contract, **arrangement**, understanding, collective recommendation, or concerted action, whether formal or informal."

4. **ID.; ID.; ID.; ELEMENTS THAT MUST BE ESTABLISHED FOR A SUCCESSFUL PROSECUTION OF THE *VIOLATION OF THE PROSCRIPTION AGAINST MONOPOLIES*. —** [W]hat RA No. 10667, in fact, prohibits and punishes is the situation where: (1) an entity, having been granted an exclusive franchise to maintain and operate one or more airports, attains a dominant position in that market; and (2) abuses such dominant position by engaging in prohibited conduct, *i.e.*, acts that substantially prevent, restrict or lessen competition in market of airport development, operations and maintenance. Thus, for petitioner to succeed in asserting that such a prohibited situation legally obtains, it must first establish, *by evidence*, that indeed: (1) the *relevant market* is that of airport development, maintenance, and operation (under the facts-based criteria enumerated in Section 24 of RA No. 10667); (2) the entity has achieved a *dominant position* (under the facts-based criteria enumerated in Section 27 of RA No. 10667) in that relevant market; and (3) the entity commits acts constituting *abuse of dominant position* (under the facts based criteria enumerated in Section 27 of RA No. 10667).

5. **ID.; ID.; ID.; EVIDENCE THAT MUST BE PRESENTED TO SUPPORT A LEGAL CONCLUSION THAT BUNDLING OF PROJECTS IS AN *ANTI-COMPETITIVE AGREEMENT*. —** [T]o support the legal conclusion that bundling is an *anti-competitive agreement*, there must be *evidence* that: (1) the

relevant market is that of airport development, maintenance, and operation (under the facts-based criterion enumerated in Section 24 of RA No. 10667); (2) bundling causes, or will cause, actual or potential adverse impact on the competition in that relevant market; (3) said impact is substantial and outweighs the actual or potential efficiency gains that results from bundling; and (4) the totality of evidence shows that the winning bidder, more likely than not engaged, in anti-competitive conduct.

6. **ID.; ID.; ANTI-DUMMY LAW (COMMONWEALTH ACT NO. 108); RATIONALE; CONDITIONS BEFORE LIABILITY FOR VIOLATION OF THE LAW TO ATTACH; PETITIONER FAILED TO ALLEGE ULTIMATE FACTS HOW THE QUESTIONED BUNDLING OF THE PROJECTS VIOLATED THE ANTI-DUMMY LAW.—** Commonwealth Act No. 108, as amended, otherwise known as the Anti-Dummy Law, was enacted to limit the enjoyment of certain economic activities to Filipino citizens or corporations. x x x For liability for violation of Section 2 to attach, it must first be established that there is a law limiting or reserving the enjoyment or exercise of a right, franchise, privilege, or business to citizens of the Philippines, or to corporations or associations at least a certain percentage of which is owned by such citizens. Moreover, it must be shown by *evidence* that a corporation or association falsely simulated the existence of the minimum required Filipino stock or capital ownership to enjoy or exercise the right, franchise, privilege, or business. In this case, petitioner failed to allege ultimate facts showing how the bundling of the Projects violated the Anti-Dummy Law. It did not identify what corporation or association falsely simulated the composition of its stock ownership. Moreover, it did not allege that there is a law limiting, reserving, or requiring that infrastructure or development projects must be awarded only to corporations, a certain percentage of the capital of which is exclusively owned by Filipinos. Executive Order (EO) No. 65, even exempts contracts for infrastructure/development projects covered by the BOT Law from the 40% foreign ownership limitation.

7. **ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT'S ORIGINAL AND CONCURRENT JURISDICTION OVER PETITIONS FOR EXTRAORDINARY WRITS, TRACED.—** The Supreme

Court's original jurisdiction over petitions for extraordinary writs predates the 1935 Constitution. x x x Several years later, on January 17, 1973, the Philippines ratified the 1973 Constitution. Article X of the same is dedicated to the Judiciary. Section 5(1) of the said article provides for the Supreme Court's original jurisdiction, *viz*.: Sec. 5. The Supreme Court shall have the following powers: (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*. x x x Where the 1935 Constitution only referred to the original jurisdiction which the Supreme Court possessed at the time of its adoption, the 1973 Constitution expressly provided for the Supreme Court's original jurisdiction over petitions for the issuance of extraordinary writs. In 1981, this Court's original jurisdiction over extraordinary writs became concurrent with the CA, pursuant to *Batas Pambansa Bilang* 129 (BP 129) or The Judiciary Reorganization Act of 1980. BP 129 repealed RA No. 296 and granted the CA with "[o]riginal jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction." In addition, Section 21(2) of BP 129 bestowed the RTCs (formerly the CFIs) with original (and consequently, concurrent with the Supreme Court) jurisdiction over actions affecting ambassadors and other public ministers and consuls. Seven years after the enactment of BP 129, the Philippines ratified the 1987 Constitution; Article VII, Section 5(1) of which provides the original jurisdiction of the Supreme Court, which is an exact reproduction of Section 5 (1), Article X of the 1973 Constitution.

8. ID.; ID.; ID.; ID.; DIRECT INVOCATION OF THE SUPREME COURT'S ORIGINAL JURISDICTION OVER THE ISSUANCE OF EXTRAORDINARY WRITS BEGAN IN 1936 IN *ANGARA V. ELECTORAL COMMISSION*; SEVERAL OTHER CASES FOLLOWED THE *ANGARA* MODEL OF DIRECT RECOURSE BUT THE COMMON DENOMINATOR OF ALL THESE CASES IS THAT THE THRESHOLD QUESTIONS PRESENTED BEFORE THE COURT ARE ONES OF LAW.— Direct invocation of the Court's original jurisdiction over the issuance of extraordinary writs started in 1936 with *Angara v. Electoral Commission*. *Angara* is the first case directly filed before the Court after the 1935 Constitution took effect on November 15, 1935. It is the

quintessential example of a valid direct recourse to this Court on constitutional questions. *Angara* was an original petition for prohibition seeking to restrain the Electoral Commission from taking further cognizance of an election contest filed against an elected (and confirmed) member of the National Assembly. The main issue before the Court involved the question of whether the Supreme Court had jurisdiction over the Electoral Commission and the subject matter of the controversy. x x x In *Angara,* there was no dispute as to the facts. Petitioner was allowed to file the petition for prohibition directly before us because **what was considered was the *nature* of the issue involved in the case: a legal controversy between two agencies of the government that called for the exercise of the power of judicial review by the final arbiter of the Constitution, the Supreme Court.** x x x The *Angara* model of direct recourse would be followed and allowed by the Court in [several other cases] x x x **To stress, the common denominator of all these cases is that the threshold questions presented before us are ones of law.**

9. ID.; ID.; ID.; ID.; THE FIRST USE OF TRANSCENDENTAL IMPORTANCE DOCTRINE TO RELAX THE RULES ON LEGAL STANDING IN THE CASE OF *ARANETA V. DINGLASAN* IS JUSTIFIED BECAUSE THE ISSUE TO BE RESOLVED THERE WAS ONE OF LAW, SIMILAR WITH *ANGARA*.— We first used the term "transcendental importance" in *Araneta v. Dinglasan. Araneta* involved five consolidated petitions before the Court assailing the validity of the President's orders issued pursuant to Commonwealth Act No. 671, or "An Act Declaring a State of Total Emergency as a Result of War Involving the Philippines and Authorizing the President to Promulgate Rules and Regulations to Meet such Emergency." x x x In overruling the objection to the personality or sufficiency of the interest of petitioners in bringing the actions as taxpayers, this Court declared that "[a]bove all, the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure." **Thus, and similar with *Angara*, direct recourse to the Court in *Araneta* is justified because the issue to be resolved there was one of law; there was no dispute as to any underlying fact.** *Araneta* has since then been followed by a myriad of cases where transcendental importance was cited as basis for setting aside objections on legal standing.

10. REMEDIAL LAW; COURTS; DOCTRINE OF HIERARCHY OF COURTS; DIRECT RESORT TO THE SUPREME COURT IS GENERALLY NOT ALLOWED; EXCEPTIONS, REITERATED; A COMMON DENOMINATOR IN THOSE EXCEPTIONS IS THAT THE ISSUES INVOLVED THEREIN ARE PURELY LEGAL; HENCE, THE PRESENCE OF ONE OR MORE "SPECIAL AND IMPORTANT REASONS" IS NOT THE DECISIVE FACTOR TO DETERMINE WHETHER DIRECT RELIEF FROM THE COURT WOULD BE ALLOWED BUT THE NATURE OF THE QUESTION RAISED BY THE PARTIES.— This doctrine of hierarchy of courts guides litigants as to the proper venue of appeals and/or the appropriate forum for the issuance of extraordinary writs. Thus, although this Court, the CA, and the RTC have concurrent original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, parties are directed, as a rule, to file their petitions before the lower-ranked court. Failure to comply is sufficient cause for the dismissal of the petition. x x x Aside from the special civil actions over which it has original jurisdiction, the Court, through the years, has allowed litigants to seek direct relief from it upon allegation of "serious and important reasons." *The Diocese of Bacolod v. Commission on Elections* (*Diocese*) summarized these circumstances in this wise: (1) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) when the issues involved are of transcendental importance; (3) cases of first impression; (4) the constitutional issues raised are better decided by the Court; (5) exigency in certain situations; (6) the filed petition reviews the act of a constitutional organ; (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and] (8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy." A careful examination of the jurisprudential bases of the foregoing exceptions would reveal a common denominator — the issues for resolution of the Court are purely legal. Similarly, the Court in *Diocese* decided to

allow direct recourse in said case because, just like *Angara*, what was involved was the resolution of a question of law, namely, whether the limitation on the size of the tarpaulin in question violated the right to free speech of the Bacolod Bishop. We take this opportunity to clarify that the presence of one or more of the so-called "special and important reasons" is not the decisive factor considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. **Rather, it is the *nature* of the question raised by the parties in those "exceptions" that enabled us to allow the direct action before us.**

11. ID.; ID.; ID.; THAT THE ISSUE RAISED IS ONE OF TRANSCENDENTAL IMPORTANCE TO EXCUSE VIOLATION OF THE DOCTRINE OF HIERARCHY OF COURTS APPLIES ONLY IN CASES WHERE THERE WERE NO DISPUTED FACTS.— Petitioner after all argues that its direct resort to us is proper because the issue raised (that is, whether the bundling of the Projects violates the constitutional proscription on monopoly and restraint of trade) is one of transcendental importance or of paramount public interest. An examination of the cases wherein this Court used "transcendental importance" of the constitutional issue raised to excuse violation of the principle of hierarchy of courts would show that resolution of factual issues was not necessary for the resolution of the constitutional issue/s. x x x **In all these cases, there were no disputed facts and the issues involved were ones of law.** x x x To be clear, the transcendental importance doctrine does not clothe us with the power to tackle factual questions and play the role of a trial court. The only circumstance when we may take cognizance of a case *in the first instance*, despite the presence of factual issues, is in the exercise of our constitutionally-expressed task to review the sufficiency of the factual basis of the President's proclamation of martial law under Section 18, Article VII of the 1987 Constitution. The case before us does not fall under this exception.

12. ID.; ID.; ID.; HIERARCHY OF COURTS IS A CONSTITUTIONAL IMPERATIVE; RATIONALE.— Strict observance of the doctrine of hierarchy of courts should not be a matter of mere policy. It is a constitutional imperative given (1) the structure of our judicial system and (2) the requirements of due process. *First*. The doctrine of hierarchy

of courts recognizes the various levels of courts in the country as they are established under the Constitution and by law, their ranking and effect of their rulings in relation with one another, and how these different levels of court interact with one another. It determines the venues of appeals and the appropriate forum for the issuance of extraordinary writs. x x x *Second*. Strict adherence to the doctrine of hierarchy of courts also proceeds from considerations of due process. While the term "due process of law" evades exact and concrete definition, this Court, in one of its earliest decisions, referred to it as a law which hears before it condemns which proceeds upon inquiry and renders judgment only after trial. It means that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society. Under the present Rules of Court, which governs our judicial proceedings, warring factual allegations of parties are settled through presentation of evidence. Evidence is the means of ascertaining, in a judicial proceeding, the truth respecting a matter of fact. As earlier demonstrated, the Court cannot accept evidence *in the first instance*. By directly filing a case before the Court, litigants necessarily deprive themselves of the opportunity to completely pursue or defend their causes of actions. Their right to due process is effectively undermined by their own doing.

13. ID.; ID.; ID.; DOCTRINE OF HIERARCHY OF COURTS OPERATES AS A FILTERING MECHANISM; WHEN A QUESTION INVOLVES DETERMINATION OF A FACTUAL ISSUE INDISPENSABLE TO THE RESOLUTION OF THE LEGAL ISSUE, THE COURT WILL REFUSE TO RESOLVE THE QUESTION REGARDLESS OF THE INVOCATION OF PARAMOUNT OR TRANSCENDENTAL IMPORTANCE.— The doctrine of hierarchy of courts operates to: (1) prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction; (2) prevent further over-crowding of the Court's docket; and (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions. Strict adherence to the doctrine of hierarchy of courts is an effective mechanism to filter the cases which reach the Court. x x x **[F]or the guidance of the bench and the bar, we**

reiterate that when a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions.

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

1. REMEDIAL LAW; COURTS; JURISDICTION, DEFINED AND EXPLAINED; ELEMENTS TO DETERMINE JURISDICTION.— Jurisdiction is the competence "to hear, try[,] and decide a case." It is a power that is granted by the Constitution and by law. In situations where several courts may exercise jurisdiction either originally or on an appeal, the court that first seized of the issues holds jurisdiction over the case, to the exclusion of the rest. Jurisdiction, or the competence to proceed with the case, requires several elements. To determine jurisdiction, courts assess: (1) the remedy or the procedural vehicle for raising the issues; (2) the subject matter of the controversy; (3) the issues as framed by the parties; and (4) the processes served on the parties themselves vis-à-vis the constitutional or law provisions that grant competence. Related to jurisdiction is our application of the doctrine of granting the primary administrative jurisdiction, when statutorily warranted, to the executive department. This is different from the rule on exhaustion of administrative remedies or the doctrine of respect for the hierarchy of courts, which are matters of justiciability, not jurisdiction.

2. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF THE BUNDLING OF GOVERNMENT PROJECTS; ELEMENTS TO DETERMINE THE JUSTICIABILITY OF A CONTROVERSY.— The general rule with respect to justiciability is one of constitutional avoidance. That is, before we proceed with even considering how a word or phrase in the Constitution is violated, we first examine whether there is an actual case or controversy. The justiciability of a controversy is often couched in four (4) elements: (1) that there is an actual case or controversy; (2) that the party raising the issues has *locus standi*; (3) that the case is ripe for

adjudication; and (4) that the constitutional issue is the very *lis mota* of the case. The third element may be rephrased into two (2) queries. The court considers whether the case has already become moot, or whether the issues that call for constitutional interpretation are prematurely raised. The doctrine of avoidance is palpable when we refuse to decide on the constitutional issue by ruling that the parties have not exhausted administrative remedies, or that they have violated the doctrine of respect for the hierarchy of courts. These are specific variants or corollaries of the rule that the case should be ripe for constitutional adjudication. The fourth element allows this Court to grant or deny the reliefs prayed for by any petitioner if there is a statutory or procedural rule that can be applied to resolve the issues raised, rather than deal with the interpretation of a constitutional issue.

3. **ID.; ID.; ID.; ID.; INSTANCES WHEN THE COURT SHOULD EXERCISE JUDICIAL RESTRAINT.—** When interpretations of a constitutional provision are equally valid but lead to contrary results, this Court should exercise judicial restraint and allow the political forces to shed light on a choice. This Court steps in only when it discerns clear fallacies in the application of certain norms or their interpretation. Judicial restraint requires that this Court does not involve itself into matters in which only those who join in democratic political deliberation should participate. As magistrates of the highest court, we should distinguish our role from that of an ordinary citizen who can vote. Judicial restraint is also founded on a policy of conscious and deliberate caution. This Court should refrain from speculating on the facts of a case and should allow parties to shape their case instead. Likewise, this Court should avoid projecting hypothetical situations where none of the parties can fully argue simply because they have not established the facts or are not interested in the issues raised by the hypothetical situations. In a way, courts are mandated to adopt an attitude of judicial skepticism. What we think may be happening may not at all be the case. Therefore, this Court should always await the proper case to be properly pleaded and proved.

4. **ID.; ID.; ID.; ID.; THAT A CASE HAS A TRANSCENDENTAL IMPORTANCE MUST BE PROPERLY PLEADED AND MADE CLEAR; CASES CALLING FOR QUESTIONS OF FACTS GENERALLY CANNOT BE CASES FROM WHICH TRANSCENDENTAL IMPORTANCE MAY BE**

ESTABLISHED.— I propose that we further tame the concept that a case's "transcendental importance" creates exceptions to justiciability. The elements supported by the facts of an actual case, and the imperatives of our role as the Supreme Court within a specific cultural or historic context, must be made clear. They should be properly pleaded by the petitioner so that whether there is any transcendental importance to a case is made an issue. That a case has transcendental importance, as applied, may have been too ambiguous and subjective that it undermines the structural relationship that this Court has with the sovereign people and other departments under the Constitution. Our rules on jurisdiction and our interpretation of what is justiciable, refined with relevant cases, may be enough. However, consistent with this opinion, we cannot wholly abandon the doctrinal application of cases with transcendental importance. That approach just does not apply in this case. Here, we have just established that cases calling for questions of fact generally cannot be cases from which we establish transcendental importance. Generally, we follow the doctrine of respect for hierarchy of courts for matters within our concurrent original jurisdiction.

APPEARANCES OF COUNSEL

Macario M. De Guia for petitioner.
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The Solicitor General for respondents.

D E C I S I O N

JARDELEZA, *J.*:

The 1987 Constitution and the Rules of Court promulgated, pursuant to its provisions, granted us original jurisdiction over certain cases. In some instances, this jurisdiction is shared with Regional Trial Courts (RTCs) and the Court of Appeals (CA). However, litigants do not have unfettered discretion to invoke the Court's original jurisdiction. The doctrine of hierarchy of courts dictates that, direct recourse to this Court is allowed only to resolve questions of law, notwithstanding the invocation of paramount or transcendental importance of the action. This

doctrine is not mere policy, rather, it is a constitutional filtering mechanism designed to enable the Court to focus on the more fundamental and essential tasks assigned to it by the highest law of the land.

On December 15, 2014, the Department of Transportation and Communication[1] (DOTC) and its attached agency, the Civil Aviation Authority of the Philippines (CAAP), posted an Invitation to Pre-qualify and Bid[2] (Invitation) on the airport development, operations, and maintenance of the Bacolod-Silay, Davao, Iloilo, Laguindingan, New Bohol (Panglao), and Puerto Princesa Airports (collectively, Projects).[3] The total cost of the Projects is ₱116.23 Billion, broken down as follows:[4]

Bacolod-Silay	₱20.26 Billion
Davao	₱40.57 Billion
Iloilo	₱30.4 Billion
Laguindingan	₱14.62 Billion
New Bohol (Panglao)	₱4.57 Billion
Puerto Princesa	₱5.81 Billion
	₱116.23 Billion[5]

The Invitation stated that the Projects aim to improve services and enhance the airside and landside facilities of the key regional airports through concession agreements with the private sector. The Projects will be awarded through competitive bidding, following the procurement rules and procedure prescibed under Republic Act (RA) No. 6957,[6] as amended by RA No. 7718[7]

[1] Renamed as Department of Transportation under Section 15 of Republic Act No. 10844 or the Department of Information and Communications Technology Act of 2015.

[2] *Rollo*, p. 17.

[3] *Id.* at 4.

[4] See Invitation to Pre-qualify and Bid. *Id.*

[5] *Rollo*, p. 17.

[6] An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes.

[7] An Act Amending Certain Sections of Republic Act No. 6957, entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes."

(BOT Law), and its Implementing Rules and Regulations. The concession period would be for 30 years.[8]

On March 10, 2015, the DOTC and the CAAP issued the Instructions to Prospective Bidders (ITPB),[9] which provided that prospective bidders are to pre-qualify and bid for the development, operations, and maintenance of the airports, which are now bundled into two groups (collectively, the Bundled Projects), namely:

Bundle 1: Bacolod-Silay and Iloilo
Bundle 2: Davao, Laguindingan, and New Bohol (Panglao)[10]

The costs of Bundle 1 and Bundle 2 are ₱50.66 Billion and ₱59.66 Billion, respectively. The Puerto Princesa Airport project was not included in the bundling.[11]

The general procedure for the bidding of the Bundled Projects stated that "[p]rospective [b]idders may bid for only Bundle 1 or Bundle 2, or bid for both Bundle 1 and Bundle 2. x x x The [Pre-Qualification, Bids and Awards Commitee (PBAC)] shall announce in a Bid Bulletin prior to the Qualifications Submission Date[,] its policy on whether a [p]rospective [b]idder may be awarded both bundles or whether a [p]rospective [b]idder may only be awarded with one (1) bundle."[12]

The submission of the Pre-Qualification Queries was scheduled for April 3, 2015 and the submission of Qualification Documents on May 18, 2015.[13]

On March 27, 2015, petitioner GIOS-SAMAR, Inc., represented by its Chairperson Gerardo M. Malinao (petitioner), suing as a taxpayer and invoking the transcendental importance

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[8] *Rollo*, p. 17.

[9] *Id.* at 18-107.

[10] *Id.* at 24.

[11] *Id.*

[12] *Rollo*, p. 35.

[13] *Id.* at 6.

of the issue, filed the present petition for prohibition.[14] Petitioner alleges that it is a non-governmental organization composed of subsistence farmers and fisherfolk from Samar, who are among the victims of Typhoon Yolanda relying on government assistance for the rehabilitation of their industry and livelihood.[15] It assails the constitutionality of the bundling of the Projects and seeks to enjoin the DOTC and the CAAP from proceeding with the bidding of the same.

Petitioner raises the following arguments:

First, the bundling of the Projects violated the "constitutional prohibitions on the anti-dummy and the grant of opportunity to the general public to invest in public utilities,"[16] citing Section 11, Article XII of the 1987 Constitution.[17] According to petitioner, bundling would allow companies with questionable or shaky financial background to have direct access to the Projects "by simply joining a consortium which under the bundling scheme adopted by the DOTC said [P]rojects taken altogether would definitely be beyond the financial capability of any qualified, single Filipino corporation."[18]

Second, bundling violates the constitutional prohibition on monopolies under Section 19, Article XII of the Constitution

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[14] *Id.* at 3-16.

[15] *Id.* at 3.

[16] *Id.* at 7.

[17] Sec. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[18] *Rollo*, p. 10.

because it would allow one winning bidder to operate and maintain several airports, thus establishing a monopoly. Petitioner asserts that, given the staggering cost of the Bundled Projects, the same can only be undertaken by a group, joint venture outfits, and consortiums which are susceptible to combinations and schemes to control the operation of the service for profit, enabling a single consortium to control as many as six airports.[19]

Third, bundling will "surely perpetrate an undue restraint of trade."[20] Mid-sized Filipino companies which may have previously considered participating in one of the six (6) distinct Projects will no longer have a realistic opportunity to participate in the bidding because the separate projects became two (2) gargantuan projects. This effectively placed the Projects beyond the reach of medium-sized Filipino companies.[21]

Fourth, the PBAC of the DOTC committed grave abuse of discretion amounting to excess of jurisdiction when it bundled the projects without legal authority.[22]

Fifth, bundling made a mockery of public bidding because it raised the reasonable bar to a level higher than what it would have been, had the projects been bidded out separately.[23]

In support of petitioner's prayer, for the issuance of a temporary restraining order and/or writ of preliminary injunction, it states that there is extreme urgency to enjoin the bidding of the Bundled Projects so as not to cause irreparable damage and injury to the coffers of the government.[24]

In its comment,[25] the DOTC counters that: (1) the petition is premature because there has been no actual bidding yet, hence

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[19] *Id.* at 10-11.

[20] *Id.* at 12.

[21] *Id.*

[22] *Id.*

[23] *Rollo*, p. 13.

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

[25] *Id.* at 214-229.

there is no Justiciable controversy to speak of; (2) petitioner has no legal standing to file the suit whether as a taxpayer or as a private individual; (3) petitioner's allegation on the violation of anti-dummy and equal opportunity clauses of the Constitution are speculative and conjectural; (4) Section 11, Article XII of the Constitution is not applicable to the bidding process assailed by petitioner; (5) the bundling of the Projects does not violate the prohibitions on monopolies or combinations in restraint of trade; and (6) the DOTC and the CAAP did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.[26]

For its part, the CAAP asserts that the petition violated the basic fundamental principle of hierarchy of courts. Petitioner had not alleged any special and compelling reason to allow it to seek relief directly from the Court. The case should have been filed with the trial court, because it raises factual issues which need to be threshed out in a full-blown trial.[27] The CAAP also maintains that petitioner has neither legal capacity nor authority to file the suit and that the petition has no cause of action.[28]

In its reply,[29] petitioner argues that it need not wait for the conduct of the bidding to file the suit because doing so would render useless the very purpose for filing the petition for prohibition.[30] As it is, five groups have already been pre-qualified to bid in the Bundled Projects.[31] Petitioner also submits that direct recourse to this Court is justified as the "matter of prohibiting the bidding process of the x x x illegally bundled projects are matters of public interest and transcendental importance."[32] It further insists that it has legal standing to file the suit through Malinao, its duly authorized representative.[33]

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[26] *Id.* at 218-219.

[27] *Id.* at 241-244.

[28] *Id.* at 244-245.

[29] *Id.* at 271-280, 284-286.

[30] *Id.* at 271.

[31] *Id.* at 274.

[32] *Id.* at 284. Emphasis omitted.

[33] *Id.* at 285.

The main issue brought to us for resolution is whether the bundling of the Projects is constitutional.

Petitioner argues that the bundling of the Projects is unconstitutional because it will: (i) create a monopoly; (ii) allow the creation and operation of a combination in restraint of trade; (iii) violate anti-dummy laws and statutes giving citizens the opportunity to invest in public utilities; and (iv) enable companies with shaky financial backgrounds to participate in the Projects.

I

While petitioner asserts that the foregoing arguments involve legal (as opposed to factual) issues, our examination of the petition shows otherwise. As will be demonstrated shortly, petitioner's arguments against the constitutionality of the bundling of the Projects are inextricably intertwined with underlying questions of fact, the determination of which require the reception of evidence. This Court, however, is not a trier of fact. We cannot resolve these factual issues at the first instance. For this reason, we **DISMISS** the petition.

A

Petitioner claims that the bundling of the Projects violates the constitutional provisions on monopolies and combinations in restraint of trade under Section 19, Article XII of the Constitution, which reads:

> Sec. 19. The State shall regulate or prohibit monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

In *Tatad v. Secretary of the Department of Energy*,[34] we clarified that the Constitution does not prohibit the operation of monopolies *per se*.[35] With particular respect to the operation of public utilities or services, this Court, in *Anglo-Fil Trading Corporation v. Lazaro*,[36] further clarified that "[b]y their very

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[34] G.R. Nos. 124360 & 127867, November 5, 1997, 281 SCRA 330.

[35] *Id.* at 357.

[36] G.R. Nos. 54958 & 54966, September 2, 1983, 124 SCRA 494, 522.

nature, certain public services or public utilities such as those which supply water, electricity, transportation, telephone, telegraph, etc. must be given exclusive franchises if public interest is to be served. Such exclusive franchises are not violative of the law against monopolies."

In short, we find that the grant of a concession agreement to an entity, as a winning bidder, for the exclusive development, operation, and maintenance of any or all of the Projects, does not *by itself* create a monopoly violative of the provisions of the Constitution. *Anglo-Fil Trading Corporation* teaches that exclusivity is inherent in the grant of a concession to a private entity to deliver a public service, where Government chooses not to undertake such service.[37] Otherwise stated, while the grant may result in a monopoly, it is a type of monopoly *not violative of law*. This is the essence of the policy decision of the Government to enter into concessions with the private sector to build, maintain and operate what would have otherwise been government-operated services, such as airports. In any case, the law itself provides for built-in protections to safeguard the public interest, foremost of which is to require public bidding. Under the BOT Law, for example, a private-public partnership (PPP) agreement may be undertaken through public bidding, in cases of solicited proposals, or through "Swiss challenge" (also known as comparative bidding), in cases of unsolicited proposals.

In any event, the Constitution provides that the State may, by law, prohibit or regulate monopolies *when the public interest so requires*.[38] Petitioner has failed to point to any provision in the law, which specifically prohibits the bundling of bids, a detail supplied by the respondent DOTC as implementing agency for the PPP program for airports. Our examination of the petition

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[37] G.R. Nos. 54958 & 54966, September 2, 1983, 124 SCRA 494. See also Section 3 of Republic Act No. 6957, as amended by Republic Act No. 7718, and Section 2.2 of the Revised Implementing Rules and Regulations of the BOT Law, as amended.

[38] *Tatad v. Secretary of the Department of Energy, supra* note 33 at 355.

and the relevant statute, in fact, provides further support for the dismissal of the present action.

Originally, monopolies and combinations in restraint of trade were governed by, and penalized under, Article 186[39] of the

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[39] Art. 186. *Monopolies and Combinations in Restraint of Trade*. — The penalty of *prision correccional* in its minimum period or a fine ranging from 200 to 6,000 pesos, or both, shall be imposed upon:

1. Any person who shall enter into any contract or agreement or shall take part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce or to prevent by artificial means free competition in the market;

2. Any person who shall monopolize any merchandise or object of trade or commerce, or shall combine with any other person or persons to monopolize said merchandise or object in order to alter the price thereof by spreading false rumors or making use of any other artifice to restrain free competition in the market;

3. Any person who, being a manufacturer, producer, or processor of any merchandise or object of commerce or an importer of any merchandise or object of commerce from any foreign country, either as principal or agent, wholesaler or retailer, shall combine, conspire or agree in any manner with any person likewise engaged in the manufacture, production, processing, assembling or importation of such merchandise or object of commerce or with any other persons not so similarly engaged for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price in any part of the Philippines, of any such merchandise or object of commerce manufactured, produced, processed, assembled in or imported into the Philippines, or of any article in the manufacture of which such manufactured, produced, or imported merchandise or object of commerce is used.

If the offense mentioned in this article affects any food substance, motor fuel or lubricants, or other articles of prime necessity, the penalty shall be that of *prision mayor* in its maximum and medium periods it being sufficient for the imposition thereof that the initial steps have been taken toward carrying out the purposes of the combination.

Any property possessed under any contract or by any combination mentioned in the preceding paragraphs, and being the subject thereof, shall be forfeited to the Government of the Philippines.

Whenever any of the offenses described above is committed by a corporation or association, the president and each one of its agents or representatives in the Philippines in case of a foreign corporation or association, who shall have knowingly permitted or failed to prevent the commission of such offense, shall be held liable as principals thereof.

Revised Penal Code. This provision has since been repealed by RA No. 10667, or the Philippine Competition Act, which defines and penalizes "all forms of anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions."[40]

RA No. 10667 does not define what constitutes a "monopoly." Instead, it prohibits one or more entities which has/have acquired or achieved a "dominant position" in a "relevant market" from "abusing" its dominant position. In other words, an entity is not prohibited from, or held liable for prosecution and punishment for, simply securing a dominant position in the relevant market in which it operates. It is only when that entity engages in conduct *in abuse* of its dominant position that it will be exposed to prosecution and possible punishment.

Under RA No. 10667, "dominant position" is defined as follows:

> Sec. 4. *Definition of Terms*. — As used in this Act:
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> x x x x x x x x x
>
> (g) *Dominant position* refers to a position of economic strength that an entity or entities hold which makes it capable of controlling the relevant market independently from any or a combination of the following: competitors, customers, suppliers, or consumers[.]

"Relevant market," on the other hand, refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market.[41] The determination of a particular relevant market depends on the consideration of factors which affect

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[40] See Sections 2(c) and 55(a) of Republic Act No. 10667.

[41] Sec. 4. *Definition of Terms*. — As used in this Act:

x x x x x x x x x

(k) *Relevant market* refers to the market in which a particular good or service is sold and which is a combination of the relevant product market and the relevant geographic market, defined as follows:

(1) A relevant product market comprises all those goods and/or services which are regarded as interchangeable or substitutable by the consumer or the customer, by reason of the goods and/or services' characteristics, their prices and their intended use; and

the substitutability among goods or services constituting such market, and the geographic area delineating the boundaries of the market.[42] An entity with a dominant position in a relevant market is deemed to have abused its dominant position if it engages in a conduct that would substantially prevent, restrict, or lessen competition.[43]

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(2) The relevant geographic market comprises the area in which the entity concerned is involved in the supply and demand of goods and services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighboring areas because the conditions of competition are different in those areas.

[42] Sec. 24. *Relevant Market*. — For purposes of determining the relevant market, the following factors, among others, affecting the substitutability among goods or services constituting such market and the geographic area delineating the boundaries of the market shall be considered:

(a) The possibilities of substituting the goods or services in question, with others of domestic or foreign origin, considering the technological possibilities, extent to which substitutes are available to consumers and time required for such substitution;

(b) The cost of distribution of the good or service, its raw materials, its supplements and substitutes from other areas and abroad, considering freight, insurance, import duties and non-tariff restrictions; the restrictions imposed by economic agents or by their associations; and the time required to supply the market from those areas;

(c) The cost and probability of users or consumers seeking other markets; and

(d) National, local or international restrictions which limit access by users or consumers to alternate sources of supply or the access of suppliers to alternate consumers.

[43] Sec. 15. *Abuse of Dominant Position*. — It shall be prohibited for one or more entities to abuse their dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition:

(a) Selling goods or services below cost with the object of driving competition out of the relevant market: *Provided*, That in the Commission's evaluation of this fact, it shall consider whether the entity or entities have no such object and the price established was in good faith to meet or compete with the lower price of a competitor in the same market selling the same or comparable product or service of like quality;

(b) Imposing barriers to entry or committing acts that prevent competitors from growing within the market in an anti-competitive manner except those that develop in the market as a result of or arising from a superior product or process, business acumen, or legal rights or laws;

Here, petitioner has not alleged ultimate facts to support its claim that bundling will create a monopoly, in violation of the Constitution. By merely stating legal conclusions, petitioner did not present any sufficient allegation upon which the Court

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(c) Making a transaction subject to acceptance by the other parties of other obligations which, by their nature or according to commercial usage, have no connection with the transaction;

(d) Setting prices or other terms or conditions that discriminate unreasonably between customers or sellers of the same goods or services, where such customers or sellers are contemporaneously trading on similar terms and conditions, where the effect may be to lessen competition substantially: *Provided*, that the following shall be considered permissible price differentials:

(1) Socialized pricing for the less fortunate sector of the economy;

(2) Price differential which reasonably or approximately reflect differences in the cost of manufacture, sale, or delivery resulting from differing methods, technical conditions, or quantities in which the goods or services are sold or delivered to the buyers or sellers;

(3) Price differential or terms of sale offered in response to the competitive price of payments, services or changes in the facilities furnished by a competitor; and

(4) Price changes in response to changing market conditions, marketability of goods or services, or volume;

(e) Imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what forms goods or services may be sold or traded, such as fixing prices, giving preferential discounts or rebate upon such price, or imposing conditions not to deal with competing entities, where the object or effect of the restrictions is to prevent, restrict or lessen competition substantially: *Provided*, That nothing contained in this Act shall prohibit or render unlawful:

(1) Permissible franchising, licensing, exclusive merchandising or exclusive distributorship agreements such as those which give each party the right to unilaterally terminate the agreement; or

(2) Agreements protecting intellectual property rights, confidential information, or trade secrets;

(f) Making supply of particular goods or services dependent upon the purchase of other goods or services from the supplier which have no direct connection with the main goods or services to be supplied;

(g) Directly or indirectly imposing unfairly low purchase prices for the goods or services of, among others, marginalized agricultural producers, fisherfolk, micro-, small-, medium-scale enterprises, and other marginalized service providers and producers;

could grant the relief petitioner prayed for. In *Zuñiga-Santos v. Santos-Gran*,[44] we held that "[a] pleading should state the ultimate facts essential to the rights of action or defense asserted, as distinguished from mere conclusions of fact, or conclusions of law. General allegations that a contract is valid or legal, or is just, fair, and reasonable, are mere conclusions of law. Likewise, allegations that a contract is void, voidable, invalid, illegal, *ultra vires*, or against public policy, without stating facts showing its invalidity, are mere conclusions of law."[45] The present action should thus be dismissed on the ground of failure to state cause of action.[46]

Similarly, RA No. 10667 does not define what a "combination in restraint of trade" is. What it does is penalize anti-competitive *agreements*. Agreement refers to "any type of form or contract, **arrangement**, understanding, collective recommendation, or concerted action, whether formal or informal."[47] The following agreements are considered anti-competitive:

> Sec. 14. *Anti-Competitive Agreements*. —
> (a) The following agreements, between or among competitors, are *per se* prohibited:
> (1) Restricting competition as to price, or components thereof, or other terms of trade;

(h) Directly or indirectly imposing unfair purchase or selling price on their competitors, customers, suppliers or consumers, provided that prices that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be considered unfair prices; and

(i) Limiting production, markets or technical development to the prejudice of consumers, provided that limitations that develop in the market as a result of or due to a superior product or process, business acumen or legal rights or laws shall not be a violation of this Act:

x x x x x x x x x

[44] G.R. No. 197380, October 8, 2014, 738 SCRA 33.

[45] *Id.* at 45. Emphasis and citation omitted.

[46] *Id.*

[47] Republic Act No. 10667, Sec. 4(b). Emphasis supplied.

(2) Fixing price at an auction or in any form of bidding including cover bidding, bid suppression, bid rotation and market allocation and other analogous practices of bid manipulation;

(b) The following agreements, between or among competitors which have the object or effect of substantially preventing, restricting or lessening competition shall be prohibited:

(1) Setting, limiting, or controlling production, markets, technical development, or investment;

(2) Dividing or sharing the market, whether by volume of sales or purchases, territory, type of goods or services, buyers or sellers or any other means;

(c) Agreements other than those specified in (a) and (b) of this section which have the object or effect of substantially preventing, restricting or lessening competition shall also be prohibited: *Provided*, Those which contribute to improving the production or distribution of goods and services or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, may not necessarily be deemed a violation of this Act.

An entity that controls, is controlled by, or is under common control with another entity or entities, have common economic interests, and are not otherwise able to decide or act independently of each other, shall not be considered competitors for purposes of this section.

The bundling of the Projects is an an arrangement made by the DOTC and the CAAP in the conduct of public bidding. The question that arises is whether the same constitutes an anti-competitive agreement prohibited by RA No. 10667. However, to resolve this, we refer to the factors enumerated in Section 26 of RA No. 10667 on the determination of anti-competitive agreements or conduct:

Sec. 26. *Determination of Anti-Competitive Agreement or Conduct*. — In determining whether anti-competitive agreement or conduct has been committed, the Commission shall:

(a) **Define the relevant market allegedly affected by the anti-competitive agreement or conduct**, following the principles laid out in Section 24 of this Chapter;

(b) Determine if there is actual or potential adverse impact on competition in the relevant market caused by the alleged agreement or conduct, and if such impact is substantial and outweighs the actual or potential efficiency gains that result from the agreement or conduct;

(c) Adopt a broad and forward-looking perspective, recognizing future developments, any overriding need to make the goods or services available to consumers, **the requirements of large investments in infrastructure, the requirements of law, and the need of our economy to respond to international competition**, but also taking account of past behavior of the parties involved and prevailing market conditions;

(d) Balance the need to ensure that competition is not prevented or substantially restricted and the risk that competition efficiency, productivity, innovation, or development of priority areas or industries in the general interest of the country may be deterred by overzealous or undue intervention; and

(e) Assess the totality of evidence on whether it is more likely than not that the entity has engaged in anti-competitive agreement or conduct including whether the entity's conduct was done with a reasonable commercial purpose such as but not limited to phasing out of a product or closure of a business, or as a reasonable commercial response to the market entry or conduct of a competitor. (Emphasis supplied.)

Similar to its assertion that bundling will create a monopoly prohibited by law, we find that petitioner, again, utterly failed to sufficiently state a cause of action, by failing to plead ultimate facts to support its conclusion that bundling, as an arrangement, is in restraint of trade or results in unfair competition under the provisions of RA No. 10667.

Even granting that the petition sufficiently pleads a cause of action for the foregoing violations, there is a need to receive evidence to test the premises of petitioner's conclusions.

To illustrate, applying the facts and claims relative to the *violation of the proscription against monopolies*, what RA No. 10667, in fact, prohibits and punishes is the situation where: (1) an entity, having been granted an exclusive franchise to maintain and operate one or more airports, attains a dominant position in that market; and (2) abuses such dominant position by engaging in prohibited conduct, *i.e.*, acts that substantially prevent, restrict or lessen competition in market of airport development, operations and maintenance. Thus, for petitioner to succeed in asserting that such a prohibited situation legally obtains, it must first establish, *by evidence*, that indeed: (1) the

relevant market is that of airport development, maintenance, and operation (under the facts-based criteria enumerated in Section 24 of RA No. 10667); (2) the entity has achieved a *dominant position* (under the facts-based criteria enumerated in Section 27 of RA No. 10667) in that relevant market; and (3) the entity commits acts constituting *abuse of dominant position* (under the facts based criteria enumerated in Section 27 of RA No. 10667).

In addition, to support the legal conclusion that bundling is an *anti-competitive agreement*, there must be *evidence* that: (1) the *relevant market* is that of airport development, maintenance, and operation (under the facts-based criterion enumerated in Section 24 of RA No. 10667); (2) bundling causes, or will cause, actual or potential adverse impact on the competition in that relevant market; (3) said impact is substantial and outweighs the actual or potential efficiency gains that results from bundling; and (4) the totality of evidence shows that the winning bidder, more likely than not engaged, in anti-competitive conduct.

The Court, however, is still not a trier of facts. Petitioner should have brought the challenge before a tribunal, specially equipped to resolve the factual and legal issues presented.[48]

B

We now jointly discuss petitioner's remaining allegations, namely, that bundling of the Projects: (i) violates the anti-dummy law and the constitutional provision allegedly giving citizens the opportunity to invest in public utilities; (ii) is in grave abuse of discretion; and (iii) enables companies with shaky financial backgrounds to participate in the Projects.

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[48] Under Republic Act No. 10667, the Congress created the Philippine Competition Commission (PCC), an independent quasi-judicial body (Section 5), which it vested with original and primary jurisdiction over the enforcement and implementation of the Philippine Competition Act. The PCC was granted the express power to conduct inquiry, investigate, and hear and decide on cases involving any violation of the Act *motu proprio* or upon complaint of an interested party or referral by a regulatory agency (Section 12).

Commonwealth Act No. 108, as amended, otherwise known as the Anti-Dummy Law, was enacted to limit the enjoyment of certain economic activities to Filipino citizens or corporations.[49] Section 2 of said law states:

> Sec. 2. *Simulation of minimum capital stock*. — In all cases in which a constitutional or legal provision requires that, in order that a corporation or association may exercise or enjoy a right, franchise or privilege, not less than a certain *per centum* of its capital must be owned by citizens of the Philippines or of any other specific country, it shall be unlawful to falsely simulate the existence of such minimum stock or capital as owned by such citizens, for the purpose of evading said provision. The president or managers and directors or trustees of corporations or associations convicted of a violation of this section shall be punished by imprisonment of not less than five nor more than fifteen years, and by a fine not less than the value of the right, franchise or privilege, enjoyed or acquired in violation of the provisions hereof but in no case less than five thousand pesos.

For liability for violation of Section 2 to attach, it must first be established that there is a law limiting or reserving the enjoyment or exercise of a right, franchise, privilege, or business to citizens of the Philippines, or to corporations or associations at least a certain percentage of which is owned by such citizens.[50] Moreover, it must be shown by *evidence* that a corporation or association falsely simulated the existence of the minimum required Filipino stock or capital ownership to enjoy or exercise the right, franchise, privilege, or business.

In this case, petitioner failed to allege ultimate facts showing how the bundling of the Projects violated the Anti-Dummy Law. It did not identify what corporation or association falsely simulated the composition of its stock ownership. Moreover, it did not allege that there is a law limiting, reserving, or requiring that infrastructure or development projects must be awarded only to corporations, a certain percentage of the capital of which

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[49] *Roque, Jr. v. Commission on Elections*, G.R. No. 188456, September 10, 2009, 599 SCRA 69, 147.

[50] *Id.* at 147-148.

is exclusively owned by Filipinos. Executive Order (EO) No. 65,[51] even exempts contracts for infrastructure/development projects covered by the BOT Law from the 40% foreign ownership limitation.

For the same reasons above, petitioner's allegation that bundling violated Section 11,[52] Article XII of the Constitution — which prescribes a 60% Filipino ownership requirement for franchises, certificate, or for the operation of public utilities — must be rejected.

Petitioner's argument that, bundling of the Projects gave shady companies direct access to the Projects, also raises questions of fact. Foremost, petitioner does not identify these "shady companies." Even assuming that petitioner is referring to any or all of the five companies who have been pre-qualified to bid in the projects,[53] its assertion that these companies are *not* financially able to undertake the project raises a question of fact, financial ability being a pre-qualification requirement. As already stated earlier, such question is one which this Court is ill-equipped to resolve.[54]

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[51] Promulgating the Eleventh Regular Foreign Investment Negative List, issued on October 29, 2018 by President Rodrigo R. Duterte.

[52] Sec. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[53] *Rollo*, p. 274.

[54] Sec. 5.4(c) of the Implementing Rules and Regulations (IRR) of the BOT Law requires, for purposes of pre-qualification, proof of the companies' or consortia's net worth or a letter testimonial from a domestic universal/

Finally, the allegation that bundling is in grave abuse of discretion is a conclusion of law. As shown, no facts were even alleged to show which specific law was violated by the decision to bundle the Projects.

In short, these three above arguments of petitioner must be dismissed for failure to sufficiently plead a cause of action. Even assuming that petitioner's causes of action were properly alleged, the resolution of said issues would still require the determination of factual issues which this Court simply cannot undertake.

In fine, while this Court has original and concurrent jurisdiction with the RTC and the CA in the issuance of writs of *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*[55] (extraordinary writs), direct recourse to this Court is proper only to seek resolution of questions of law. Save for the single specific instance provided by the Constitution under Section 18, Article VII,[56] cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts. We are not equipped, either by structure or rule, to receive and evaluate evidence in the first instance; these are the primary functions

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commercial bank or an international bank with a subsidiary/branch in the Philippines or any internal bank recognized by the *Bangko Sentral ng Pilipinas* attesting that the prospective project proponent and/or members of the consortium are banking with them, and that they are in good financial standing and/or qualified to obtain credit accommodations from such banks to finance the projects.

[55] Article VIII, Section 5(1) of the 1987 Constitution and Sections 9(1) and 21(1) of *Batas Pambansa Bilang* 129 or The Judiciary Reorganization Act of 1980.

[56] Sec. 18.

x x x x x x x x x

The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.

x x x x x x x x x

of the lower courts or regulatory agencies.[57] This is the *raison d'etre* behind the doctrine of hierarchy of courts. It operates as a constitutional filtering mechanism designed to enable this Court to focus on the more fundamental tasks assigned to it by the Constitution. It is a bright-line rule which cannot be brushed aside by an invocation of the transcendental importance or constitutional dimension of the issue or cause raised.

II

For a better understanding of our ruling today, we review below, in light of the Court's fundamental constitutional tasks, the constitutional and statutory evolution of the Court's original and concurrent jurisdiction, and its interplay with related doctrines, pronouncements, and even the Court's own rules, as follows:

(a) The Court's original and concurrent jurisdiction;
(b) Direct recourse to the Court under the *Angara*[58] model;
(c) The transcendental importance doctrine;
(d) The Court is not a trier of facts;
(e) The doctrine of hierarchy of courts;
(f) The Court's expanded jurisdiction, social rights, and the Court's constitutional rule-making power under the 1987 Constitution;
(g) Exceptions to the doctrine of hierarchy of courts: The case of *The Diocese of Bacolod v. Commission on Elections*;[59]
(h) Hierarchy of courts as a constitutional imperative; and
(i) Hierarchy of courts as a filtering mechanism.

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[57] See *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*, G.R. No. 199669, April 25, 2017, citing *Mangaliag v. Catubig-Pastoral*, G.R. No. 143951, October 25, 2005, 474 SCRA 153, 160-162. See also *Tuna Processing, Inc. v. Philippine Kingford, Inc.*, G.R. No. 185582, February 29. 2012, 667 SCRA 287, 308; *Chua v. Ang*, G.R. No. 156164, September 4, 2009, 598 SCRA 229, 238-239; *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, G.R. No. 155001, January 21, 2004, 420 SCRA 575, 584; *Chavez v. Public Estates Authority*, G.R. No. 133250, July 9, 2002, 384 SCRA 152, 179.

[58] *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

[59] G.R. No. 205728, January 21, 2015, 747 SCRA 1.

A

The Court's original and concurrent jurisdiction

The Supreme Court's original jurisdiction over petitions for extraordinary writs predates the 1935 Constitution.

On June 11, 1901, the Second Philippine Commission, popularly known as the Taft Commission, enacted Act No. 136, or An Act Providing For the Organization of Courts in the Philippine Islands.[60] Act No. 136 vested the judicial power of the Government of the Philippine Islands unto the Supreme Court, Courts of First Instance (CFI), courts of justices of the peace, together with such special jurisdiction of municipal courts, and other special tribunals as may be authorized by law.[61] Under Act No. 136, the Supreme Court had original jurisdiction over the following cases:

> Sec. 17. *Its Original Jurisdiction*. — The Supreme Court shall have original jurisdiction to issue writs of mandamus, *certiorari*, prohibition, *habeas corpus*, and *quo warranto* in the cases and in the manner **prescribed in the Code of Civil Procedure**, and to hear and determine controversies thus brought before it, and in other cases provided by law. (Emphasis supplied.)

The Code of Civil Procedure[62] (1901 Rules) referred to in Section 17 of Act No. 136, in turn, provided that the Supreme Court shall have concurrent jurisdiction with the CFIs in *certiorari*, prohibition, and *mandamus* proceedings over any inferior tribunal, board, or officer and in *quo warranto* and *habeas corpus* proceedings.[63] Likewise, the 1901 Rules stated that the Court shall have original jurisdiction by *certiorari* and *mandamus* over the proceedings of CFIs wherever said courts have acted without, or in excess of, jurisdiction, or in case of

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[60] David Cecil Johnson, *Courts in the Philippines, Old: New*, Michigan Law Review, Vol. 14, No. 4 (Feb., 1916) p. 314.

[61] Act No. 136, Sec. 2.

[62] Act No. 190 or An Act Providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands, enacted on August 7, 1901 and became effective on September 1, 1901.

[63] See CODE OF CIVIL PROCEDURES, Sections 514, 515, 516, 519, and 526.

a *mandamus* proceeding, when the CFIs and judges thereof unlawfully neglect the performance of a duty imposed by law.[64]

Notably, Sections 496 and 497 of the 1901 Rules proscribed the Court not only from reviewing the evidence taken in the court below but also from retrying questions of fact, *viz.*:

> Sec. 496. *General Procedure in the Supreme Court.* — The Supreme Court may, in the exercise of its appellate jurisdiction, affirm, reverse, or modify any final judgment, order, or decree of a Court of First Instance, regularly entered in the Supreme Court by bill of exceptions, or appeal, and may direct the proper judgment, order, or decree to be entered, or direct a new trial, or further proceedings to be had, and **if a new trial shall be granted, the court shall pass upon and determine all the questions of law involved in the case presented by such bill of exceptions and necessary for the final determination of the action**.
>
> Sec. 497. *Hearings Confined to Matters of Law, With Certain Exceptions*. — In hearings upon bills of exception, in civil actions and special proceedings, **the Supreme Court shall not review the evidence taken in the court below, nor retry the questions of fact, except as in this section hereafter provided; but shall determine only questions of law raised by the bill of exceptions**. x x x (Emphasis supplied.)

On July 1, 1902, the Congress enacted the Philippine Bill[65] or the first "Constitution" of the Philippines under the American occupation.[66] The Philippine Bill retained original jurisdiction of the Supreme Court conferred under Act No. 136, with the caveat that the legislative department might add to such jurisdiction.[67]

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[64] See CODE OF CIVIL PROCEDURES, Sections 514, 515, 516, and 519.

[65] An Act Temporarily to Provide For The Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes.

[66] David Cecil Johnson, *Courts in the Philippines, Old: New*, Michigan Law Review, Vol. 14. No. 4 (Feb., 1916) p. 316.

[67] Philippine Bill of 1902, Sec. 9. That the Supreme Court and the Courts of First Instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided, and such additional jurisdiction as shall hereafter be prescribed by the Government of said Islands, subject to the power of said Government to change the practice and method of procedure. x x x

Thus, in *Weigall v. Shuster*,[68] one of the earliest cases of the Court, we held that the Philippine Commission could increase, but not decrease, our original jurisdiction under Act No. 136.

On December 31, 1916, Act No. 2657 or the Administrative Code was enacted, which included the "Judiciary Law" under Title IV, Chapter 10. It was revised on March 10, 1917 through the Revised Administrative Code,[69] which increased the original jurisdiction of the Supreme Court by adding those cases affecting ambassadors, other public ministers, and consuls.[70]

On May 14, 1935, 33 years after the enactment of the Philippine Bill, the Philippines ratified the 1935 Constitution. Like its predecessor, the 1935 Constitution adopted the original jurisdiction of the Supreme Court as provided in existing laws, *i.e.*, Act No. 136, the 1901 Rules, and the Revised Administrative Code. Section 3, Article VIII of the 1935 Constitution states that, "[u]ntil the [Congress] shall provide otherwise the Supreme Court shall have such original and appellate jurisdiction as may be possessed and exercised by the Supreme Court of the Philippine Islands at the time of the adoption of this Constitution. x x x"[71] The 1935 Constitution further stated that the Congress may not deprive the Supreme Court of its original jurisdiction over cases affecting ambassadors, other public ministers, and consuls.[72]

On December 31, 1935, Commonwealth Act No. 3,[73] amending the Revised Administrative Code, created the Court of Appeals (CA) and granted it "original jurisdiction to issue writs of

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[68] 11 Phil. 340 (1908).

[69] Act No. 2711 or An Act Amending the Administrative Code.

[70] REVISED ADMINISTRATIVE CODE, Sec. 138.

[71] CONSTITUTION (1935), Art. VIII, Sec. 3, as amended.

[72] CONSTITUTION (1935), Art. VIII , Sec. 2.

[73] An Act to Amend Certain Provisions of the Revised Administrative Code on the Judiciary, by Reducing the Number of Justices of the Supreme Court and Creating the Court of Appeals and Defining Their Respective Jurisdictions, Appropriating Funds Therefor, and for Other Purposes.

mandamus, prohibition, injunction, *certiorari, habeas corpus*, and all other auxiliary writs and process in aid of its appellate jurisdiction."[74]

On June 17, 1948, the Congress enacted RA No. 296, otherwise known as the Judiciary Reorganization Act of 1948. Section 17 of RA No. 296 vested the Supreme Court with "original and exclusive jurisdiction in petitions for the issuance of writs of *certiorari,* prohibition and *mandamus* against the Court of Appeals." It also provided that the Supreme Court shall exercise original and concurrent jurisdiction with CFIs:

x x x x x x x x x

1. In petitions for the issuance of writs of *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*;

2. In actions between the Roman Catholic Church and the municipalities or towns, or the Filipino Independent Church for controversy as to title to, or ownership, administration or possession of hospitals, convents, cemeteries or other properties used in connection therewith;

3. In actions brought by the Government of the Philippines against the Roman Catholic Church or vice versa for the title to, or ownership of, hospitals, asylums, charitable institutions, or any other kind of property; and

4. In actions brought to prevent and restrain violations of law concerning monopolies and combinations in restraint of trade.

RA No. 5440 amended RA No. 296 on September 9, 1968, deleting numbers 3 and 4 mentioned above.[75]

Several years later, on January 17, 1973, the Philippines ratified the 1973 Constitution. Article X of the same is dedicated to the Judiciary. Section 5(1) of the said article provides for the Supreme Court's original jurisdiction, *viz.*:

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[74] Commonwealth Act No. 3. Sec. 3, as amended.

[75] See Section 2 of Republic Act No. 5440 or An Act Amending Sections Nine and Seventeen of the Judiciary Act of 1948.

Sec. 5. The Supreme Court shall have the following powers:

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*.

x x x x x x x x x

Where the 1935 Constitution only referred to the original jurisdiction which the Supreme Court possessed at the time of its adoption, the 1973 Constitution expressly provided for the Supreme Court's original jurisdiction over petitions for the issuance of extraordinary writs.

In 1981, this Court's original jurisdiction over extraordinary writs became concurrent with the CA, pursuant to *Batas Pambansa Bilang* 129 (BP 129) or The Judiciary Reorganization Act of 1980. BP 129 repealed RA No. 296[76] and granted the CA with "[o]riginal jurisdiction to issue writs of *mandamus*, prohibition, *certiorari, habeas corpus*, and *quo warranto*, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction."[77] In addition, Section 21(2) of BP 129 bestowed the RTCs (formerly the CFIs) with original (and consequently, concurrent with the Supreme Court) jurisdiction over actions affecting ambassadors and other public ministers and consuls.

Seven years after the enactment of BP 129, the Philippines ratified the 1987 Constitution; Article VII, Section 5(1) of which provides the original jurisdiction of the Supreme Court, which is an exact reproduction of Section 5(1), Article X of the 1973 Constitution.

B

Direct recourse to the Court under the Angara model

Direct invocation of the Court's original jurisdiction over the issuance of extraordinary writs started in 1936 with *Angara*

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[76] *Batas Pambansa Bilang* 129, Sec. 47.

[77] *Batas Pambansa Bilang* 129, Sec. 9(i).

v. Electoral Commission.[78] *Angara* is the first case directly filed before the Court after the 1935 Constitution took effect on November 15, 1935. It is the quintessential example of a valid direct recourse to this Court on constitutional questions.

Angara was an original petition for prohibition seeking to restrain the Electoral Commission from taking further cognizance of an election contest filed against an elected (and confirmed) member of the National Assembly. The main issue before the Court involved the question of whether the Supreme Court had jurisdiction over the Electoral Commission and the subject matter of the controversy.[79]

We took cognizance of the petition, ruling foremost that the Court has jurisdiction over the case by virtue of its "**power of judicial review under the Constitution**:"

> x x x [W]hen the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. x x x[80]

In *Angara*, there was no dispute as to the facts. Petitioner was allowed to file the petition for prohibition directly before us because **what was considered was the *nature* of the issue involved in the case: a legal controversy between two agencies of the government that called for the exercise of the power of judicial review by the final arbiter of the Constitution, the Supreme Court**.

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[78] *Supra* note 57.

[79] Angara averred that the Supreme Court has jurisdiction over the case because it involves the interpretation of the Constitution. The Solicitor General, appearing on behalf of the Electoral Commission, asserted that the Electoral Commission cannot be the subject of a writ of prohibition because it is not an inferior tribunal, corporation, or person within the purview of Sections 226 and 516 of the 1901 Rules. Pedro Ynsua raised the same argument. *Id.* at 153-155.

[80] *Id.* at 158.

Several years later, another original action for prohibition was filed directly before the Court, this time seeking to enjoin certain members of the rival political party from "continuing to usurp, intrude into and/or hold or exercise the said public offices respectively being occupied by them in the Senate Electoral Tribunal." In *Tañada and Macapagal v. Cuenco, et al.*[81] we were confronted with the issue of whether the election of Senators Cuenco and Delgado, by the Senate, as members of the Senate Electoral Tribunal, upon nomination by Senator Primicias — a member and spokesman of the party having *the largest* number of votes in the Senate — on behalf of its Committee on Rules, contravenes the constitutional mandate that said members of the Senate Electoral Tribunal shall be chosen "upon nomination x x x of the party having *the second* largest number of votes. x x x x."[82] There, this Court proceeded to resolve the constitutional issue raised without inquiring into the propriety of direct recourse to us. Similar with *Angara*, the question before us, then, was purely legal.

The *Angara* model of direct recourse would be followed and allowed by the Court in *Bengzon Jr. v. Senate Blue Ribbon Committee*,[83] *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*,[84] *Province*

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[81] 103 Phil. 1051 (1957).

[82] *Id.* at 1068. Italics in the original.

[83] G.R. No. 89914, November 20, 1991, 203 SCRA 767. The issues before us are: (1) whether the Court has jurisdiction to inquire into the motives of the lawmakers in conducting legislative investigations under the doctrine of separation of powers; and (2) whether the the Senate Blue Ribbon Committee has power under Section 21, Article VI of the 1987 Constitution to conduct inquiries into private affairs in purported aid of legislation. *Id.* at 774-777.

[84] G.R. No. 160261, November 10, 2003, 415 SCRA 44. The issues before us are: (1) whether the filing of the second impeachment complaint against Chief Justice Hilario G. Davide, Jr. with the House of Representatives falls within the one-year bar provided in the Constitution; and (2) whether this is a political question that is beyond the ambit of judicial review. *Id.* at 105, 120-126.

of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP),[85] *Macalintal v. Presidential Electoral Tribunal*,[86] *Belgica v. Ochoa*,[87] *Imbong v. Ochoa, Jr.*,[88]

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[85] G.R. No. 183591, October 14, 2008, 568 SCRA 402. The substantive issues are: (1) whether the respondents violated constitutional and statutory provisions on public consultation and the right to information (under Article III, Section 7 of the 1987 Constitution) when they negotiated and later initialed the MOA-AD; and (2) whether the Memorandum of Agreement on Ancestral Domain violate the Constitution and the laws (*i.e.*, Sections 1, 15, and 20, Article X of the 1987 Constitution; Section 3, Article 10 of Republic Act No. 9054 or the Organic Act of Autonomous Region of Muslim Mindanao; Section 52 of Republic Act No. 8371 or The Indigenous Peoples' Rights Act of 1997). *Id.* at 465-582.

[86] G.R. No. 191618, November 23, 2010, 635 SCRA 783. The issue is whether the constitution of the PET, composed of the Members of the Supreme Court, is unconstitutional, and violates Section 4, Article VII and Section 12, Article VIII of the 1987 Constitution. *Id.* at 790, 817.

[87] G.R. No. 208566, November 19, 2013, 710 SCRA 1. The substantive issues are: (1) As to Congressional Pork Barrel — whether the 2013 Priority Development Assistance Fund Article and all other Congressional Pork Barrel Laws similar thereto are unconstitutional considering that they violate the principles of constitutional provisions on (*a*) separation of powers; (*b*) non-delegability of legislative power; (*c*) checks and balances; (*d*) accountability; (*e*) political dynasties; and (*f*) local autonomy; and

(2) As to Presidential Pork Barrel — Whether or not the phrases (*a*) "and for such other purposes as may be hereafter directed by the President" under Section 8 of Presidential Decree No. 910, relating to the Malampaya Funds, and (*b*) "to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines" under Section 12 of Presidential Decree No. 1869, as amended by Presidential Decree No. 1993, relating to the Presidential Social Fund, are unconstitutional insofar as they constitute undue delegations of legislative power. *Id.* at 88, 106-108.

[88] G.R. No. 204819, April 8, 2014, 721 SCRA 146. The substantive issue is whether the RH law is unconstitutional because it violates the following rights provided under the 1987 Constitution: (1) right to life; (2) right to health; (3) freedom of religion and the right to free speech; (4) the family; (5) freedom of expression and academic freedom; (6) due process; (7) equal protection; (8) involuntary servitude; (9) delegation of authority to the Food and Drugs Administration; and (10) autonomy of local governments/ Autonomous Region of Muslim Mindanao. *Id.* at 274.

Araullo v. Aquino III,[89] *Saguisag v. Ochoa, Jr.*,[90] *Padilla v. Congress of the Philippines*,[91] to name a few. **To stress, the common denominator of all these cases is that the threshold questions presented before us are ones of law.**

C

The transcendental importance doctrine

In 1949, the Court introduced a legal concept that will later underpin most of the cases filed directly before us — the doctrine of transcendental importance. Although this doctrine was originally used to relax the rules on *locus standi* or legal standing, its application would later be loosely extended as an independent justification for direct recourse to this Court.

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[89] G.R. No. 209287, July 1, 2014, 728 SCRA 1. The substantive issues are: (1) whether the Disbursement Acceleration Program (DAP) violates Section 29, Article VI of the 1987 Constitution, which provides: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

(2) whether the DAP, National Budget Circular No. 541, and all other executive issuances allegedly implementing the DAP violate Section 25(5), Article VI of the 1987 Constitution insofar as (a) they treat the unreleased appropriations and unobligated allotments withdrawn from government agencies as "savings" as the term is used in Section 25(5), in relation to the provisions of the General Appropriations Acts (GAAs) of 2011, 2012 and 2013; (b) they authorize the disbursement of funds for projects or programs not provided in the GAAs for the Executive Department; and (c) they "augment" discretionary lump sum appropriations in the GAAs. (3) whether or not the DAP violates: (a) the Equal Protection Clause; (b) the system of checks and balances; and (c) the principle of public accountability enshrined in the 1987 Constitution considering that it authorizes the release of funds upon the request of legislators. *Id.* at 59-60.

[90] G.R. Nos. 212426 & 212444, January 12, 2016, 779 SCRA 241, 321-333. The issues are: (1) whether the President may enter into an executive agreement on foreign military bases, troops, or facilities under Article XVIII, Section 25 of the 1987 Constitution; and (2) whether the provisions under Enhanced Defense Cooperation Agreement are consistent with the Constitution, as well as with existing laws and treaties (*i.e.*, the Mutual Defense Treaty and the Visiting Forces Agreement). *Id.* at 337.

[91] G.R. No. 231671, July 25, 2017. The issue is whether or not under Article VII, Section 18 of the 1987 Constitution , it is mandatory for the Congress to automatically convene in joint session in the event that the President proclaims a state of martial law and/or suspends the privilege of the writ of *habeas corpus* in the Philippines or any part thereof.

We first used the term "transcendental importance" in *Araneta v. Dinglasan*.[92] *Araneta* involved five consolidated petitions before the Court assailing the validity of the President's orders issued pursuant to Commonwealth Act No. 671, or "An Act Declaring a State of Total Emergency as a Result of War Involving the Philippines and Authorizing the President to Promulgate Rules and Regulations to Meet such Emergency."[93] Petitioners rested their case on the theory that Commonwealth Act No. 671 had already ceased to have any force and effect.[94] The main issues for resolution in *Araneta* were: (1) whether Commonwealth Act No. 671 was still in force; and relatedly, (2) whether the executive orders issued pursuant thereto were valid. Specifically, the Court had to resolve the issue of whether Commonwealth Act No. 671 (and the President's Emergency Powers) continued to be effective after the opening of the regular session of Congress.

In overruling the objection to the personality or sufficiency of the interest of petitioners in bringing the actions as taxpayers,[95] this Court declared that "[a]bove all, the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure."[96] **Thus, and similar with *Angara*, direct recourse to the Court in *Araneta* is justified because the issue to be resolved there was one of law; there was no dispute as to any underlying fact.** *Araneta* has since then been followed by a myriad of cases[97] where transcendental importance was cited as basis for setting aside objections on legal standing.

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[92] 84 Phil. 368 (1949).

[93] *Id.* at 374.

[94] *Id.*

[95] *Id.*

[96] *Id.* at 373.

[97] See *Social Justice Society (SJS) Officers v. Lim*, G.R. No. 187836, November 25, 2014, 742 SCRA 1; *Biraogo v. Philippine Truth Commission of 2010*, G.R. No. 192935, December 7, 2010, 637 SCRA 78; *Chavez v. Gonzales*, G.R. No. 168338, February 15, 2008, 545 SCRA 441; *Automotive*

It was in *Chavez v. Public Estates Authority*[98] when, for the first time, it appeared that the transcendental importance doctrine *could*, apart from its original purpose to overcome objections to standing, stand as a justification for disregarding the proscription against direct recourse to the Court. *Chavez* is an original action for *mandamus* filed before the Court against the Public Estates Authority (PEA). There, the petition sought, among others, to compel the PEA to disclose all facts on the PEA's then on-going renegotiations to reclaim portions of Manila Bay.[99] On the issue of whether the non-observance of the hierarchy of courts merits the dismissal of the petition, we ruled that:

x x x The principle of hierarchy of courts applies generally to cases involving factual questions. As it is not a trier of facts, the

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Industry Workers Alliance (AIWA) v. Romulo, G.R. No. 157509, January 18, 2005, 449 SCRA 1; *Bayan (Bagong Alyansang Makabayan) v. Zamora*, G.R. Nos. 138570, 138572, 138587, 138680 & 138698, October 10, 2000, 342 SCRA 449; *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81; *Guingona, Jr. v. Gonzales*, G.R. No. 106971, October 20, 1992, 214 SCRA 789; *Solicitor General v. Metropolitan Manila Authority*, G.R. No. 102782, December 11, 1991, 204 SCRA 837; *Osmeña v. Commission on Elections*, G.R. No. 100318, July 30, 1991, 199 SCRA 750; *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343; *Gonzales v. Commission on Elections*, G.R. No. L-27833, April 18, 1969, 27 SCRA 835. See also *Padilla v. Congress*, G.R. No. 231671, July 25, 2017; *Ocampo v. Mendoza*, G.R. No. 190431, January 31, 2017, 816 SCRA 300; *Intellectual Property Association of the Philippines v. Ochoa*, G.R. No. 204605, July 19, 2016, 797 SCRA 134; *Funa v. Manila Economic & Cultural Office*, G.R. No. 193462; February 4, 2014, 715 SCRA 247; *Liberal Party v. Commission on Elections*, G.R. No. 191771, May 6, 2010, 620 SCRA 393; *Guingona, Jr. v. Commission on Elections*, G.R. No. 191846, May 6, 2010, 620 SCRA 448; *Francisco, Jr. v. Desierto*, G.R. No. 154117, October 2, 2009, 602 SCRA 50; *Social Justice Society (SJS) v. Dangerous Drugs Board*, G.R. No. 157870, November 3, 2008, 570 SCRA 410; *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), supra* note 84; *Lim v. Executive Secretary*, G.R. No. 151445, April 11, 2002, 380 SCRA 739; *Matibag v. Benipayo*, G.R. No. 149036, April 2, 2002, 380 SCRA 49; *Nazareno v. Court of Appeals*, G.R. No. 111610, February 27, 2002, 378 SCRA 28; and *De Guia v. Commission on Elections*, G.R. No. 104712, May 6, 1992, 208 SCRA 420.

[98] G.R. No. 133250, July 9, 2002, 384 SCRA 152.

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

Court cannot entertain cases involving factual issues. The instant case, however, raises constitutional issues of transcendental importance to the public. The Court can resolve this case without determining any factual issue related to the case. Also, the instant case is a petition for *mandamus* which falls under the *original* jurisdiction of the Court under Section 5, Article VIII of the Constitution. We resolve to exercise primary jurisdiction over the instant case.[100] (Emphasis supplied; citation omitted.)

D

The Court is not a trier of facts

In 1973, the *dictum* that the Supreme Court is not trier of facts first appeared in jurisprudence through the concurring opinion of then Chief Justice Querube Makalintal in *Chemplex (Philippines) Inc. v. Pamatian*.[101] *Chemplex* involved a petition for *certiorari* against an order recognizing the validity and legitimacy of the election of directors on the board of a private corporation. In his concurrence to the majority decision dismissing the petition, Chief Justice Querube Makalintal wrote:

Judge Pamatian issued the order now assailed herein after he heard the parties and received relevant evidence bearing on the incident before him, namely, the issuance of a writ of preliminary injunction as prayed for by the defendants. He issued the writ on the basis of the facts as found by him, subject of course, as he himself admitted, considering the interlocutory nature of the injunction, to further consideration of the case on the merits after trial. **I do not see that his factual findings are arbitrary or unsupported by the evidence. If anything, they are circumspect, reasoned out and arrived at after serious judicial inquiry.**

This Court is not a trier of facts, and it is beyond its function to make its own findings of certain vital facts different from those of the trial court, especially on the basis of the conflicting claims of the parties and without the evidence being properly before it. For this Court to make such factual conclusions is entirely unjustified — first, because if material facts are controverted, as in this case, and they are issues being litigated before the lower court,

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[100] *Id.* at 179.

[101] G.R. No. L-37427, June 25, 1974, 57 SCRA 408.

the petition for *certiorari* would not be in aid of the appellate jurisdiction of this Court; and, **secondly, because it preempts the primary function of the lower court, namely, to try the case on the merits, receive all the evidence to be presented by the parties, and only then come to a definite decision**, including either the maintenance or the discharge of the preliminary injunction it has issued.

The thousands of pages of pleadings, memoranda, and annexes already before this Court and the countless hours spent in discussing the bare allegations of the parties — as to the factual aspects of which the members are in sharp disagreement — merely to resolve whether or not to give due course to the petition, demonstrate clearly why this Court, in a case like this, should consider only one question, and no other, namely, did the court below commit a grave abuse of discretion in issuing the order complained of, and should answer that question without searching the pleadings for supposed facts still in dispute and not those set forth in the order itself, and in effect deciding the main case on the merits although it is yet in its preliminary stages and has not entered the period of trial.[102] (Emphasis and italics supplied.)

The maxim that the Supreme Court is not a trier of facts will later find its way in the Court's majority opinion in *Mafinco Trading Corporation v. Ople*.[103]

Mafinco involved a special civil action for *certiorari* and prohibition to annul a Decision of the Secretary of Labor, finding that the old National Labor Relations Commission (NLRC) had jurisdiction over the complaint filed against Mafinco Trading Corporation for having dismissed two union members. The crucial issue brought before the Court was whether an employer-employee relationship existed between petitioner and the private respondents. Before resolving the issue *on the basis of the parties' contracts*, the Court made the following pronouncements:

The parties in their pleadings and memoranda injected conflicting factual allegations to support their diametrically opposite contentions. From the factual angle, the case has become highly controversial.

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[102] *Id.* at 412-413. Concurring Opinion of *C.J.* Querube Makalintal.

[103] G.R. No. L-37790, March 25, 1976, 70 SCRA 139, 161.

In a *certiorari* and prohibition case, like the instant case, only legal issues affecting the jurisdiction of the tribunal, board or officer involved may be resolved on the basis of undisputed facts. Sections 1, 2 and 3, Rule 65 of the Rules of Court require that in the verified petition for *certiorari, mandamus* and prohibition the petitioner should allege "facts with certainty."

In this case, the facts have become uncertain. Controversial evidentiary facts have been alleged. What is certain and indubitable is that a notarized peddling contract was executed.

This Court is not a trier of facts. It would be difficult, if not anomalous, to decide the jurisdictional issue on the basis of the parties contradictory factual submissions. The record has become voluminous because of their efforts to persuade this Court to accept their discordant factual statements.

Pro hac vice the issue of whether Repomanta and Moralde were employees of Mafinco or were independent contractors should be resolved mainly in the light of their peddling contracts. A different approach would lead this Court astray into the field of factual controversy where its legal pronouncements would not rest on solid grounds.[104] (Emphasis supplied.)

The Rules of Court referred to above is the 1964 Rules of Court. Up to this date, the requirement of alleging facts with certainty remains in Sections 1 to 3 of Rule 65 of the 1997 Revised Rules of Court.

Meanwhile, the Court, aware of its own limitations, decreed in Section 2, Rule 3 of its Internal Rules[105] that it is "not a trier of facts," *viz*.:

Sec. 2. *The Court Not a Trier of Facts*. — The Court is not a trier of facts; its role is to decide cases based on the findings of fact before it. Where the Constitution, the law or the Court itself, in the exercise of its discretion, decides to receive evidence, the reception of evidence may be delegated to a member of the Court, to either the Clerk of Court or one of the Division Clerks of Court, or to one of the appellate courts or its justices who shall submit to the Court a report and recommendation on the basis of the evidence presented.

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[104] *Id.* at 160-161.

[105] Administrative Matter No. 10-4-20-SC, May 4, 2010.

E

The doctrine of hierarchy of courts

Starting in 1987, the Court, in two cases, addressed the penchant of litigants to seek direct recourse to it from decisions originating even from the municipal trial courts and city courts.

In *Vergara, Sr. v. Suelto*,[106] the Court's original jurisdiction over special civil actions for *mandamus* was invoked to compel a Municipal Trial Court (MTC) to issue summary judgment in a case for illegal detainer. There, we declared in no uncertain terms that:

> x x x As a matter of policy[,] such a direct recourse to this Court should not be allowed. **The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor[.]** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another, are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.**[107] (Emphasis supplied.)

This so-called "policy" was reaffirmed two years later in *People v. Cuaresma*,[108] which involved a petition for *certiorari* challenging the quashal by the City Fiscal of an Information for defamation on the ground of prescription. In dismissing the petition, this Court reminded litigants to refrain from directly

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[106] G.R. No. 74766, December 21, 1987, 156 SCRA 753.

[107] *Id.* at 766.

[108] G.R. No. 67787, April 18, 1989, 172 SCRA 415.

filing petitions for extraordinary writs before the Court, unless there were special and important reasons therefor. We then introduced the concept of "hierarchy of courts," to wit:

> x x x This Court's original jurisdiction to issue writs of *certiorari* (as well as prohibition, *mandamus, quo warranto, habeas corpus* and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance), which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly, Intermediate Appellate Court), although prior to the effectivity of *Batas Pambansa Bilang* 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." **This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. <u>There is after all a hierarchy of courts.</u> That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy.** x x x
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> **The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence thereto in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometime even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land.** x x x[109]

(Emphasis and underscoring supplied; citation omitted.)

This doctrine of hierarchy of courts guides litigants as to the proper venue of appeals and/or the appropriate forum for

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

the issuance of extraordinary writs. Thus, although this Court, the CA, and the RTC have concurrent original jurisdiction[110] over petitions for *certiorari*, prohibition, *mandamus, quo warranto*, and *habeas corpus*, parties are directed, as a rule, to file their petitions before the lower-ranked court. Failure to comply ts sufficient cause for the dismissal of the petition.[111]

This Court has interchangeably referred to the hierarchy of courts as a "principle,"[112] a "rule,"[113] and a "doctrine."[114] For purposes for this discussion, however, we shall refer to it as a doctrine.

F

The Court's expanded jurisdiction, social rights, and the Court's constitutional rule-making power under the 1987 Constitution

With the 1987 Philippine Constitution came significant developments in terms of the Court's judicial and rule-making powers.

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[110] Article VIII, Section 5(1) of the 1987 Constitution and Sections 9(1) and 21(1) of *Batas Pambansa Bilang* 129.

[111] *Heirs of Bertuldo Hinog v. Melicor*, G.R. No. 140954, April 12, 2005, 455 SCRA 460, 472.

[112] See *Intramuros Administration v. Offshore Construction Development Co.*, G.R. No. 196795, March 7, 2018; *Rama v. Moises*, G.R. No. 197146 (Resolution), August 8, 2017; *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*, *supra* note 56; *Dynamic Builders & Construction Co. (Phil.), Inc. v. Presbitero, Jr.*, G.R. No. 174202, April 7, 2015, 755 SCRA 90, 107.

[113] See *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018; *Mercado v. Lopena*, G.R. No. 230170, June 6, 2018; *De Lima v. Guerrero*, G.R. No. 229781, October 10, 2017; *Roy III v. Herbosa*, G.R. No. 207246, November 22, 2016, 810 SCRA 1, 93.

[114] See *Alliance of Quezon City Homeowners' Association, Inc. v. Quezon City Government*, G.R. No. 230651, September 18, 2018; *Ifurung v. Carpio Morales*, G.R. No. 232131, April 24, 2018; *Trillanes IV v. Castillo-Marigomen*, G.R. No. 223451, March 14, 2018; *Bureau of Customs v. Gallegos*, G.R. No. 220832 (Resolution), February 28, 2018.

First, judicial power is no longer confined to its traditional ambit of settling actual controversies involving rights that were legally demandable and enforceable.[115] The second paragraph of Section 1, Article VIII of the 1987 Constitution provides that judicial power also includes the duty of the courts "x x x to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." In *Araullo v. Aquino III*, former Associate (now Chief) Justice Bersamin eruditely explained:

> The Constitution states that judicial power includes the duty of the courts of justice not only "to settle actual controversies involving rights which are legally demandable and enforceable" but also "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." It has thereby expanded the concept of judicial power, which up to then was confined to its traditional ambit of settling actual controversies involving rights that were legally demandable and enforceable.
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> x x x x x x x x x
>
> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.[116] (Italics supplied.)

It must be stressed, however, that this grant of expanded power of judicial review did **not** result to the abandonment of the *Angara* model.[117] Direct recourse to the Court, on grounds

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[115] *Araullo v. Aquino III, supra* note 88 at 67-68.

[116] *Id.* at 67-68, 74.

[117] *Id.* at 70-78.

of grave abuse of discretion, was still allowed only when the questions presented were legal.

Second, in addition to providing for "self-executory and ready for use"[118] civil and political rights, the 1987 Constitution also contained provisions pertaining to what has been termed as "social rights." Esteemed constitutionalist and member of the 1987 Constitutional Commission Father Joaquin G. Bernas, SJ, explained:

> x x x But as will be seen, the 1987 Constitution advances beyond what was in previous Constitutions in that it seeks not only economic social justice but also political social justice.
>
> x x x The guarantees of civil and political rights found principally in the Bill of Rights are self-executory and ready for use. One can assert those rights in a court of justice. Social rights are a different phenomenon. Except to the extent that they prohibit the government from embarking in activity contrary to the ideals of social justice, they generally are not rights in the strict sense that the rights in the Bill of Rights are. x x x In legal effectiveness, they are primarily in the nature of claims of demands which people expect government to satisfy, or they are ideals which government is expected to respect. x x x[119]

This, in turn, gave rise to a slew of litigation invoking these so-called "social rights."[120] In *Oposa v. Factoran, Jr.*,[121] for example, this Court famously recognized an enforceable right to a balanced and healthful ecology under Section 16, Article II of the 1987 Constitution.

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[118] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2005, Ed. p. 1192.

[119] *Id.*

[120] See *Knights of Rizal v. DMCI Homes, Inc.*, G.R. No. 213948, April 25, 2017; *Espina v. Zamora, Jr.*, G.R. No. 143855, September 21, 2010, 631 SCRA 17; *Tondo Medical Center Employees Association v. Court of Appeals*, G.R. No. 167324, July 17, 2007, 527 SCRA 746; *Manila Prince Hotel v. Government Service Insurance System*, G.R. No. 122156, February 3, 1997, 267 SCRA 408; *Basco v. Phil. Amusements and Gaming Corporation*, G.R. No. 91649, May 14, 1991, 197 SCRA 52.

[121] G.R. No. 101083, July 30, 1993, 224 SCRA 792.

Third, the Supreme Court's rule-making power was enhanced under the new Constitution, to wit:

x x x x x x x x x

Section 5. The Supreme Court shall have the following powers:

x x x x x x x x x

(5) *Promulgate rules concerning the protection and enforcement of constitutional rights*, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. *Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.*[122] (Italics in the original)

For the first time, the Court was granted with the following: (1) the power to promulgate rules concerning the protection and enforcement of constitutional rights; and (2) the power to disapprove rules of procedure of special courts and quasi-judicial bodies. The 1987 Constitution also took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure.[123]

Pursuant to its constitutional rule-making power,[124] the Court promulgated new sets of rules which effectively increased its original and concurrent jurisdiction with the RTC and the CA: (1) A.M. No. 07-9-12-SC or the Rule on the Writ of *Amparo*;[125]

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[122] *Echegaray v. Secretary of Justice*, G.R. No. 132601, January 19, 1999, 301 SCRA 96, 111.

[123] *Id.* at 112.

[124] CONSTITUTION, Art. VIII, Sec. 5(5).

[125] A petition for a writ of *Amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. It may be filed with the Regional Trial Court of the place where the threat, act or omission was committed or any of its elements occurred, or with the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts, (Sections 1 and 3.)

(2) A.M. No. 08-1-16-SC or the Rule on the Writ of *Habeas Data*;[126] and (3) A.M. No. 09-6-8-SC or the Rules of Procedure for Environmental Cases.[127]

Under these Rules, litigants are allowed to seek direct relief from this Court, regardless of the presence of questions which are heavily factual in nature. In the same vein, judgments in petitions for writ of *amparo*, writ of *habeas data*, and writ of *kalikasan* rendered by lower-ranked courts can be appealed to the Supreme Court on questions of fact, or law, or both, via a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Court.[128]

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[126] This is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party. It may be filed directly with the Supreme Court, the Court of Appeals, or the Sandiganbayan when the action concerns public data files of government offices. (Sections 1 and 3, par. 2.)

[127] Two remedies may be availed of under this Rule: a writ of *kalikasan* and a writ for continuing *mandamus*. The former is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life. health or property of inhabitants in two or more cities or provinces. A petition for the issuance of this writ may be filed with the Supreme Court or with any stations of the Court of Appeals. (Sections 1 and 3, Rule 7.)

A writ of continuing *mandamus*, on the other hand, may be issued when "any agency or instrumentality of the government or officer thereof unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station in connection with the enforcement or violation of an environmental law, rule or regulation or a right therein, or unlawfully excludes another from the use or enjoyment of such right and there is no other plain, speedy and adequate remedy in the ordinary course of law." A petition for its issuance may be filed with the Regional Trial Court exercising Jurisdiction over the territory where the actionable neglect or omission occurred or with the Court of Appeals or this Court. (Sections 1 and 2, Rule 8.)

[128] See Section 19 of The Rules on the Writ of *Amparo* and *Habeas Data* and Rule 7, Section 16 of the Rules of Procedure for Environmental Cases.

In practice, however, petitions for writ of *amparo*, writ of *habeas data*, and writ of *kalikasan* which were originally filed before this Court invariably found their way to the CA for hearing and decision, with the CA's decision to be later on brought before us on appeal. Thus, in *Secretary of National Defense v. Manalo*,[129] the first ever *amparo* petition, this Court ordered the remand of the case to the CA for the conduct of hearing, reception of evidence, and decision.[130] We also did the same in: (1) *Rodriguez v. Macapagal-Arroyo*;[131] (2) *Saez v. Macapagal-Arroyo*;[132] and (3) *International Service for the Acquisition of Agri-Biotech Applications, Inc., v. Greenpeace Southeast Asia (Philippines)*.[133] The consistent practice of the Court in these cases (that is, referring such petitions to the CA for the reception of evidence) is a tacit recognition by the Court itself that it is not equipped to be a trier of facts.

Notably, our referral of the case to the CA for hearing, reception of evidence, and decision is in consonance with Section 2, Rule 3 of our Internal Rules which states that if the Court, in the exercise of its discretion, decides to receive evidence, it may delegate the same to one of the appellate courts for report and recommendation.

G

Exceptions to the doctrine of hierarchy of courts

Aside from the special civil actions over which it has original Jurisdiction, the Court, through the years, has allowed litigants to seek direct relief from it upon allegation of "serious and important reasons." *The Diocese of Bacolod v. Commission on Elections*[134] (*Diocese*) summarized these circumstances in this wise:

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[129] G.R. No. 180906, October 7, 2008, 568 SCRA 1.

[130] *Id.* at 12. See also *Lozada, Jr. v. Macapagal-Arroyo*, G.R. Nos. 184379-80, April 24, 2012, 670 SCRA 545, 552-553.

[131] G.R. No. 191805 & G.R. No. 193160, November 15, 2011, 660 SCRA 84, 96-97.

[132] G.R. No. 183533, September 25, 2012, 681 SCRA 678.

[133] G.R. No. 209271, December 8, 2015, 776 SCRA 434.

[134] *Supra* note 58.

(1) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
(2) when the issues involved are of transcendental importance;
(3) cases of first impression;
(4) the constitutional issues raised are better decided by the Court;
(5) exigency in certain situations;
(6) the filed petition reviews the act of a constitutional organ;
(7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]
(8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."[135]

A careful examination of the jurisprudential bases[136] of the foregoing exceptions would reveal a common denominator —

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[135] *Id.* at 45-50.

[136] The first exception referred to *Aquino III v. Commission on Elections (Comelec)*, G.R. No. 189793, April 7, 2010, 617 SCRA 623, and *Magallona v. Ermita*, G.R. No. 187167, August 16, 2011, 655 SCRA 476. In *Aquino III v. Comelec*, the issue is whether Republic Act No. 9716, which created an additional legislative district for the Province of Camarines Sur, is constitutional. In *Magallona v. Ermita*, the issue is the constitutionality of Republic Act No. 9522 adjusting the country's archipelagic baselines and classifying the baseline regime of nearby territories. Both presented questions of law.

The second exception was based on *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, G.R. No. 155001, May 5, 2003, 402 SCRA 612, and *Initiatives for Dialogue and Empowerment Through Alternative Legal Services, Inc. (IDEALS, INC.) v. Power Sector Assets and Liabilities Management (PSALM)*, G.R. No. 192088, October 9, 2012, 682 SCRA 602. In *Agan*, we noted that the facts necessary to resolve the legal questions are well established and, hence, need not be determined by a trial court. In *IDEALS, INC.*, the issue was the validity of the award by the Power Sector

the issues for resolution of the Court are purely legal. Similarly, the Court in *Diocese* decided to allow direct recourse in said case because, just like *Angara*, what was involved was the resolution of a question of law, namely, whether the limitation on the size of the tarpaulin in question violated the right to free speech of the Bacolod Bishop.

Assets and Liabilities Management of the Angat Hydro-Electric Power Plant to Korea Water Resources Corporation.

The third exception was based on *Government of the United States of America v. Purganan*, G.R. No. 148571, September 24, 2002, 389 SCRA 623; *Mallion v. Alcantara*, G.R. No. 141528, October 31, 2006, 506 SCRA 336; and *Soriano v. Laguardia*, G.R. No. 164785, April 29, 2009, 587 SCRA 79. In *Purganan*, the issue is whether prospective extradites are entitled to a notice and hearing before warrants for their arrest can be issued, and whether they are entitled to bail and provisional liberty while the extradition proceedings are pending. Significantly, the Court declared that the issues raised are pure questions of law. The issue in *Mallion* is whether a previous final judgment denying a petition for declaration of nullity on the ground of psychological incapacity bars a subsequent petition for declaration of nullity on the ground of lack of marriage license. While in *Soriano*, the issue is whether the Movie and Television Review and Classification Board has the power to issue preventive suspension under Presidential Decree No. 1986 or The Law Creating the Movie and Television Review and Classification Board. Both cases presented questions of law.

The fourth exception cited *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, which involves the constitutionality of Section 187 of the Local Government Code, also a question of law.

The fifth exception did not cite any jurisprudential antecedent.

The sixth exception referred to *Albano v. Arranz* , G.R. No. L-19260, January 31, 1962, 4 SCRA 386, where the sole issue is whether respondent Judge Manuel Arranz committed grave abuse of discretion in issuing a preliminary injunction ordering the Board of Canvassers and the Provincial Treasurer to refrain from bringing the questioned returns to Manila, as instructed by the Commission on Elections, also a question of law.

The seventh exception did not provide for a jurisprudential basis.

The eight exception cited *Chavez v. Romulo*, G.R. No. 157036, June 9, 2004, 431 SCRA 534; *Commission on Elections v. Quijano-Padilla*, G.R. No. 151992, September 18, 2002, 389 SCRA 353; and *Buklod ng Kawaning EIIB v. Zamora*, G.R. Nos. 142801-802, July 10, 2001, 360 SCRA 718. *Chavez* dealt with the constitutionality of the "Guidelines in the Implementation of the Ban on the Carrying of Firearms Outside of Residence." In *Quijano-Padilla*, the issue is whether a successful bidder may compel a

We take this opportunity to clarify that the presence of one or more of the so-called "special and important reasons" is not the decisive factor considered by the Court in deciding whether to permit the invocation, at the first instance, of its original jurisdiction over the issuance of extraordinary writs. **Rather, it is the *nature* of the question raised by the parties in those "exceptions" that enabled us to allow the direct action before us.**

As a case in point, we shall focus our discussion on transcendental importance. Petitioner after all argues that its direct resort to us is proper because the issue raised (that is, whether the bundling of the Projects violates the constitutional proscription on monopoly and restraint of trade) is one of transcendental importance or of paramount public interest.

An examination of the cases wherein this Court used "transcendental importance" of the constitutional issue raised to excuse violation of the principle of hierarchy of courts would show that resolution of factual issues was not necessary for the resolution of the constitutional issue/s. These cases include *Chavez v. Public Estates Authority*,[137] *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*,[138] *Jaworski v. Philippine Amusement and Gaming Corporation*,[139] *Province of Batangas v. Romulo*,[140] *Aquino III v. Commission on Elections*,[141] *Department of Foreign Affairs v. Falcon*,[142] *Capalla v.*

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government agency to formalize a contract with it notwithstanding that its bid exceeds the amount appropriated by Congress for the project. In *Buklod*, the issues are whether Executive Order Nos. 191 and 223 violated Buklod members' right to security of tenure and whether then President Joseph Estrada usurped the power of Congress to abolish public office. All these cases presented questions of law.

[137] *Supra* note 56 at 179.

[138] *Agan, Jr. v. Philippine International Air Terminals Co., Inc., supra* note 135 at 646.

[139] G.R. No. 144463, January 14, 2004, 419 SCRA 317, 323-324.

[140] G.R. No. 152774, May 27, 2004, 429 SCRA 736, 757.

[141] *Aquino III v. Commission on Elections, supra* note 135.

[142] G.R. No. 176657, September 1, 2010, 629 SCRA 644, 669-670.

Commission on Elections,[143] *Kulayan v. Tan*,[144] *Funa v. Manila Economic & Cultural Office*,[145] *Ferrer, Jr. v. Bautista*,[146] and *Ifurung v. Carpio Morales*.[147] **In all these cases, there were no disputed facts and the issues involved were ones of law**.

In *Agan*, we stated that "[t]he facts necessary to resolve these legal questions are well established and, hence, need not be determined by a trial court,"[148] In *Jaworski*, the issue is whether Presidential Decree No. 1869 authorized the Philippine Amusement and Gaming Corporation to contract any part of its franchise by authorizing a concessionaire to operate internet gambling.[149] In *Romulo*, we declared that the facts necessary to resolve the legal question are not disputed.[150] In *Aquino III*, the lone issue is whether RA No. 9716, which created an additional legislative district for the Province of Camarines Sur, is constitutional.[151] In *Falcon*, the threshold issue is whether an information and communication technology project, which does not conform to our traditional notion of the term "infrastructure," is covered by the prohibition against the issuance of court injunctions under RA No. 8975.[152] Similarly, in *Capalla*, the issue is the validity and constitutionality of the Commission on Elections' Resolutions for the purchase of precint count optical scanner machines as well as the extension agreement and the deed of sale covering the same.[153] In *Kulayan*, the issue is whether

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[143] G.R. No. 201112, June 13, 2012, 673 SCRA 1, 238.

[144] G.R. No. 187298, July 3, 2012, 675 SCRA 482, 493-494.

[145] *Supra* note 96.

[146] G.R. No. 210551, June 30, 2015, 760 SCRA 652.

[147] *Supra* note 113.

[148] *Agan, Jr. v. Philippine International Air Terminals Co., Inc., supra* note 135 at 646.

[149] *Supra* note 138 at 321.

[150] *Supra* note 139 at 756-757.

[151] *Aquino III v. Commission on Elections, supra* note 135 at 630.

[152] *Supra* note 141 at 669.

[153] *Supra* note 142 at 46.

Section 465 in relation to Section 16 of the Local Government Code authorizes the respondent governor to declare a state of national emergency and to exercise the powers enumerated in his Proclamation No. 1-09.[154] In *Funa*, the issue is whether the Commission on Audit is, under prevailing law, mandated to audit the accounts of the Manila Economic and Cultural Office.[155] In *Ferrer*, the issue is the constitutionality of the Quezon City ordinances imposing socialized housing tax and garbage fee.[156] In *Ifurung*, the issue is whether Section 8(3) of RA No. 6770 or the Ombudsman Act of 1989 is constitutional.[157]

More recently, in *Aala v. Uy*,[158] the Court *En Banc*, dismissed an original action for *certiorari*, prohibition, and *mandamus*, which prayed for the nullification of an ordinance for violation of the equal protection clause, due process clause, and the rule on uniformity in taxation. We stated that, not only did petitioners therein fail to set forth exceptionally compelling reasons for their direct resort to the Court, they also raised factual issues which the Court deems indispensable for the proper disposition of the case. We reiterated the time-honored rule that we are not a trier of facts: "[T]he initial reception and appreciation of evidence are functions that [the] Court cannot perform. These are functions best left to the trial courts."[159]

To be clear, the transcendental importance doctrine does not clothe us with the power to tackle factual questions and play the role of a trial court. The only circumstance when we may take cognizance of a case *in the first instance*, despite the presence of factual issues, is in the exercise of our constitutionally-expressed task to review the sufficiency of the factual basis of the President's proclamation of martial law under Section 18,

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[154] *Supra* note 143 at 492.

[155] *Supra* note 96 at 272.

[156] *Supra* note 145 at 667.

[157] *Supra* note 113.

[158] G.R. No. 202781, January 10, 2017, 814 SCRA 41.

[159] *Id.* at 66.

Article VII of the 1987 Constitution.[160] The case before us does not fall under this exception.

H

Hierarchy of courts is a constitutional imperative

Strict observance of the doctrine of hierarchy of courts should not be a matter of mere policy. It is a constitutional imperative given (1) the structure of our judicial system and (2) the requirements of due process.

First. The doctrine of hierarchy of courts recognizes the various levels of courts in the country as they are established under the Constitution and by law, their ranking and effect of their rulings in relation with one another, and how these different levels of court interact with one another.[161] It determines the venues of appeals and the appropriate forum for the Issuance of extraordinary writs.[162]

Since the creation of the Court in 1901,[163] and save for certain exceptions, it does not, as a rule, retry questions of

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[160] *Lagman v. Medialdea*, G.R. No. 231658, July 4, 2017, 829 SCRA 1. See also *Marcos v. Manglapus*, G.R. No. 88211, September 15, 1989, 177 SCRA 668, where we looked into whether or not there exist factual bases for the President to conclude that it was in the national interest to bar the return of the Marcoses to the Philippines. (*Id.* at 697) Albeit, we resolved the issue by merely considering the pleadings filed by the parties, their oral arguments, and the facts revealed during the briefing in chambers by the Chief of Staff of the Armed Forces of the Philippines and the National Security Adviser, wherein petitioners and respondents were represented.

[161] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, G.R. Nos. 207132 & 207205, December 6, 2016, 812 SCRA 452, 499.

[162] See *People v. Cuaresma, supra* note 107 at 424.

[163] In the case of *Guico v. Mayuga*, G.R. Nos. L-45274 and L-45275, August 21, 1936, 63 Phil. 328, we held that:

> **Our appellate jurisdiction in this case is limited to reviewing and examining the errors of law incurred by the Court of Appeals**, in accordance with the provisions of Section 138, No. 6, of the Administrative Code, as amended by Commonwealth Act No. 3.
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facts.[164] Trial courts such as the MTCs and the RTCs, on the other hand, routinely decide questions of fact and law at the first instance, in accordance with the jurisdiction granted to

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Rule 47 (a) of the Rules of the Supreme Court provides, in respect to cases brought to it in connection with its appellate jurisdiction, that only questions of law may be raised therein and that the court has the power to order *motu proprio* the dismissal thereof if in its opinion they are without merit. *Id.* at 331. (Emphasis supplied.)

[164] CODE OF CIVIL PROCEDURE. Sec. 497. *Hearings Confined to Matters of Law, With Certain Exceptions*. — In hearings upon bills of exception, in civil actions and special proceedings, **the Supreme Court shall not review the evidence taken in the court below, nor retry the questions of fact, except as in this section hereafter provided; but shall determine only questions of law raised by the bill of exceptions**. But the Supreme Court may review the evidence taken in the court below, and affirm, reverse, or modify the judgment there rendered, as justice may require, in the following cases:

1. If assessors sat with the judge in the hearing in the court below, and both the assessors were of the opinion that the findings of the facts and judgment in the action are wrong and have certified in writing their dissent therefrom, and their reasons for such dissent, the Supreme Court may in connection with the hearing on the bill of exceptions, review the facts upon the evidence adduced in the court below, and shall give to the dissent aforesaid such weight as in the opinion of the judges of the Supreme Court it is entitled to, and upon such review shall render such judgment as is found just;

2. If before the final determination of an action pending in the Supreme Court on bill of exceptions, new and material evidence be discovered by either party, which could not have been discovered before the trial in the court below, by the exercise of due diligence, and which is of such a character as probably to change the result, the Supreme Court may receive and consider such new evidence, together with that adduced on the trial below, and may grant or refuse a new trial, or render such other judgment as ought, in view of the whole case, to be rendered, upon such terms as it may deem just. The party seeking a new trial, or a reversal of the judgment on the ground of newly discovered evidence, may petition the Supreme Court for such new trial, and shall attach to the petition affidavits showing the facts entitling him to a new trial and the newly discovered evidence. Upon the filing of such petition in the Supreme Court, the court shall, on notice to both parties, make such order as to taking further testimony by each party, upon the petition, either orally in court, or by depositions, upon notice, as it may deem just. The petition, with the evidence, shall be heard at the same time as the bill of exceptions;

them by law.[165] While the CA and other intermediate courts can rule on both questions of fact and law, the Supreme Court, in stark contrast, generally decides only questions of law. This is because the Court, whether in the exercise of its original or appellate jurisdiction, is not equipped to receive and evaluate evidence in the first instance. Our sole role is to apply the law based on the findings of facts brought before us.[166] Notably, from the 1901 Rules[167] until the present 1997 Revised Rules of Court,[168] the power to ascertain facts and receive and evaluate evidence in relation thereto is lodged with the trial courts.

In *Alonso v. Cebu Country Club, Inc.* (*Alonso*),[169] this Court had occasion to articulate the role of the CA in the judicial hierarchy, *viz.*:

> The hierarchy of courts is not to be lightly regarded by litigants. **The CA stands between the RTC and the Court, and its establishment has been precisely to take over much of the work that used to be done by the Court. Historically, the CA has been of the greatest help to the Court in synthesizing the facts, issues, and rulings in an orderly and intelligible manner and in identifying errors that ordinarily might escape detection. The Court has thus been freed to better discharge its constitutional duties and perform**

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3. If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the findings of fact were plainly and manifestly against the weight of evidence, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts, and render such final judgment, as justice and equity require. But, if the Supreme Court shall be of the opinion that this exception is frivolous and not made in good faith, it may impose double or treble additional costs upon the excepting party, and may order them to be paid by the counsel prosecuting the bill of exceptions, if in its opinion justice so requires. (Emphasis supplied.)

[165] *Supra* note 161 at 423-424.

[166] *Aspacio v. Inciong*, G.R. No. L-49893, May 9, 1988, 161 SCRA 180, 184.

[167] CODE OF CIVIL PROCEDURE, Secs. 56 and 132.

[168] REVISED RULES OF COURT, Rule 30, Sec. 5 and Rule 5, Sec. 1.

[169] G.R. No. 188471, April 20, 2010, 618 SCRA 619.

its most important work, which, in the words of Dean Vicente G. Sinco, "is less concerned with the decision of cases that begin and end with the transient rights and obligations of particular individuals but is more intertwined with the direction of national policies, momentous economic and social problems, the delimitation of governmental authority and its impact upon fundamental rights."[170] (Emphasis supplied; citations omitted.)

Accordingly, when litigants seek relief directly from the Court, they bypass the judicial structure and open themselves to the risk of presenting incomplete or disputed facts. This consequently hampers the resolution of controversies before the Court. Without the necessary facts, the Court cannot authoritatively determine the rights and obligations of the parties. The case would then become another addition to the Court's already congested dockets. Thus, as we explained in *Alonso*:

> x x x Their non-observance of the hierarchy of courts has forthwith enlarged the docket of the Court by one more case, which, though it may not seem burdensome to the layman, is one case too much to the Court, which has to devote time and effort in poring over the papers submitted herein, only to discover in the end that a review should have first been made by the CA. The time and effort could have been dedicated to other cases of importance and impact on the lives and rights of others.[171]

Second. Strict adherence to the doctrine of hierarchy of courts also proceeds from considerations of due process. While the term "due process of law" evades exact and concrete definition, this Court, in one of its earliest decisions, referred to it as a law which hears before it condemns which proceeds upon inquiry and renders judgment only after trial. It means that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society.[172] Under the present Rules of Court, which governs our judicial proceedings, warring factual allegations of parties are settled

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[170] *Id.* at 627-628.

[171] *Id.* at 627.

[172] *United States v. Ling Su Fan*, G.R. No 3962, 10 Phil. 104, 111 (1908).

through presentation of evidence. Evidence is the means of ascertaining, in a judicial proceeding, the truth respecting a matter of fact.[173] As earlier demonstrated, the Court cannot accept evidence *in the first instance*. By directly filing a case before the Court, litigants necessarily deprive themselves of the oportunity to completely pursue or defend their causes of actions. Their right to due process is effectively undermined by their own doing.

Objective justice also requires the ascertainment of all relevant facts before the Court can rule on the issue brought before it. Our pronouncement in *Republic v. Sandiganbayan*[174] is enlightening:

> **The resolution of controversies is, as everyone knows, the *raison d'etre* of courts. This essential function is accomplished by *first*, the ascertainment of all the material and relevant facts from the** pleadings and from the evidence adduced by the parties, and *second*, after that determination of the facts has been completed, by the application of the law thereto to the end that the controversy may be settled authoritatively, definitely and finally.
>
> **It is for this reason that a substantial part of the adjective law in this jurisdiction is occupied with assuring that all the facts are indeed presented to the Court; for obviously, to the extent that adjudication is made on the basis of incomplete facts, to that extent there is faultiness in the approximation of objective justice.** It is thus the obligation of lawyers no less than of judges to see that this objective is attained; that is to say, that there no suppression, obscuration, misrepresentation or distortion of the facts; and that no party be unaware of any fact material and relevant to the action, or surprised by any factual detail suddenly brought to his attention during the trial.[175] (Emphasis supplied.)

I
The doctrine of hierarchy of courts as a filtering mechanism

The doctrine of hierarchy of courts operates to: (1) prevent inordinate demands upon the Court's time and attention which

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[173] RULES OF COURT, Rule 128, Sec. 1.

[174] G.R. No. 90478, November 21, 1991, 204 SCRA 212.

[175] *Id.* at 221.

are better devoted to those matters within its exclusive jurisdiction;[176] (2) prevent further over-crowding of the Court's docket;[177] and (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions.[178]

Strict adherence to the doctrine of hierarchy of courts is an effective mechanism to filter the cases which reach the Court. As of December 31, 2016, 6,526 new cases were filed to the Court. Together with the reinstated/revived/reopened cases, the Court has a total of 14,491 cases in its docket. Of the new cases, 300 are raffled to the Court *En Banc* and 6,226 to the three Divisions of the Court. The Court *En Banc* disposed of 105 cases by decision or signed resolution, while the Divisions of the Court disposed of a total of 923 by decision or signed resolution.[179]

These, clearly, are staggering numbers. The Constitution provides that the Court has original jurisdiction over five extraordinary writs and by our rule-making power, we created four more writs which can be filed directly before us. There is also the matter of appeals brought to us from the decisions of

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[176] *People v. Cuaresma, supra* note 107 at 424.

[177] *Id.*

[178] *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 652.

[179] The Judiciary Annual Report of 2016 to June 2017, p. 13. The US Supreme Court, in contrast, received 6,305 filings in its 2016 term, heard only 71 cases in arguments, and disposed 68 cases in 61 signed opinions. (2017 Year-end Report on the Federal Judiciary, p. 13, accessed at <https://www.supremecourt.gov/publicinfo/year-end/2017year-endreport.pdf>) This to us shows the US Court's impressive control over its case docket through a judicious use of its discretionary authority. With particular application to cases invoking the US Court's original jurisdiction, it appears that the so-called "appropriateness test" is being judiciously applied to sift through the cases filed before it. (See *Louisiana v. Mississippi*, 488 U.S. 990 (1988); *California v. West Virginia*, 454 U.S. 1027 (1981); *Arizona v. New Mexico*, 425 U.S. 794 (1976); *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972).

lower courts. Considering the immense backlog facing the court, this begs the question: *What is really the Court's work? What sort of cases deserves the Court's attention and time?*

We restate the words of Justice Jose P. Laurel in *Angara* that the Supreme Court is the final arbiter of the Constitution. Hence, direct recourse to us should be allowed only when the issue involved is one of law. However, and as former Associate Justice Vicente V. Mendoza reminds, the Court may still choose to avoid passing upon constitutional questions which are confessedly within its jurisdiction if there is some other ground on which its decision may be based.[180] The so-called "seven pillars of limitations of judicial review"[181] or the "rules of avoidance" enunciated by US Supreme Court Justice Brandeis in his concurring opinion in *Ashwander v. Tennessee Valley Authority*[182] teaches that:

1. The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary proceeding, declining because to decide such questions "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act."

2. The Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it." "It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case."

3. The Court will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied."

4. The Court will not pass upon a constitutional question, although properly presented by the record, if there is also present some other

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[180] Ret. Associate Justice Vicente V. Mendoza, *Judicial Review of Constitutional Questions* (2004), p. 89, citing *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288 (1936).

[181] *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc., supra* note 83 at 160.

[182] 297 U.S. 288 (1936).

ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. Appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground.

5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained. In *Fairchild v. Hughes*, the Court affirmed the dismissal of a suit brought by a citizen who sought to have the Nineteenth Amendment declared unconstitutional. In *Massachusetts v. Mellon*, the challenge of the federal Maternity Act was not entertained although made by the Commonwealth on behalf of all its citizens.

6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.

7. "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."[183] (Citations omitted.)

Meanwhile, in *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*,[184] the Court summarized the foregoing "pillars" into six categories and adopted "parallel guidelines" in the exercise of its power of judicial review, to wit:

The foregoing "pillars" of limitation of judicial review, summarized in *Ashwander v. Tennessee Valley Authority* from different decisions of the United States Supreme Court, can be encapsulated into the following categories:

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[183] *Id.* at 347-348.

[184] *Supra* note 83.

1. that there be absolute necessity of deciding a case
2. that rules of constitutional law shall be formulated only as required by the facts of the case
3. that judgment may not be sustained on some other ground
4. that there be actual injury sustained by the party by reason of the operation of the statute
5. that the parties are not in *estoppel*
6. that the Court upholds the presumption of constitutionality.

As stated previously, parallel guidelines have been adopted by this Court in the exercise of judicial review:

1. actual case or controversy calling for the exercise of judicial power;
2. the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;
3. the question of constitutionality must be raised at the earliest possible opportunity;
4. the issue of constitutionality must be the very *lis mota* of the case.[185] (Citations omitted.)

Thus, the exercise of our power of judicial review is subject to these four requisites and the further requirement that we can only resolve pure questions of law. These limitations, when properly and strictly observed, should aid in the decongestion of the Court's workload.

To end, while reflective deliberation is necessary in the judicial process, there is simply no ample time for it given this Court's massive caseload.[186] In fact, we are not unaware of the proposals to radically reform the judicial structure in an attempt to relieve the Court of its backlog of cases.[187] Such proposals are, perhaps,

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[185] *Id.* at 161-162. See also *Saguisag v. Ochoa, Jr., supra* note 89 at 324-325.

[186] Philip B. Kurland, *Jurisdiction of the United States Supreme Court: Time for a Change*, 59 Cornell L. Rev. 616, 620 (1974), accessed on March 7, 2019 at <https://scholarship.law.cornell.edu/clr/vo159/iss4/3/.>

[187] See Vicente V. Mendoza, *Proposed judicial revisions will weaken judiciary*, Philippine Daily Inquirer, October 29, 2018, accessed on January

borne out of the public's frustration over the slow pace of decision-making. With respect, however, no overhaul would be necessary if this Court commits to be more judicious with the exercise of its original jurisdiction by strictly implementing the doctrine of hierarchy of courts.

Accordingly, for the guidance of the bench and the bar, we reiterate that when a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions.

WHEREFORE, PREMISES CONSIDERED, the petition is **DISMISSED**.

SO ORDERED.

Bersamin, C.J., Peralta, del Castillo, Perlas-Bernabe, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, Carandang, and *Lazaro-Javier, JJ.*, concur.

Carpio, J., concurs with *J. Leonen* that we do not abandon here the doctrine of transcendental importance.

Leonen, J., see separate concurring opinion.

CONCURRING OPINION

LEONEN, *J.*:

I agree with the disposition of this case as proposed in the Decision written by Associate Justice Francis H. Jardeleza. To clarify the reasons for my vote, I add the following brief points.

28, 2019 at <https://opinion.inquirer.net/117068/proposed-judicial-revisions-will-weaken-judiciary.>

I

Indeed, the claims made by petitioner GIOS-SAMAR, Inc. require a more contextual appreciation of the evidence that it may present to support its claims. The nature of its various allegations requires the presentation of evidence and inferences, which should, at first instance, be done by a trial court.[1]

Monopolization should not be lightly inferred especially since efficient business organizations are rewarded by the market with growth. Due to the high barriers to economic entry and long gestation periods, it is reasonable for the government to bundle infrastructure projects. There is, indeed, a difference between abuse of dominant position in a relevant market[2] and combinations in restraint of trade.[3] The Petition seems to have confused these two (2) competition law concepts and it has not made clear which concept it wished to apply.

Further, broad allegations amounting to a generalization that certain corporations allow themselves to serve as dummies for cartels or foreigners cannot hold ground in this Court. These constitute criminal acts. The Constitution requires that judicial action proceed carefully and always from a presumption of innocence. Tall tales of conspiratorial actions—though they may be salacious, make for interesting fiction, and are fodder for social media—do not deserve any judicial action. Broad generalizations of facts without corresponding evidence border on the contemptuous.

Although the Constitution grants original and concurrent jurisdiction with the Regional Trial Courts and the Court of Appeals over actions for certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus*, this Court generally does not receive evidence, and thus, rarely makes findings of facts

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[1] See *Knights of Rizal v. DMCI Homes, Inc.*, G.R. No. 213948, April 25, 2017, 824 SCRA 327, 404-405 [Per *J.* Carpio, *En Banc*].

[2] Rep. Act No. 10667 (2015), Ch. III, Sec. 15.

[3] CONST., Art. XII, Sec. 19.

contested by the parties at first instance. In *The Diocese of Bacolod v. Commission on Elections*,[4] this Court held:

> The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
>
> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
>
> This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[5] (Citation omitted)

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[4] 751 Phil. 301 (2015) [Per *J.* Leonen, *En Banc*].

[5] *Id.* at 329-330.

This is true whether the remedy used is the original action for certiorari or prohibition, regardless of whether this is brought under Rule 65 of the Rules of Court or the expanded power to examine if there has been grave abuse of discretion by any government branch or instrumentality,[6] as held in *Araullo v. Aquino III*,[7] among others.

Through the classic eloquence of the ponente, this case reiterates the doctrine that the finding of grave abuse of discretion made by this Court in its original jurisdiction is generally only over cases where the material facts are not contested. Further, this case highlights that petitioners bear the burden of clearly and convincingly elaborating on why the doctrine of respect for the hierarchy of courts may have been apparently violated.[8]

Reiterating these rules is important. A single instance when a ruling is laid means mere *ratio decidendi*. *Ratio decidendi*, when repeated in several various compositions of this Court, endows it with the status of an evolving doctrine. When reiterated in a number of cases over the years, an evolving doctrine becomes canon. The *ratio decidendi*, baring other factors, is strengthened with reiteration and reexamination of its rationale in subsequent cases.

However, to be more precise, I propose that we clarify that even if the issues raised are questions of law, this Court is not devoid of its discretion to deny addressing the constitutional issues entirely.

This means restating the difference between the concept of jurisdiction and justiciability in constitutional adjudication.

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[6] CONST., Art. VIII, Sec. 1.

[7] 737 Phil. 457 (2014) [Per *J.* Bersamin, *En Banc*].

[8] See *Review Center Association of the Philippines v. Ermita*, 602 Phil. 342, 360 (2009) [Per *J.* Carpio, *En Banc*]; *Bagabuyo v. Commission on Elections*, 593 Phil. 678, 689 (2008) [Per *J.* Brion, *En Banc*]; and *Civil Service Commission v. Department of Budget and Management*, 502 Phil. 372, 384 (2005) [Per *J.* Carpio Morales, *En Banc*].

II

Jurisdiction is the competence "to hear, try[,] and decide a case."[9] It is a power that is granted by the Constitution and by law.[10] In situations where several courts may exercise jurisdiction either originally or on an appeal, the court that first seized of the issues holds jurisdiction over the case, to the exclusion of the rest.[11]

Jurisdiction, or the competence to proceed with the case, requires several elements. To determine jurisdiction, courts assess: (1) the remedy or the procedural vehicle for raising the issues;[12] (2) the subject matter of the controversy;[13] (3) the issues as framed by the parties;[14] and (4) the processes served on the parties themselves vis-à-vis the constitutional or law provisions that grant competence.[15]

Related to jurisdiction is our application of the doctrine of granting the primary administrative jurisdiction, when statutorily warranted, to the executive department.[16] This is different from the rule on exhaustion of administrative remedies[17] or the doctrine

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[9] *Land Bank of the Philippines v. Dalauta*, G.R. No. 190004, August 8, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/190004.pdf> 8 [Per *J.* Mendoza, *En Banc*].

[10] *Id.*

[11] See *Laquian v. Baltazar*, 142 Phil. 531 (1970) [Per *C.J.* Concepcion, Second Division].

[12] *The City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 517 (2014) [Per *J.* Leonen, Second Division].

[13] *Id.* at 515.

[14] *Dy v. Yu*, 763 Phil. 491, 518 (2015) [Per *J.* Perlas-Bernabe, First Division].

[15] *The City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 516 (2014) [Per *J.* Leonen, Second Division].

[16] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <http://sc.judiciary.gov.ph /pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf> 18 [Per *J.* Leonen, *En Banc*].

[17] *Id.* at 19.

of respect for the hierarchy of courts,[18] which are matters of justiciability, not jurisdiction.

Jurisdiction, once acquired, cannot be waived.[19]

Determining whether the case, or any of the issues raised, is justiciable is an exercise of the power granted to a court with jurisdiction over a case that involves constitutional adjudication. Thus, even if this Court has jurisdiction, the canons of constitutional adjudication in our jurisdiction allow us to disregard the questions raised at our discretion.

The general rule with respect to justiciability is one of constitutional avoidance. That is, before we proceed with even considering how a word or phrase in the Constitution is violated, we first examine whether there is an actual case or controversy. The justiciability of a controversy is often couched in four (4) elements: (1) that there is an actual case or controversy;[20] (2) that the party raising the issues has *locus standi*;[21] (3) that the case is ripe for adjudication;[22] and (4) that the constitutional issue is the very *lis mota* of the case.[23]

The third element may be rephrased into two (2) queries. The court considers whether the case has already become moot,[24] or whether the issues that call for constitutional interpretation are prematurely raised.[25]

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[18] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 329-330 (2015) [Per *J.* Leonen, *En Banc*].

[19] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, 706 Phil. 442, 450 (2013) [Per *J.* Mendoza, Third Division].

[20] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf> 24 [Per *J.* Leonen*, En Banc*].

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Baldo, Jr. v. Commission on Elections*, 607 Phil. 281 (2009) [Per *J.* Chico-Nazario*, En Banc*].

[25] See *Corales v. Republic*, 716 Phil. 432 (2013) [Per *J.* Perez, *En Banc*].

The doctrine of avoidance is palpable when we refuse to decide on the constitutional issue by ruling that the parties have not exhausted administrative remedies,[26] or that they have violated the doctrine of respect for the hierarchy of courts.[27] These are specific variants or corollaries of the rule that the case should be ripe for constitutional adjudication.

The fourth element allows this Court to grant or deny the reliefs prayed for by any petitioner if there is a statutory or procedural rule that can be applied to resolve the issues raised, rather than deal with the interpretation of a constitutional issue.[28]

Angara v. Electoral Commission[29] imbues these rules with its libertarian character. Principally, *Angara* emphasized the liberal deference to another constitutional department or organ given the majoritarian and representative character of the political deliberations in their forums. It is not merely a judicial stance dictated by courtesy, but is rooted on the very nature of this Court. Unless congealed in constitutional or statutory text and imperatively called for by the actual and non-controversial facts of the case, this Court does not express policy. This Court should channel democratic deliberation where it should take place.

When interpretations of a constitutional provision are equally valid but lead to contrary results, this Court should exercise judicial restraint and allow the political forces to shed light on a choice. This Court steps in only when it discerns clear fallacies in the application of certain norms or their interpretation. Judicial restraint requires that this Court does not involve itself into matters in which only those who join in democratic political deliberation should participate. As magistrates of the highest court, we should distinguish our role from that of an ordinary citizen who can vote.

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[26] *Aala v. Uy*, G.R. No. 202781, January 10, 2017, 814 SCRA 41, 66 [Per *J.* Leonen, *En Banc*].

[27] *Id.* at 60.

[28] See *General v. Urro*, 662 Phil. 132 (2011) [Per *J.* Brion, *En Banc*].

[29] 63 Phil. 139 (1936) [Per *J.* Laurel, *En Banc*].

Judicial restraint is also founded on a policy of conscious and deliberate caution. This Court should refrain from speculating on the facts of a case and should allow parties to shape their case instead. Likewise, this Court should avoid projecting hypothetical situations where none of the parties can fully argue simply because they have not established the facts or are not interested in the issues raised by the hypothetical situations.[30] In a way, courts are mandated to adopt an attitude of judicial skepticism. What we think may be happening may not at all be the case. Therefore, this Court should always await the proper case to be properly pleaded and proved.

Plainly put, majority opinions that rule on constitutional issues as *obiter dictum* is dangerous not only because it is injudicious, but also because it undermines the constitutional framework of governance.

III

Thus, I propose that we further tame the concept that a case's "transcendental importance"[31] creates exceptions to justiciability. The elements supported by the facts of an actual case, and the imperatives of our role as the Supreme Court within a specific cultural or historic context, must be made clear. They should be properly pleaded by the petitioner so that whether there is any transcendental importance to a case is made an issue. That a case has transcendental importance, as applied, may have been too ambiguous and subjective that it undermines the

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[30] See *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf> [Per *J.* Leonen, *En Banc*]; *Republic v. Roque*, 718 Phil. 294 (2013) [Per *J.* Perlas-Bernabe, *En Banc*]; and *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per *J.* Carpio Morales, *En Banc*].

[31] See *Araneta v. Dinglasan*, 84 Phil. 368, 373 (1949) [Per *J.* Tuason, *En Banc*] involving the Emergency Power Act. This Court took cognizance of the cases in *Araneta*, saying for the first time that "the transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure."

structural relationship that this Court has with the sovereign people and other departments under the Constitution. Our rules on jurisdiction and our interpretation of what is justiciable, refined with relevant cases, may be enough.

However, consistent with this opinion, we cannot wholly abandon the doctrinal application of cases with transcendental importance.[32] That approach just does not apply in this case. Here, we have just established that cases calling for questions of fact generally cannot be cases from which we establish transcendental importance. Generally, we follow the doctrine of respect for hierarchy of courts for matters within our concurrent original jurisdiction.

IV

Critically, the nuances of the cases we find justiciable signal our philosophy of adjudication. Even as we try to filter out and dispose of the cases pending in our docket, this Court's role is not simply to settle disputes. This Court also performs the important public function of clarifying the values embedded in our legal order anchored on the Constitution, laws, and other issuances by competent authorities.

As this Court finds ways to dispose of its cases, it should be sensitive to the quality of the doctrines it emphasizes and the choice of cases on which it decides. Both of these will facilitate the vibrant democracy and achievement of social justice envisioned by our Constitution.

Every case filed before this Court has the potential of undoing the act of a majority in one (1) of the political and co-equal departments of our government. Our Constitution allows that its congealed and just values be used by a reasonable minority to convince this Court to undo the majority's action. In doing

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[32] See *The Province of Batangas v. Hon. Romulo*, 473 Phil. 806, 827 (2004) [Per *J.* Callejo, Sr., *En Banc*]; *Senator Jaworski v. Philippine Amusement and Gaming Corporation*, 464 Phil. 375, 285 (2004) [Per *J.* Ynares-Santiago, *En Banc*]; and *Agan, Jr. v. Philippine International Air Terminals, Co., Inc.*, 450 Phil. 744, 805 (2003) [Per *J.* Puno, *En Banc*].

so, this Court is required to make its reasons precise, transparent, and responsive to the arguments pleaded by the parties. The trend, therefore, should be to clarify broad doctrines laid down in the past. The concept of a case with transcendental importance is one (1) of them.

Our democracy, after all, is a reasoned democracy: one with a commitment not only to the majority's rule, but also to fundamental and social rights.

Even as we recall the canonical doctrines that inform the structure of our Constitution, we should never lose sight of the innovations that our fundamental law has introduced. We have envisioned a more engaged citizenry and political forums that welcome formerly marginalized communities and identities. Hence, we have encoded the concepts of social justice, acknowledged social and human rights, and expanded the provisions in our Bill of Rights.

We should always be careful that in our desire to achieve judicial efficiency, we do not filter cases that bring out these values.

This Court, therefore, has a duty to realize this vision. The more guarded but active part of judicial review pertains to situations where there may have been a deficit in democratic participation, especially where the hegemony or patriarchy ensures the inability of discrete and insular minorities to participate fully. While this Court should presume representation in the deliberative and political forums, it should not be blind to present realities.

Certainly, this case falls woefully short of these noble expectations.

ACCORDINGLY, I vote to **DISMISS** the Petition.

EN BANC

[G.R. No. 227363. March 12, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SALVADOR TULAGAN,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT, AFFIRMED BY THE COURT OF APPEALS, RESPECTED. —** Factual findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. Said rule finds an even more stringent application where the said findings are sustained by the CA.

2. **CRIMINAL LAW; STATUTORY RAPE; ELEMENTS. —** In Criminal Case No. SCC-6211 for statutory rape, both the RTC and the CA found that the elements thereof were present, to wit: (1) accused had carnal knowledge of the victim, and (2) said act was accomplished when the offended party is under twelve (12) years of age.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES IN THE TESTIMONIES. —** Jurisprudence tells us that a witness' testimony containing inconsistencies or discrepancies does not, by such fact alone, diminish the credibility of such testimony. In fact, the variance in minor details has the net effect of bolstering instead of diminishing the witness' credibility because they discount the possibility of a rehearsed testimony. Instead, what remains paramount is the witness' consistency in relating the principal elements of the crime and the positive and categorical identification of the accused as the perpetrator of the same.

4. **ID.; ID.; ID.; THE VICTIM'S POSITIVE IDENTIFICATION OF THE ACCUSED AND THE STRAIGHTFORWARD AND CANDID ACCOUNT OF HER ORDEAL**

CORROBORATED BY THE MEDICAL FINDINGS, ARE SUFFICIENT TO SUPPORT A CONVICTION OF RAPE. — [T]he fact that some of the details testified to by AAA did not appear in her *Sinumpaang Salaysay* does not mean that the sexual assault did not happen. AAA was still able to narrate all the details of the sexual assault she suffered in Tulagan's hands. AAA's account of her ordeal being straightforward and candid and corroborated by the medical findings of the examining physician, as well as her positive identification of Tulagan as the perpetrator of the crime, are, thus, sufficient to support a conviction of rape. As for Tulagan's imputation of ill motive on the part of AAA's grandmother, absent any concrete supporting evidence, x x x We reiterate the principle that no young girl, such as AAA, would concoct a sordid tale, on her own or through the influence of her grandmother as per Tulagan's intimation, undergo an invasive medical examination then subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice.

5. **ID.; ID.; DENIAL; NEGATIVE DEFENSE THAT DESERVES NO WEIGHT IN THE ABSENCE OF CLEAR AND CONVINCING EVIDENCE.** — Being a negative defense, the defense of denial, if not substantiated by clear and convincing evidence, as in the instant case, deserves no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses, like AAA, who testified on affirmative matters. Since AAA testified in a categorical and consistent manner without any ill motive, her positive identification of Tulagan as the sexual offender must prevail over his defenses of denial and alibi.

6. **ID.; ID.; ALIBI; NOT APPRECIATED AS THE PHYSICAL IMPOSSIBILITY TO BE AT THE *LOCUS CRIMINIS* WHEN THE RAPE INCIDENTS TOOK PLACE WAS NOT ESTABLISHED.** — [T]he courts *a quo* did not give credence to Tulagan's alibi considering that his house was only 50 meters away from AAA's house, thus, he failed to establish that it was physically impossible for him to be at the *locus criminis* when the rape incidents took place. "Physical impossibility" refers to distance and the facility of access between the crime scene and the location of the accused when the crime was committed. There must be a demonstration that they were so far away and could not have been physically present at the

crime scene and its immediate vicinity when the crime was committed. In this regard, Tulagan failed to prove that there was physical impossibility for him to be at the crime scene when the rape was committed. Thus, his alibi must fail. Further, although the rape incidents in the instant case were not immediately reported to the police, such delay does not affect the truthfulness of the charge in the absence of other circumstances that show the same to be mere concoction or impelled by some ill motive.

7. CRIMINAL LAW; THE REVISED PENAL CODE (RPC) IN RELATION TO RA 7610 (ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION); CRIMES AND PENALTIES FOR ACTS CONSTITUTING SEXUAL ASSAULTS AGAINST MINORS OR DEMENTED; OFFENSES COMMITTED WHERE THE VICTIM IS UNDER 12 YEARS OF AGE OR IS DEMENTED AND WHERE THE VICTIM IS 12 YEARS OLD AND UNDER 18 YEARS OLD OR 18 YEARS OLD AND ABOVE UNDER SPECIAL CIRCUMSTANCES. — Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta* and *Caoili.* We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610" and no longer "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610," because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A(2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*. Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5(b) of R.A. No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*, but it should not make any reference to the provisions of the RPC. It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should

be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor*.

8. **ID.; ID.; SEXUAL INTERCOURSE WITH A VICTIM WHO IS UNDER 12 YEARS OLD OR IS DEMENTED IS ALWAYS A CRIME OF STATUTORY RAPE UNDER THE RPC AND THE OFFENDER SHOULD NO LONGER BE HELD LIABLE UNDER RA NO. 7610. —** [S]exual intercourse with a victim who is under 12 years of age or is demented is always statutory rape, as Section 5(b) of R.A. No. 7610 expressly states that the perpetrator will be prosecuted under Article 335, paragraph 3 of the RPC [now paragraph 1(d), Article 266-A of the RPC as amended by R.A. No. 8353]. Even if the girl who is below twelve (12) years old or is demented consents to the sexual intercourse, it is always a crime of statutory rape under the RPC, and the offender should no longer be held liable under R.A. No. 7610.

9. **ID.; ID.; RA NO. 7610; SEXUAL INTERCOURSE WITH A CHILD UNDER 12 YEARS OF AGE AND A CHILD 12 YEARS OLD OR LESS THAN 18 WHO IS DEEMED "EXPLOITED IN PROSTITUTION AND OTHER SEXUAL ABUSE"; NOMENCLATURE OF THE STATUTORY CRIMES AND THE IMPOSABLE PENALTIES FOR PRINCIPALS BY FORCE OR INDUCEMENT OR BY INDISPENSABLE COOPERATION.—** [I]f sexual intercourse is committed with a child under 12 years of age, who is deemed to be "exploited in prostitution and other sexual abuse," then those who engage in or promote, facilitate or induce child prostitution under Section 5(a) of R.A. No. 7610 shall be liable as principal by force or inducement under Article 17 of the RPC in the crime of statutory rape under Article 266-A(1) of the RPC; whereas those who derive profit or advantage therefrom under Section 5(c) of R.A. No. 7610 shall be liable as principal by indispensable cooperation under Article 17 of the RPC. Bearing in mind the policy of R.A. No. 7610 of providing for stronger deterrence and special protection against child abuse and exploitation, the following shall be the nomenclature of the said statutory crimes and the imposable penalties for principals by force or inducement or by indispensable cooperation: 1. Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(a) or (c), as the case may be, of R.A. No. 7610, with the imposable penalty of *reclusion*

temporal in its medium period to *reclusion perpetua*; 2. Rape under Article 266-A(1) of the RPC, in relation to Article 17 of the RPC and Section 5(a) or (c), as the case may be, of R.A. No. 7610 with the imposable penalty of *reclusion perpetua*, pursuant to Article 266-B of the RPC, except when the victim is below 7 years old, in which case the crime is considered as Qualified Rape, for which the death penalty shall be imposed; and 3. Sexual Assault under Article 266-A(2) of the RPC, in relation to Section 5(a) or (c), as the case may be, of R.A. No. 7610 with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*.

10. ID.; ID.; CRIMES COMMITTED IN CASE OF SEXUAL INTERCOURSE WITH A VICTIM WHO IS 12 YEARS OLD OR LESS THAN 18, DEPENDING ON THE ATTENDING CIRCUMSTANCES. — If the victim who is 12 years old or less than 18 and is deemed to be a child "exploited in prostitution and other sexual abuse" because she agreed to indulge in sexual intercourse "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," then the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and there was consent. That is why the offender will now be penalized under Section 5(b), R.A. No. 7610, and not under Article 335 of the RPC [now Article 266-A]. But if the said victim does not give her consent to sexual intercourse in the sense that the sexual intercourse was committed through force, threat or intimidation, the crime is rape under paragraph 1, Article 266-A of the RPC. However, if the same victim gave her consent to the sexual intercourse, and no money, profit, consideration, coercion or influence is involved, then there is no crime committed, except in those cases where "force, threat or intimidation" as an element of rape is substituted by "moral ascendancy or moral authority," like in the cases of incestuous rape, and unless it is punished under the RPC as qualified seduction under Article 337 or simple seduction under Article 338.

11. ID.; ID.; RA NO. 7610 ON THE PHRASE "CHILDREN EXPLOITED IN PROSTITUTION" AS AN ELEMENT OF VIOLATION OF SECTION 5(B) THEREOF; DISSECTED. —We dissect the phrase "children exploited in prostitution" as an element of violation of Section 5(b) of R.A. No. 7610. As can be gathered from the text of Section 5 of R.A. No. 7610

and having in mind that the term "lascivious conduct" has a clear definition which does not include "sexual intercourse," the phrase "children exploited in prostitution" contemplates four (4) scenarios: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse.

12. ID.; ID.; RA NO. 7610 ON THE TERM "OTHER SEXUAL ABUSE"; CONSTRUED IN RELATION TO THE DEFINITIONS OF "CHILD ABUSE" AND "SEXUAL ABUSE." — The term "other sexual abuse," on the other hand, is construed in relation to the definitions of "child abuse" under Section 3, Article I of R.A. No. 7610 and "sexual abuse" under Section 2(g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*. In the former provision, "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, "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.

13. ID.; ID.; RA NO. 7610 ON THE USE OF THE TERM "COERCION OR INFLUENCE"; ELUCIDATED. — [It] should be emphasized that "coercion or influence" is used in Section 5 of R.A. No. 7610 to qualify or refer to the means through which "any adult, syndicate or group" compels a child to indulge in sexual intercourse. On the other hand, the use of "money, profit or any other consideration" is the other mode by which a child indulges in sexual intercourse, without the participation of "any adult, syndicate or group." In other words, "coercion or influence" of a child to indulge in sexual intercourse is clearly exerted NOT by the offender whose liability is based on Section 5(b) of R.A. No. 7610 for committing sexual act with a child exploited in prostitution or other sexual abuse. Rather, the "coercion or influence" is exerted upon the child

by "any adult, syndicate, or group" whose liability is found under Section 5(a) for engaging in, promoting, facilitating or inducing child prostitution, whereby the sexual intercourse is the necessary consequence of the prostitution.

14. ID.; ID.; SEXUAL ASSAULT UNDER PARAGRAPH 2, ARTICLE 266-A OF THE RPC IN RELATION TO SECTION 5(B), ARTICLE III OF RA NO. 7610 AND STATUTORY RAPE COMMITTED IN CASE AT BAR; PENALTIES. — We hold that Tulagan was aptly prosecuted for sexual assault under paragraph 2, Article 266-A of the RPC in Criminal Case. No. SCC-6210 because it was alleged and proven that AAA was nine (9) years old at the time he inserted his finger into her vagina. Instead of applying the penalty under Article 266-B of the RPC, which is *prision mayor*, the proper penalty should be that provided in Section 5(b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period. This is because AAA was below twelve (12) years of age at the time of the commission of the offense, and that the act of inserting his finger in AAA's private part undeniably amounted to "lascivious conduct." Hence, the proper nomenclature of the offense should be Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610. Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Hence, Tulagan should be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. In Criminal Case No. SCC-6211 for statutory rape, We affirm that Tulagan should suffer the penalty of *reclusion perpetua* in accordance with paragraph 1(d), Article 266-A in relation to Article 266-B of the RPC, as amended by R.A. No. 8353.

15. ID.; ID.; DAMAGES; AWARD OF CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES IN ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF

THE RPC, ACTS OF LASCIVIOUSNESS IN RELATION TO SECTION 5(B) OF R.A. NO. 7610, LASCIVIOUS CONDUCT UNDER SECTION 5(B) OF R.A. NO. 7610, SEXUAL ASSAULT UNDER PARAGRAPH 2, ARTICLE 266-A OF THE RPC, AND SEXUAL ASSAULT IN RELATION TO SECTION 5(B) OF R.A. NO. 7610. — For the sake of consistency and uniformity, We deem it proper to address the award of damages in cases of Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610, and Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610. Considering that the imposable penalties for the said two crimes are within the range of *reclusion temporal*, the award of civil indemnity and moral damages should now be fixed in the amount of ₱50,000.00 each. The said amount is based on *People v. Jugueta* which awards civil indemnity and moral damages in the amount of ₱50,000.00 each in cases of homicide where the imposable penalty is *reclusion temporal*. In case exemplary damages are awarded due to the presence of any aggravating circumstance, to set a public example, or to deter elders who abuse and corrupt the youth, then an equal amount of ₱50,000.00 should likewise be awarded. The said award of civil indemnity, moral damages and exemplary damages should be distinguished from those awarded in cases of: (1) Acts of Lasciviousness under Article 336 of the RPC where the imposable penalty is *prision correccional*, the amount of civil indemnity and moral damages should now be fixed at ₱20,000.00 while exemplary damages, if warranted, should also be ₱20,000.00; (2) Sexual Assault under paragraph 2, Article 266-A of the RPC where the imposable penalty is *prision mayor*, the award of civil indemnity and moral damages should be fixed at ₱30,000.00 each, while the award of exemplary damages, if warranted, should also be ₱30,000.00 pursuant to prevailing jurisprudence; and (3) Lascivious conduct under Section 5(b) of R.A. No. 7610, when the penalty of *reclusion perpetua* is imposed, and the award of civil indemnity, moral damages and exemplary damages is ₱75,000.00 each.

PERLAS-BERNABE, *J.*, *separate opinion*:

1. CRIMINAL LAW; THE REVISED PENAL CODE (RPC) IN RELATION TO RA 7610 (ACT PROVIDING FOR

STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION); SECTION 5 (B), ARTICLE III OF RA 7610 ONLY APPLIES IN INSTANCES WHERE THE CHILD-VICTIM IS EXPLOITED IN PROSTITUTION OR SUBJECT TO OTHER SEXUAL ABUSE (EPSOSA FOR BREVITY); LACK OF CONSENT IS IMMATERIAL. — With all due respect, I disagree that RA 7610 would be generally applicable to all cases of sexual abuse involving minors, except those who are under twelve (12) years of age. x x x Section 5 (b), Article III of RA 7610 only applies in instances where the child-victim is "*exploited in prostitution or subject to other sexual abuse. (EPSOSA for brevity)*" x x x The idea of providing "stronger deterrence" and "special protection" connotes that Congress was not only establishing a more robust form of penal legislation, it was also creating something new. x x x RA 7610 was enacted to x x x protect child-victim [who] "willingly engaged" in sexual acts, not out of a desire to satisfy their own sexual gratification, but because of their **vulnerable pre-disposition as exploited children**. This vulnerable pre-disposition is embodied in the concept of EPSOSA, which, as opposed to the RPC, effectively dispenses with the need to prove the lack of consent at the time the act of sexual abuse is committed. x x x [Thus,] a child need not be forced, intimidated or, in any manner prevailed upon, at the time of the act's commission to be considered sexually abused or exploited; rather, it is enough that the child is put under a vulnerable pre-disposition that leads him or her to "consent" to the sexual deed. This niche situation, whether based on monetary ("exploited in prostitution") or non-monetary ("or subject to other sexual abuse") considerations, is what Section 5 (b), Article III of RA 7610 uniquely punishes. And in so doing, RA 7610 expands the range of existing child protection laws and effectively complements (and not redundantly supplants) the RPC.

2. **ID.; ID.; SECTION 5, ARTICLE III OF RA 7610 IS SEPARATE AND DISTINCT STATUTORY COMPLEMENT WHICH WORKS SIDE-BY-SIDE WITH THE REVISED PENAL CODE'S (RPC) PROVISIONS ON RAPE AND ACT OF LASCIVIOUSNESS. —** As Justice Caguioa astutely remarked, "[RA] 7610 and the RPC x x x have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws." [The] application of

RA 7610 is **independent — and in fact, mutually exclusive — from** the RPC's rape and acts of lasciviousness provisions, x x x Simply put, x x x RA 7610 applies in a scenario where the accused sexually abuses a child who "consents" to the deed but is nonetheless EPSOSA, and x x x the RPC applies in a scenario wherein the child does not consent to the sexual act because he is forced, intimidated, or otherwise prevailed upon by the accused, x x x In understanding the intent of Congress to fill in the gaps in the law, it is my position that Section 5, Article III of RA 7610 must be treated as a *separate and distinct statutory complement which works side-by-side with the RPC.*

3. ID.; ID.; RA 7610 HAS A SPECIFIC APPLICATION ONLY TO CHILDREN WHO ARE PRE-DISPOSED TO "CONSENT" TO A SEXUAL ACT BECAUSE THEY ARE EXPLOITED IN PROSTITUTION OR SUBJECT TO OTHER SEXUAL ABUSE. — The proviso under Section 5(b), Article III of RA 7610 — which provides that "*when the [victim] is under twelve (12) years of age, the perpetrators* ***shall be prosecuted under x x x the Revised Penal Code****, for rape or lascivious conduct, as the case may be*"— is a *textual indicator* that RA 7610 has a specific application only to children who are pre-disposed to "consent" to a sexual act because they are "exploited in prostitution or subject to other sexual abuse." x x x EPSOSA is a circumstantial pre-disposition which effectively taints the child's consent. As a "consent-tainting" element which is integral and unique to RA 7610, the proviso "shall be prosecuted under [the RPC]" recognizes that one cannot prosecute a sex offender under RA 7610 when a child is under twelve (12) years of age. **This is because the concept of consent is altogether immaterial when a child is below twelve (12) years of age because the latter is conclusively presumed to be incapable of giving consent**. In other words, since the question of consent will never be at issue when the victim is under twelve (12) years of age, then the application of Section 5 (b),Article III of RA 7610 becomes technically impossible. [This] reinforces the point that RA 7610 was meant to apply only to cases **where the consent of the child** x x x **is at question.**

4. ID.; ID.; RA 7610 ON THE PHRASE "EXPLOITED IN PROSTITUTION OR SUBJECT TO OTHER SEXUAL ABUSE" WAS INTENDED TO BE APPRECIATED SEPARATELY FROM THE ACT OF SEXUAL ABUSE

ITSELF. — A literal reading of the law itself confirms that the phrase "exploited in prostitution or subject to other sexual abuse" was intended to be appreciated separately from the act of sexual abuse itself. For reference, Section 5, Article III of RA 7610 states: 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 (b) Those who **commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse**; x x x As plainly worded, the law punishes those who commit the act of sexual intercourse or lascivious conduct with *a child "exploited in prostitution or* ***subject*** *to other sexual abuse."* The word "subject" is a clear qualification of the term "child," which means it is descriptive of the same. x x x However, it is fairly evident that with the coining of the new phrase "a child exploited in prostitution or subject to other sexual abuse," Congress intended to establish a special classification of children, *i.e*., those EPSOSA, which is further suggested by the term "*deemed.*" It is a cardinal rule in statutory construction 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. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.

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

1. CRIMINAL LAW; RA 7610; SECTION 5 COVERS TWO OFFENSES: CHILDREN SUBJECTED TO PROSTITUTION AND CHILDREN SUBJECTED TO OTHER SEXUAL ABUSE. — A plain reading of [Section 5] shows two (2) offenses: (1) child prostitution and (2) other sexual abuse. Children subjected to prostitution are those "who for money, profit, or any other consideration . . . indulge in sexual intercourse or lascivious conduct[.]" Children subjected to other sexual abuse are those who "due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or

lascivious conduct[.]" Under the law, the State must "provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination." Children do not willingly indulge in sexual intercourse or lascivious conduct with an adult. There is always an element of intimidation or coercion involved. Thus, the crime is not merely punishable under the Revised Penal Code, but also under Republic Act No. 7610. x x x Article III, Section 5(b) *generally* applies to those who engage in sexual intercourse or are subjected to other sexual abuse. However, reference must be made to the law's chapeau: 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 law itself requires that children in EPSOSA must have either consented due to money, profit, or other consideration, or must have consented due to the "coercion or influence of any adult[.]" The difference in age, by itself, is indicative of coercion and intimidation.

2. ID.; REVISED PENAL CODE (RPC); ARTICLE 336 (ACTS OF LASCIVIOUSNESS) REPEALED UNDER RA 8353. — Republic Act No. 8353 has rendered ineffective the provision on acts of lasciviousness in [Article 336] of the Revised Penal Code. x x x Under this provision, a lascivious act is punishable if it is committed under the circumstances mentioned in Article 335 of the Revised Penal Code, x x x Article 335, however, has already been repealed by Republic Act No. 8353. The provisions on rape were transferred from Title Eleven to Title Eight of the Revised Penal Code, reflecting its reconceptualization from being a crime against chastity to being a crime against persons. In effect, acts of lasciviousness cease to be a crime under Article 336 of the Revised Penal Code. This provision is rendered incomplete and ineffective since its elements can no longer be completed. The acts constituting it no longer exist in the Revised Penal Code. In any case, the ineffectivity of Article 336 does not preclude acts of lasciviousness from being punishable under different laws such as Republic Act No. 7610 or Republic Act No. 9262. These laws, likewise, carry more severe penalties than Article 336, providing better protection for victims of lascivious acts not constituting rape.

3. ID.; ID.; RAPE; NONCONSENSUAL INSERTION OF A FINGER IN ANOTHER'S GENITALS IS RAPE BY CARNAL KNOWLEDGE. — The nonconsensual insertion of a finger in another's genitals is rape by carnal knowledge under Article 266-A, Paragraph 1 of the Revised Penal Code. The finger, when used in a sexual act, is not an instrument or an object. It is as much a part of the human body as a penis. x x x I stated in *Caoili* that "[t]he persistence of an archaic understanding of rape relates to our failure to disabuse ourselves of the notion that carnal knowledge or sexual intercourse is merely a reproductive activity." x x x A woman who was raped through insertion of a finger does not suffer less than a woman who was raped by penile penetration. One (1) crime is not less heinous than the other. x x x Laws punishing rape should be read from the point of view of the victim. The finger is as much a weapon of forced sexual penetration as the penis. All victims of forced sexual acts suffer the same indignity. Thus, the offender must be charged with the same crime.

CAGUIOA, *J.*, *concurring and dissenting opinion*:

1. CRIMINAL LAW; THE REVISED PENAL CODE (RPC) IN RELATION TO RA 7610; SECTION 5(B) OF RA NO. 7610 AND THE RPC, AS AMENDED BY RA 8353; APPLICATION THEREOF.— My view of the relevant laws and their respective applications is straightforward and simple: apply Section 5(b) of Republic Act No. (R.A.) 7610 upon the concurrence of both allegation **and** proof that the victim is "exploited in prostitution or subjected to other sexual abuse," and in its absence — or in all other cases — apply the provisions of the Revised Penal Code (RPC), as amended by R.A. 8353.

2. POLITICAL LAW; STATUTORY CONSTRUCTION; WHEN A STATUTE IS CLEAR AND FREE FROM AMBIGUITY, IT MUST BE GIVEN ITS LITERAL MEANING AND APPLIED WITHOUT ATTEMPTED INTERPRETATION; CASE AT BAR. — The letter of Section 5(b), R.A. 7610 is clear: it only punishes those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse. There is no ambiguity to speak of that necessitates the Court's exercise of statutory construction to ascertain the legislature's intent in enacting

the law. Verily, the legislative intent is already made manifest in the letter of the law which, again, states that the person to be punished by Section 5(b) is the one who committed the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse (or what Justice Estela M. Perlas-Bernabe calls as EPSOSA, for brevity). x x x A closer scrutiny of the structure of Section 5 of R.A. 7610 further demonstrates its intended application: to cover only cases of prostitution, **or other related sexual abuse *akin to prostitution* but may or may not be for consideration or profit**. In my considered opinion, the structure of Section 5 follows the more common model or progression of child prostitution or other forms of sexual exploitation. x x x [I]t is clear that Section 5(a) punishes the procurer of the services of the child, or in layman's parlance, the pimp. Section 5(b), in turn, punishes the person who himself (or herself) commits the sexual abuse on the child. Section 5(c) finally then punishes any other person who derives profit or advantage therefrom, such as, but are not limited to, owners of establishments where the sexual abuse is committed.

3. CRIMINAL LAW; RA 7610; SECTION 5 (B); ELEMENT OF "EXPLOITED IN PROSTITUTION OR SUBJECT TO OTHER SEXUAL ABUSE" (EPSOSA); THE ELEMENT OF BEING EPSOSA IS RELEVANT WHEN THE VICTIM IS BELOW 12 YEARS OLD AS THE PENALTIES WILL BE INCREASED TO THOSE PROVIDED FOR BY RA 7610. — [It] is the element of being EPSOSA that precisely triggers the application of Section 5(b) of R.A. 7610. x x x The blanket claim that being EPSOSA is irrelevant when the victim is below 12 years old leads to the exact same evils that this opinion is trying to address, *i.e.*, the across-the-board application of Section 5(b) of R.A. 7610 in each and every case of sexual abuse committed against children, although limited only to the instance that the victim is below 12 years old. This indiscriminate application of the *provisos* in Section 5(b) of R.A. 7610 does not seem to matter when the act committed by the accused constitutes rape by sexual intercourse. x x x [T]he element of being EPSOSA is relevant when the victim is below 12 years old **as the penalties will be increased to those provided for by R.A. 7610**.

4. ID.; ID.; ID.; ID.; AN ACCUSED MAY BE CONVICTED OF VIOLATING ARTICLE 336 OF THE RPC IN RELATION

TO SECTION 5(B) OF R.A. 7610, ONLY UPON ALLEGATION AND PROOF OF "EPSOSA." — [F]or a person to be convicted of violating Section 5(b), R.A. 7610, the following essential elements need to be proved: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child "exploited in prostitution or subjected to other sexual abuse"; and (3) the child whether male or female, is below 18 years of age. x x x To my mind, a person can only be convicted of violation of Article 336 in relation to Section 5(b), upon allegation and proof **of the unique circumstances of the child — that he or she is "exploited in prostitution or subject to other sexual abuse."** x x x Otherwise stated, in order to impose the higher penalty provided in Section 5(b) as compared to Article 336, it must be **alleged** and **proved** that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group — indulges in sexual intercourse or lascivious conduct.

5. **REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHT OF THE ACCUSED TO BE INFORMED OF THE CAUSE OF ACCUSATION AGAINST HIM; CONVICTING AN ACCUSED UNDER ARTICLE 336 OF THE RPC IN RELATION TO SECTION 5(B) OF RA 7610, WITHOUT STATING IN THE INFORMATION THAT THE CHILD VICTIM IS "EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE" WITH THE PARTICULARS, A VIOLATION OF. —** No Information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. The law essentially requires this to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense. From this legal backdrop, it may then be said that convicting an accused and relating the offenses to R.A. 7610 to increase the penalty **when the Information does not state that the victim was a child "engaged in prostitution or subjected to sexual abuse" constitutes a violation of an accused's right to due process**. x x x To recall, the test for sufficiency of an Information is that it must state the facts constituting the offense in a manner that would enable a person of common understanding to know what offense was intended to be charged. Hence, the phrase "in relation to Republic Act No. 7610" in criminal Informations,

much like in the one filed in this case, does not cure the defect in the said Informations. Again, it is my view that criminal Informations, to be considered under the purview of Section 5(b), R.A. 7610, must state the child-victim is "exploited in prostitution or subjected to other sexual abuse" **and allege the particulars**.

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 Decision[1] of the Court of Appeals (*CA*) dated August 17, 2015 in CA-G.R. CR-HC No. 06679, which affirmed the Joint Decision[2] dated February 10, 2014 of the Regional Trial Court (*RTC*) of San Carlos City in Criminal Case Nos. SCC-6210 and SCC-6211, finding accused-appellant Salvador Tulagan (*Tulagan*) guilty beyond reasonable doubt of the crimes of sexual assault and statutory rape as defined and penalized under Article 266-A, paragraphs 2 and 1(d) of the Revised Penal Code (*RPC*), respectively, in relation to Article 266-B.

In Criminal Case No. SCC-6210, Tulagan was charged as follows:

That sometime in the month of September 2011, at x x x, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation and with abuse of superior strength forcibly laid complainant AAA,[3] a 9-year-old minor in a

[1] Penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court), with Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang, concurring; *rollo*, pp. 2-38.

[2] CA *rollo*, pp. 38-50.

[3] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members,

cemented pavement, and did then and there, willfully, unlawfully and feloniously inserted his finger into the vagina of the said AAA, against her will and consent.

Contrary to Article 266-A, par. 2 of the Revised Penal Code in relation to R.A. 7610.

In Criminal Case No. SCC-6211, Tulagan was charged as follows:

That on or about October 8, 2011 at x x x, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation and with abuse of superior strength, did then and there, willfully, unlawfully and feloniously have sexual intercourse with complainant AAA, a 9-year-old minor against her will and consent to the damage and prejudice of said AAA, against her will and consent.

Contrary to Article 266-A, par. 1(d) of the Revised Penal Code in relation to R.A. 7610.

Upon arraignment, Tulagan pleaded not guilty to the crimes charged.

During the trial, BBB, aunt of the victim AAA, testified that around 10:30 a.m. of October 17, 2011, she noticed a man looking at AAA outside their house. When AAA asked her permission to go to the bathroom located outside their house, the man suddenly went near AAA. Out of suspicion, BBB walked to approach AAA. As BBB came close to AAA, the man left suddenly. After AAA returned from the bathroom, BBB asked what the man was doing to her. AAA did not reply. She then

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shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (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.

told AAA to get inside the house. She asked AAA to move her panties down, and examined her genitalia. She noticed that her genitalia was swollen. AAA then confessed to her about the wrong done to her by appellant whom AAA referred to as Badong or Salvador Tulagan. AAA cried hard and embraced BBB tightly. AAA asked BBB for her help and even told her that she wanted Badong to be put in jail.

AAA, nine (9) years old, testified that sometime in September 2011 while she was peeling corn with her cousin who lived adjacent to her grandmother's house, Tulagan approached her, spread her legs, and inserted his finger into her private part. She said that it was painful, but Tulagan just pretended as if he was just looking for something and went home.

AAA, likewise, testified that at around 11:00 a.m. of October 8, 2011, while she was playing with her cousin in front of Tulagan's house, he brought her to his house and told her to keep quiet. He told her to lie down on the floor, and removed her short pants and panties. He also undressed himself, kissed AAA's cheeks, and inserted his penis into her vagina. She claimed that it was painful and that she cried because Tulagan held her hands and pinned them with his. She did not tell anyone about the incident, until her aunt examined her private part.

Upon genital examination by Dr. Brenda Tumacder on AAA, she found a healed laceration at 6 o'clock position in AAA's hymen, and a dilated or enlarged vaginal opening. She said that it is not normal for a 9-year-old child to have a dilated vaginal opening and laceration in the hymen.

For the defense, Tulagan claimed that he did not know AAA well, but admitted that he lived barely five (5) meters away from AAA's grandmother's house where she lived. He added that the whole month of September 2011, from 8:00 a.m. to 1:00 p.m., he was gathering dried banana leaves to sell then take a rest after 1:00 p.m. at their terrace, while his mother cut the banana leaves he gathered at the back of their kitchen. He said that he never went to AAA's house and that he had not seen AAA during the entire month of September 2011. Tulagan, likewise, claimed that before the alleged incidents occurred,

his mother had a misunderstanding with AAA's grandmother, who later on started spreading rumors that he raped her granddaughter.

After trial, the RTC found that the prosecution successfully discharged the burden of proof in two offenses of rape against AAA. It held that all the elements of sexual assault and statutory rape was duly established. The trial court relied on the credible and positive declaration of the victim as against the alibi and denial of Tulagan. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the Court finds the accused GUILTY beyond reasonable doubt [of] the crime of rape defined and penalized under Article 266-A, paragraph 1 (d), in relation to R.A. 7610 in Criminal Case No. SCC-6211 and is hereby sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the victim in the amount of fifty thousand (Php50,000.00) pesos; moral damages in the amount of fifty thousand (Php 50,000.00) pesos, and to pay the cost of the suit. Likewise, this Court finds the accused GUILTY beyond reasonable doubt in Criminal Case No. SCC-6210 for the crime of rape defined and penalized under Article 266-A, paragraph 2 and he is hereby sentenced to suffer an indeterminate penalty of six (6) years of *prision correccional*, as minimum, to twelve (12) years of *prision mayor*, as maximum, and to indemnify the victim in the amount of thirty thousand (Php30,000.00) pesos; and moral damages in the amount of twenty thousand (Php20,000.00) pesos, and to pay the cost of suit.
>
> SO ORDERED.[4]

Upon appeal, the CA affirmed with modification Tulagan's conviction of sexual assault and statutory rape. The dispositive portion of the Decision reads:

> **ACCORDINGLY**, the Decision dated February 10, 2014 is **AFFIRMED**, subject to the following **MODIFICATIONS:**
>
> 1. In Criminal Case No. SCC-6210 (Rape by Sexual Assault), appellant is sentenced to an indeterminate penalty of 12 years of *reclusion temporal*, as minimum, to 15 years of *reclusion temporal*, as maximum. The award of moral damages is increased

[4] CA *rollo*, pp. 49-50.

to ₱30,000.00; and ₱30,000.00 as exemplary damages, are likewise granted.

2. In Criminal Case No. SCC-6211 (Statutory Rape), the awards of civil indemnity and moral damages are increased to ₱100,000.00 each. Exemplary damages in the amount of ₱100,000.00, too, are granted.

3. All damages awarded are subject to legal interest at the rate of 6% [*per annum*] from the date of finality of this judgment until fully paid.

SO ORDERED.[5]

Aggrieved, Tulagan invoked the same arguments he raised before the CA in assailing his conviction. He alleged that the appellate court erred in giving weight and credence to the inconsistent testimony of AAA, and in sustaining his conviction despite the prosecution's failure to prove his guilt beyond reasonable doubt. To support his appeal, he argued that the testimony of AAA was fraught with inconsistencies and lapses which affected her credibility.

Our Ruling

The instant appeal has no merit. However, a modification of the nomenclature of the crime, the penalty imposed, and the damages awarded in Criminal Case No. SCC-6210 for sexual assault, and a reduction of the damages awarded in Criminal Case No. SCC-6211 for statutory rape, are in order.

Factual findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case.[6] Said rule finds an even more stringent application where the said findings are sustained by the CA, as in the instant case:

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[5] *Rollo*, pp. 36-37. (Emphasis in the original)

[6] *People v. Gahi,* 727 Phil. 642 (2014).

Time and again, we have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[7]

Here, in Criminal Case No. SCC-6210 for sexual assault, both the RTC and the CA found AAA's testimony to be credible, straightforward and unwavering when she testified that Tulagan forcibly inserted his finger in her vagina. In Criminal Case No. SCC-6211 for statutory rape, both the RTC and the CA also found that the elements thereof were present, to wit: (1) accused had carnal knowledge of the victim, and (2) said act was accomplished when the offended party is under twelve (12) years of age. Indubitably, the courts *a quo* found that the prosecution was able to prove beyond reasonable doubt Tulagan's guilt for the crime of rape. We find no reason to deviate from said findings and conclusions of the courts *a quo*.

Jurisprudence tells us that a witness' testimony containing inconsistencies or discrepancies does not, by such fact alone,

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[7] *Id.* at 658.

diminish the credibility of such testimony. In fact, the variance in minor details has the net effect of bolstering instead of diminishing the witness' credibility because they discount the possibility of a rehearsed testimony. Instead, what remains paramount is the witness' consistency in relating the principal elements of the crime and the positive and categorical identification of the accused as the perpetrator of the same.[8]

As correctly held by the CA, the fact that some of the details testified to by AAA did not appear in her *Sinumpaang Salaysay* does not mean that the sexual assault did not happen. AAA was still able to narrate all the details of the sexual assault she suffered in Tulagan's hands. AAA's account of her ordeal being straightforward and candid and corroborated by the medical findings of the examining physician, as well as her positive identification of Tulagan as the perpetrator of the crime, are, thus, sufficient to support a conviction of rape.

As for Tulagan's imputation of ill motive on the part of AAA's grandmother, absent any concrete supporting evidence, said allegation will not convince us that the trial court's assessment of the credibility of the victim and her supporting witness was tainted with arbitrariness or blindness to a fact of consequence. We reiterate the principle that no young girl, such as AAA, would concoct a sordid tale, on her own or through the influence of her grandmother as per Tulagan's intimation, undergo an invasive medical examination then subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice. In *People v. Garcia*,[9] we held:

> Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to

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[8] *People v. Appegu*, 429 Phil. 467, 477 (2002).

[9] 695 Phil. 576 (2012).

which she testified is not true. Youth and immaturity are generally badges of truth and sincerity. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[10]

We also reject Tulagan's defense of denial. Being a negative defense, the defense of denial, if not substantiated by clear and convincing evidence, as in the instant case, deserves no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses, like AAA, who testified on affirmative matters. Since AAA testified in a categorical and consistent manner without any ill motive, her positive identification of Tulagan as the sexual offender must prevail over his defenses of denial and alibi.

Here, the courts *a quo* did not give credence to Tulagan's alibi considering that his house was only 50 meters away from AAA's house, thus, he failed to establish that it was physically impossible for him to be at the *locus criminis* when the rape incidents took place. "Physical impossibility" refers to distance and the facility of access between the crime scene and the location of the accused when the crime was committed. There must be a demonstration that they were so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed. In this regard, Tulagan failed to prove that there was physical impossibility for him to be at the crime scene when the rape was committed.[11] Thus, his alibi must fail.

Further, although the rape incidents in the instant case were not immediately reported to the police, such delay does not affect the truthfulness of the charge in the absence of other circumstances that show the same to be mere concoction or impelled by some ill motive.[12]

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[10] *Id.* at 588-589. (Citations omitted).

[11] *People v. Barberan, et al*., 788 Phil. 103, 113 (2016).

[12] See *People v. Ilogon*, 788 Phil. 633, 643-644 (2016).

For the guidance of the Bench and the Bar, We take this opportunity to reconcile the provisions on Acts of Lasciviousness, Rape and Sexual Assault under the Revised Penal Code (*RPC*), as amended by Republic Act (*R.A.*) No. 8353 *vis-a-vis* Sexual Intercourse and Lascivious Conduct under Section 5(b) of R.A. No. 7610, to fortify the earlier decisions of the Court and doctrines laid down on similar issues, and to clarify the nomenclature and the imposable penalties of said crimes, and damages in line with existing jurisprudence.[13]

Prior to the effectivity of R.A. No. 8353 or *The Anti-Rape Law of 1997* on October 22, 1997, acts constituting sexual assault under paragraph 2,[14] Article 266-A of the RPC, were punished as acts of lasciviousness under Article No. 336[15] of the RPC or Act No. 3815 which took effect on December 8, 1930. For an accused to be convicted of acts of lasciviousness, the confluence of the following essential elements must be proven: (1) that the offender commits any act of lasciviousness or lewdness; and (2) that it is done under any of the following circumstances: (a) by using force or intimidation; (b) when the offended woman is deprived of reason or otherwise unconscious; or (c) when the offended party is under twelve (12) years of age.[16] In *Amployo v. People*,[17] We expounded on the broad definition of the term "lewd":

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

[14] Article 266-A. *Rape; When And How Committed. — Rape is Committed —*

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2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

[15] Art. 336. *Acts of Lasciviousness*. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

[16] *PO3 Sombilon, Jr. v. People of the Philippines*, 617 Phil. 187, 195-196 (2009).

[17] 496 Phil. 747 (2005).

The term lewd is commonly defined as something indecent or obscene; it is characterized by or intended to excite crude sexual desire. That an accused is entertaining a lewd or unchaste design is necessarily a mental process the existence of which can be inferred by overt acts carrying out such intention, *i.e.*, by conduct that can only be interpreted as lewd or lascivious. The presence or absence of lewd designs is inferred from the nature of the acts themselves and the environmental circumstances. **What is or what is not lewd conduct, by its very nature, cannot be pigeonholed into a precise definition.** As early as *US. v. Gomez*, we had already lamented that

> It would be somewhat difficult to lay down any rule specifically establishing just what conduct makes one amenable to the provisions of Article 439 of the Penal Code. What constitutes lewd or lascivious conduct must be determined from the circumstances of each case. It may be quite easy to determine in a particular case that certain acts are lewd and lascivious, and it may be extremely difficult in another case to say just where the line of demarcation lies between such conduct and the amorous advances of an ardent lover.[18]

When R.A. No. 7610 or The *Special Protection of Children Against Abuse, Exploitation and Discrimination Act* took effect on June 17, 1992 and its Implementing Rules and Regulation was promulgated in October 1993, the term "lascivious conduct" was given a specific definition. The *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases* states that "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."

Upon the effectivity of R.A. No. 8353, specific forms of acts of lasciviousness were no longer punished under Article 336 of the RPC, but were transferred as a separate crime of "sexual

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[18] *Id.* at 756. (Emphasis added).

assault" under paragraph 2, Article 266-A of the RPC. Committed by "inserting penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person" against the victim's will, "sexual assault" has also been called "gender-free rape" or "object rape." However, the term "rape by sexual assault" is a misnomer, as it goes against the traditional concept of rape, which is carnal knowledge of a woman without her consent or against her will. In contrast to sexual assault which is a broader term that includes acts that gratify sexual desire (such as cunnilingus, felatio, sodomy or even rape), the classic rape is particular and its commission involves only the reproductive organs of a woman and a man. Compared to sexual assault, rape is severely penalized because it may lead to unwanted procreation; or to paraphrase the words of the legislators, it will put an outsider into the woman who would bear a child, or to the family, if she is married.[19] The dichotomy between rape and sexual assault can be gathered from the deliberation of the House of Representatives on the Bill entitled "*An Act To Amend Article 335 of the Revised Penal Code, as amended, and Defining and Penalizing the Crime of Sexual Assault*":

> INTERPELLATION OF MR. [ERASMO B.] DAMASING:
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> x x x x x x x x x
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> Pointing out his other concerns on the measure, specifically regarding the proposed amendment to the Revised Penal Code making rape gender-free, Mr. Damasing asked how carnal knowledge could be committed in case the sexual act involved persons of the same sex or involves unconventional sexual acts.
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> Mr. [Sergio A. F.] Apostol replied that the Bill is divided into two classifications: rape and sexual assault. The Committee, he explained, defines rape as carnal knowledge by a person with the opposite sex, while sexual assault is defined as gender-free, meaning it is immaterial whether the person committing the sexual act is a man or a woman or of the same sex as the victim.

[19] See Records of the Bicameral Conference Committee on the Disagreeing Provisions of Senate Bill No. 950 and House Bill No. 6265 dated February 19, 1997.

Subsequently, Mr. Damasing adverted to Section 1 which seeks to amend Article 335 of the Revised Penal Code as amended by RA No. 7659, which is amended in the Bill as follows: "Rape is committed by having carnal knowledge of a person of the opposite sex under the following circumstances." He then inquired whether it is the Committee's intent to make rape gender-free, either by a man against a woman, by a woman against a man, by man against a man, or by a woman against a woman. He then pointed out that the Committee's proposed amendment is vague as presented in the Bill, unlike the Senate version which specifically defines in what instances the crime of rape can be committed by a man or by the opposite sex.

Mr. Apostol replied that under the Bill "carnal knowledge" presupposes that the offender is of the opposite sex as the victim. If they are of the same sex, as what Mr. Damasing has specifically illustrated, such act cannot be considered rape — it is sexual assault.

Mr. Damasing, at this point, explained that the Committee's definition of carnal knowledge should be specific since the phrase "be a person of the opposite sex" connotes that carnal knowledge can be committed by a person, who can be either a man or a woman and hence not necessarily of the opposite sex but may be of the same sex.

Mr. Apostol pointed out that the measure explicitly used the phrase "carnal knowledge of a person of the opposite sex" to define that the abuser and the victim are of the opposite sex; a man cannot commit rape against another man or a woman against another woman. He pointed out that the Senate version uses the phrase carnal knowledge with a woman."

While he acknowledged Mr. Apostol's points, Mr. Damasing reiterated that the specific provisions need to be clarified further to avoid confusion, since, earlier in the interpellation Mr. Apostol admitted that being gender-free, rape can be committed under four situations or by persons of the same sex. Whereupon, Mr. Damasing read the specific provisions of the Senate version of the measure.

In his rejoinder, Mr. Apostol reiterated his previous contention that the Bill has provided for specific and distinct definitions regarding rape and sexual assault to differentiate that rape cannot be totally gender-free as it must be committed by a person against someone of the opposite sex.

With regard to Mr. Damasing's query on criminal sexual acts involving persons of the same sex, Mr. Apostol replied that Section

2, Article 266(b) of the measure on sexual assault applies to this particular provision.

Mr. Damasing, at this point, inquired on the particular page where Section 2 is located.

SUSPENSION OF SESSION

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INTERPELLATION OF MR. DAMASING
(Continuation)

Upon resumption of session, Mr. Apostol further expounded on Sections 1 and 2 of the bill and differentiated rape from sexual assault. Mr. Apostol pointed out that the main difference between the aforementioned sections is that carnal knowledge or rape, under Section 1, is always with the opposite sex. Under Section 2, on sexual assault, he explained that such assault may be on the genitalia, the mouth, or the anus; it can be done by a man against a woman, a man against a man, a woman against a woman or a woman against a man.[20]

Concededly, R.A. No. 8353 defined specific acts constituting acts of lasciviousness as a distinct crime of "sexual assault," and increased the penalty thereof from *prision correccional* to *prision mayor*. But it was never the intention of the legislature to redefine the traditional concept of rape. The Congress merely upgraded the same from a "crime against chastity" (a private crime) to a "crime against persons" (a public crime) as a matter of policy and public interest in order to allow prosecution of such cases even without the complaint of the offended party, and to prevent extinguishment of criminal liability in such cases through express pardon by the offended party. Thus, other forms of acts of lasciviousness or lascivious conduct committed against a child, such as touching of other delicate parts other than the private organ or kissing a young girl with malice, are still punished as acts of lasciviousness under Article 336 of the RPC in relation to R.A. No. 7610 or lascivious conduct under Section 5 of R.A. No. 7610.

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[20] Journal of the House of Representatives, Unfinished Business: Second Reading of Committee Report No. 224 on House Bill No. 6265.

Records of committee and plenary deliberations of the House of Representative and of the deliberations of the Senate, as well as the records of bicameral conference committee meetings, further reveal no legislative intent for R.A. No. 8353 to supersede Section 5(b) of R.A. No. 7610. The only contentious provisions during the bicameral conference committee meetings to reconcile the bills of the Senate and House of Representatives which led to the enactment of R.A. No. 8353, deal with the nature of and distinction between rape by carnal knowledge and rape by sexual assault; the threshold age to be considered in statutory rape [whether Twelve (12) or Fourteen (14)], the provisions on marital rape and effect of pardon, and the presumptions of vitiation or lack of consent in rape cases. While R.A. No. 8353 contains a generic repealing and amendatory clause, the records of the deliberation of the legislature are silent with respect to sexual intercourse or lascivious conduct against children under R.A. No. 7610, particularly those who are 12 years old or below 18, or above 18 but are unable to fully take care or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

In instances where the lascivious conduct committed against a child victim is covered by the definition under R.A. No. 7610, and the act is likewise covered by sexual assault under paragraph 2,[21] Article 266-A of the RPC, the offender should be held liable for violation of Section 5(b), Article III of R.A. No. 7610. The ruling in *Dimakuta v. People*[22] is instructive:

Article 226-A, paragraph 2 of the RPC, punishes inserting of the penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person if the victim did not consent either it was done through force, threat or

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[21] Article 266-A. *Rape: When And How Committed. — Rape is committed*:

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2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

[22] 771 Phil. 641 (2015).

intimidation; or when the victim is deprived of reason or is otherwise unconscious; or by means of fraudulent machination or grave abuse of authority as sexual assault as a form of rape. However, 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 *prision 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 Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (18) years 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.[23]

There could be no other conclusion, a child is presumed by law to be incapable of giving rational consent to any lascivious act, taking into account the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth, as well as, in harmony with the foremost consideration of the child's best interests in all actions concerning him or her. This is equally consistent with the declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination. Besides, if it was the intention of the framers of the law to make child offenders liable only of Article 266-A of the RPC, which provides for a lower penalty than R.A. No. 7610, the law could have expressly made such statements.[24]

Meanwhile, if acts of lasciviousness or lascivious conduct are committed with a child who is 12 years old or less than 18 years old, the ruling in *Dimakuta*[25] is also on point:

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[23] *Id.* at 670.

[24] *Id.* at 670-671.

[25] *Supra* note 22.

Under Section 5, Article III of R.A. No. 7610, a child is deemed subjected to other sexual abuse when he or she indulges in lascivious conduct under the coercion or influence of any adult. This statutory provision must be distinguished from Acts of Lasciviousness under Articles 336 and 339 of the RPC. As defined in Article 336 of the RPC, Acts of Lasciviousness has the following elements:

(1) That the offender commits any act of lasciviousness or lewdness;

(2) That it is done under any of the following circumstances:

a. By using force or intimidation; or
b. When the offended party is deprived of reason or otherwise unconscious; or
c. When the offended party is under 12 years of age; and

(3) That the offended party is another person of either sex.

Article 339 of the RPC likewise punishes *acts of lasciviousness committed with the* ***consent*** *of the offended party* if done by the same persons and under the same circumstances mentioned in Articles 337 and 338 of the RPC, to wit:

1. if committed against a virgin **over twelve years and under eighteen years of age** by any person in public authority, priest, home-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman; or

2. if committed by means of deceit against a woman who is single or a widow of good reputation, **over twelve but under eighteen years of age**.

Therefore, if the victim of the lascivious acts or conduct is over 12 years of age and under eighteen (18) years of age, the accused shall be liable for:

1. Other acts of lasciviousness under Art. 339 of the RPC, where the victim is a **virgin** and **consents** to the lascivious acts through abuse of confidence or when the victim is **single** or a **widow of good reputation** and consents to the lascivious acts through deceit, or;

2. Acts of lasciviousness under Art. 336 if the act of lasciviousness is not covered by lascivious conduct as defined in R.A. No. 7610. In case the acts of lasciviousness [are] covered

by lascivious conduct under R.A. No. 7610 and it is done through coercion or influence, which establishes absence or lack of consent, then Art. 336 of the RPC is no longer applicable;

3. Section 5(b), Article III of R.A. No. 7610, where there was no consent on the part of the victim to the lascivious conduct, which was done through the employment of coercion or influence. The offender may likewise be liable for sexual abuse under R.A. No. 7610 if the victim is at least eighteen (18) years 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.[26]

In *People v. Caoili*,[27] We prescribed the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty:

1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.

2. **If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.**

3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.[28]

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[26] *Id.* at 668-669. (Emphasis, underscoring; italics added in the original).

[27] G.R. No. 196848, August 8, 2017, 835 SCRA 107; penned by Associate Justice Noel Gimenez Tijam.

[28] *Id.* at 153-154. (Emphasis added).

Based on the *Caoili*[29] guidelines, it is only when the victim of the lascivious conduct is 18 years old and above that such crime would be designated as "Acts of Lasciviousness under Article 336 of the RPC" with the imposable penalty of *prision correccional*.

Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta* and *Caoili.* We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610" and no longer "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610," because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A(2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.

Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5(b) of R.A. No. 7610" with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua,*[30] but it should not make any reference to the provisions of the RPC. It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor*.

Sexual intercourse with a victim who is under 12 years old or is demented is statutory rape

Under Section 5(b) of R.A. No. 7610, the proper penalty when sexual intercourse is committed with a victim who is under

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[29] *Supra* note 27.

[30] *Id.*

12 years of age or is demented is *reclusion perpetua*, pursuant to paragraph 1(d),[31] Article 266-A in relation to Article 266-B of the RPC, as amended by R.A. No. 8353,[32] which in turn amended Article 335[33] of the RPC. Thus:

> 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 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 [sic] and Article 336 of Act No. 3815, as amended, the

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[31] Article 266 A. Rape: *When And How Committed. — Rape is committed:*

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
   a) 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.

[32] Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. x x x.

[33] Art. 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by *reclusion perpetua*.

Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its *medium period*; x x x.[34]

In *Quimvel v. People*,[35] it was opined[36] that the two *provisos* under Section 5(b) of R.A. No. 7610 will apply only if the victim is under 12 years of age, but not to those 12 years old and below 18, for the following reason:

"while the first clause of Section 5(b), Article III of R.A. 7610 is silent with respect to the age of the victim, Section 3, Article I thereof defines "children" as those 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. Notably, two *provisos* succeeding the first clause of Section 5(b) explicitly state a qualification that when the victim of lascivious conduct is under 12 years of age, the perpetrator shall be (1) prosecuted under Article 336 of the RPC, and (2) the penalty shall be *reclusion temporal* in its medium period. **It is a basic rule in statutory construction that the office of the proviso qualifies or modifies only the phrase immediately preceding it or restrains of limits the generality of the clause that it immediately follows. A proviso is to be construed with reference to the immediately preceding part of the provisions, to which it is attached, and not to the statute itself or the other sections thereof.**[37] Accordingly, this case falls under the qualifying provisos of Section 5(b), Article III of R.A. 7610 because the allegations in the information make out a case for acts of lasciviousness, as defined under Article 336 of the RPC, and the victim is under 12 years of age x x x."[38]

In view of the foregoing rule in statutory construction, it was proposed[39] in *Quimvel* that the penalty for acts of lasciviousness

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[34] Underscoring added.

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

[36] *Id.* See Separate Concurring Opinion and Majority Opinion.

[37] *Chinese Flour Importers Association v. Price Stabilization Board*, 89 Phil. 439 (1951); *Arenas v. City of San Carlos*, 172 Phil. 306 (1978).

[38] *Quimvel v. People*, *supra* note 35, at 268-269. (Emphasis added).

[39] See Separate Concurring Opinion and Majority Opinion.

committed against a child should depend on his/her age: if the victim is under 12 years of age, the penalty is *reclusion temporal* in its medium period, and if the victim is 12 years old and below 18, or 18 or older under special circumstances under Section 3(a)[40] of R.A. No. 7610, the penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.

Applying by analogy the foregoing discussion in *Quimvel* to the act of sexual intercourse with a child exploited in prostitution or subject to other sexual abuse, We rule that when the offended party is under 12 years of age or is demented, only the first *proviso* of Section 5(b), Article III of R.A. No. 7610 will apply, to wit: "*when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape x x x*." The penalty for statutory rape under Article 335 is *reclusion perpetua*, which is still the same as in the current rape law, *i.e.*, paragraph 1(d), Article 266-A in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, except in cases where the victim is below 7 years of age where the imposable penalty is death.[41]

Note that the second *proviso* of Section 5(b) of R.A. No. 7610 will not apply because it clearly has nothing to do with sexual intercourse, and it only deals with "*lascivious conduct when the victim is under 12 years of age*." While the terms "lascivious conduct" and "sexual intercourse" are included in

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[40] Section. 3. *Definition of Terms.*—

(a) "Children" refers to a person 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.

[41] Item II (1) of A.M. No. 15-08-02-SC, entitled "*Guidelines for the Proper Use of the Phrase 'Without Eligibility for Parole' in Indivisible Penalties*," dated August 4, 2015 provides:

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "*without eligibility for parole*" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; x x x

the definition of "sexual abuse" under Section 2(g)[42] of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*, note that the definition of "lascivious conduct"[43] does not include sexual intercourse. Be it stressed that the purpose of indicating the phrase "under twelve (12) years of age" is to provide for statutory lascivious conduct or statutory rape, whereby evidence of force, threat or intimidation is immaterial because the offended party, who is under 12 years old or is demented, is presumed incapable of giving rational consent.

Malto ruling clarified

An important distinction between violation of Section 5(b) of R.A. No. 7610 and rape under the RPC was explained in *Malto v. People*[44] We ruled in *Malto*[45] that one may be held liable for violation of Sec. 5(b), Article III of R.A. No. 7610 despite a finding that the person did not commit rape, because rape is a felony under the RPC, while sexual abuse against a child is punished by a special law. Said crimes are separate and distinct, and they have different elements. Unlike in rape, however, consent is immaterial in cases involving violation of Sec. 5, Art. III of R.A. No. 7610. The mere fact of having sexual intercourse or committing lascivious conduct with a child who is exploited in prostitution or subjected to sexual abuse constitutes the offense.

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[42] Section 2(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases states that "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.

[43] Section 3(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases states that "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.

[44] 560 Phil. 119 (2007); penned by Associate Justice Renato C. Corona.

[45] *Supra*, at 138.

In *Malto*,[46] where the accused professor indulged several times in sexual intercourse with the 17-year-old private complainant, We also stressed that since a child cannot give consent to a contract under our civil laws because she can easily be a victim of fraud as she is not capable of full understanding or knowing the nature or import of her actions, the harm which results from a child's bad decision in a sexual encounter may be infinitely more damaging to her than a bad business deal. Thus, the law should protect her from the harmful consequences of her attempts at adult sexual behavior. For this reason, a child should not be deemed to have validly consented to adult sexual activity and to surrender herself in the act of ultimate physical intimacy under a law which seeks to afford her special protection against abuse, exploitation and discrimination. In sum, a child is presumed by law to be incapable of giving rational consent to any lascivious conduct or sexual intercourse.

We take exception, however, to the sweeping conclusions in *Malto* (1) that "a child is presumed by law to be incapable of giving rational consent to any lascivious conduct or sexual intercourse" and (2) that "consent of the child is immaterial in criminal cases involving violation of Section 5, Article III of RA 7610" because they would virtually eradicate the concepts of statutory rape and statutory acts of lasciviousness, and trample upon the express provision of the said law.

Recall that in statutory rape, the only subject of inquiry is whether the woman is below 12 years old or is demented and whether carnal knowledge took place; whereas force, intimidation and physical evidence of injury are not relevant considerations. With respect to acts of lasciviousness, R.A. No. 8353 modified Article 336 of the RPC by retaining the circumstance that the offended party is under 12 years old in order for acts of lasciviousness to be considered as statutory and by adding the circumstance that the offended party is demented, thereby rendering the evidence of force or intimidation immaterial.[47]

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[46] *Id.* at 139-140.

[47] See Separate Concurring Opinion in *Quimvel v. People, supra* note 35.

This is because the law presumes that the victim who is under 12 years old or is demented does not and cannot have a will of her own on account of her tender years or dementia; thus, a child's or a demented person's consent is immaterial because of her presumed incapacity to discern good from evil.[48]

However, considering the definition under Section 3(a) of R.A. No. 7610 of the term "children" which refers to 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, We find that the opinion in *Malto*, that a child is presumed by law to be incapable of giving rational consent, unduly extends the concept of statutory rape or acts of lasciviousness to those victims who are within the range of 12 to 17 years old, and even those 18 years old and above under special circumstances who are still considered as "children" under Section 3(a) of R.A. No. 7610. While *Malto* is correct that consent is immaterial in cases under R.A. No. 7610 where the offended party is below 12 years of age, We clarify that consent of the child is material and may even be a defense in criminal cases involving violation of Section 5, Article III of R.A. No. 7610 when the offended party is 12 years old or below 18, or above 18 under special circumstances. Such consent may be implied from the failure to prove that the said victim engaged in sexual intercourse **either** "due to money, profit or any other consideration **or** due to the coercion or influence of any adult, syndicate or group."

It bears emphasis that violation of the first clause of Section 5(b), Article III of R.A. No. 7610 on sexual intercourse with a child exploited in prostitution or subject to other sexual abuse, is separate and distinct from statutory rape under paragraph 1(d), Article 266-A of the RPC. Aside from being dissimilar in the sense that the former is an offense under special law, while the latter is a felony under the RPC, they also have different elements.[49]

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[48] *People v. Brioso*, 788 Phil. 292, 306 (2016).

[49] The elements of violation of the first clause of Section 5(b) of R.A. No. 7610 are: (1) the accused commits the act of sexual intercourse or lascivious

Nevertheless, sexual intercourse with a victim who is under 12 years of age or is demented is always statutory rape, as Section 5(b) of R.A. No. 7610 expressly states that the perpetrator will be prosecuted under Article 335, paragraph 3 of the RPC [now paragraph 1(d), Article 266-A of the RPC as amended by R.A. No. 8353].

Even if the girl who is below twelve (12) years old or is demented consents to the sexual intercourse, it is always a crime of statutory rape under the RPC, and the offender should no longer be held liable under R.A. No. 7610. For example, a nine (9)-year-old girl was sold by a pimp to a customer, the crime committed by the latter if he commits sexual intercourse with the girl is still statutory rape, because even if the girl consented or is demented, the law presumes that she is incapable of giving a rational consent. The same reason holds true with respect to acts of lasciviousness or lascivious conduct when the offended party is less than 12 years old or is demented. Even if such party consents to the lascivious conduct, the crime is always statutory acts of lasciviousness. The offender will be prosecuted under Article 336[50] of the RPC, but the penalty is provided for under Section 5(b) of R.A. No. 7610. Therefore, there is no conflict between rape and acts of lasciviousness under the RPC, and sexual intercourse and lascivious conduct under R.A. No. 7610.

Meanwhile, if sexual intercourse is committed with a child under 12 years of age, who is deemed to be "exploited in prostitution and other sexual abuse," then those who engage in or promote, facilitate or induce child prostitution under Section 5(a)[51] of

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conduct; (2) the act is performed with a child exploited in prostitution or other sexual abuse; and (3) the child, whether male or female, is 12 years old or below 18. On the other hand, the elements of statutory rape under paragraph 1 (d), Article 266-A of the RPC are: (1) the offender is a man; (2) the offender shall have carnal knowledge of a woman; and (3) the offended party is under 12 years of age or is demented.

[50] Art. 336. *Acts of Lasciviousness.*— Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional*.

[51] Section 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration,

R.A. No. 7610 shall be liable as principal by force or inducement under Article 17[52] of the RPC in the crime of statutory rape under Article 266-A(1) of the RPC; whereas those who derive profit or advantage therefrom under Section 5(c)[53] of R.A. No. 7610 shall be liable as principal by indispensable cooperation under Article 17 of the RPC. Bearing in mind the policy of R.A. No. 7610 of providing for stronger deterrence and special protection against child abuse and exploitation, the following shall be the nomenclature of the said statutory crimes and the imposable penalties for principals by force or inducement or by indispensable cooperation:

1. Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(a) or (c), as the case may be, of

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or due to 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:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
(1) Acting as a procurer of a child prostitute;
(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
(3) Taking advantage of influence or relationship to procure a child as prostitute;
(4) Threatening or using violence towards a child to engage him as a prostitute; or
(5) Giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

[52] Article 17. *Principals*.— The following are considered principals:

1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it;
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

[53] (c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

R.A. No. 7610, with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*;

2. Rape under Article 266-A(1) of the RPC, in relation to Article 17 of the RPC and Section 5(a) or (c), as the case may be, of R.A. No. 7610 with the imposable penalty of *reclusion perpetua*, pursuant to Article 266-B of the RPC, except when the victim is below 7 years old, in which case the crime is considered as Qualified Rape, for which the death penalty shall be imposed; and

3. Sexual Assault under Article 266-A(2) of the RPC, in relation to Section 5(a) or (c), as the case may be, of R.A. No. 7610 with the imposable penalty of *reclusion temporal* in its medium period to *reclusion perpetua*.

If the victim who is 12 years old or less than 18 and is deemed to be a child "exploited in prostitution and other sexual abuse" because she agreed to indulge in sexual intercourse "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," then the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and there was consent. That is why the offender will now be penalized under Section 5(b), R.A. No. 7610, and not under Article 335[54] of the RPC [now Article 266-A]. But if the said victim does not give her consent to sexual intercourse in the sense that the sexual intercourse was committed through force, threat or intimidation, the crime is rape under paragraph 1, Article 266-A of the RPC. However, if the same victim gave her consent to the sexual intercourse, and no money, profit, consideration, coercion or influence is involved, then there is

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[54] Art. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by *reclusion perpetua*.
x x x x x x x x x

no crime committed, except in those cases where "force, threat or intimidation" as an element of rape is substituted by "moral ascendancy or moral authority,"[55] like in the cases of incestuous rape, and unless it is punished under the RPC as qualified seduction under Article 337[56] or simple seduction under Article 338.[57]

Rulings in Tubillo, Abay* and *Pangilinan clarified

At this point, it is not amiss to state that the rulings in *People v. Tubillo*,[58] *People v. Abay*[59] and *People v. Pangilinan*[60] should be clarified, because there is no need to examine whether the focus of the prosecution's evidence is "coercion and influence" or "force and intimidation" for the purpose of determining which between R.A. No. 7610 or the RPC should the accused be prosecuted under in cases of acts of lasciviousness or rape where the offended party is 12 years of age or below 18.

To recap, We explained in *Abay*[61] that under Section 5 (b), Article III of R.A. No. 7610 in relation to R.A. No. 8353, if the

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[55] *People v. Bentayo*, G.R. No. 216938, June 5, 2017, 825 SCRA 620, 626; *People v. Mayola*, 802 Phil. 756, 762 (2016).

[56] Art. 337. *Qualified seduction*. — The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by *prision correccional* in its minimum and medium periods.
The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.
Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

[57] Article 338. *Simple seduction*. — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor*.

[58] *People v. Tubillo*, G.R. No. 220718, June 21, 2017, 828 SCRA 96; penned by Associate Justice Jose Catral Mendoza.

[59] 599 Phil. 390 (2009); penned by Associate Justice Renato C. Corona.

[60] 676 Phil. 16 (2011); penned by Associate Justice Diosdado M. Peralta.

[61] *Supra* note 59, at 395-396.

victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under paragraph 1(d), Article 266-A of the RPC, 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 R.A. No. 7610 or rape under Article 266-A (except paragraph 1 [d]) of the RPC. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy might be prejudiced. Besides, rape cannot be complexed with a violation of Section 5(b) of R.A. No. 7610, because under Section 48 of the RPC (on complex crimes), a felony under the RPC (such as rape) cannot be complexed with an offense penalized by a special law.

Considering that the victim in *Abay* was more than 12 years old when the crime was committed against her, and the Information against appellant stated that the child was 13 years old at the time of the incident, We held that appellant may be prosecuted either for violation of Section 5(b) of R.A. No. 7610 or rape under Article 266-A (except paragraph 1[d]) of the RPC. We observed that while the Information may have alleged the elements of both crimes, the prosecution's evidence only established that appellant sexually violated the person of the child through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Hence, appellant was found guilty of rape under paragraph 1(a), Article 266-A of the RPC.

In *Pangilinan*, where We were faced with the same dilemma because all the elements of paragraph 1, Article 266-A of the RPC and Section 5(b) of R.A. No. 7610 were present, it was ruled that the accused can be charged with either rape or child abuse and be convicted therefor. However, We observed that rape was established, since the prosecution's evidence proved that the accused had carnal knowledge of the victim through force and intimidation by threatening her with a samurai. Citing the discussion in *Abay*, We ruled as follows:

> As in the present case, appellant can indeed be charged with either Rape or Child Abuse and be convicted therefor. The prosecution's

evidence established that appellant had carnal knowledge of AAA through force and intimidation by threatening her with a samurai. Thus, rape was established. Considering that in the resolution of the Assistant Provincial Prosecutor, he resolved the filing of rape under Article 266-A of the Revised Penal Code for which appellant was convicted by both the RTC and the CA, therefore, we merely affirm the conviction.[62]

In the recent case of *Tubillo* where We noted that the Information would show that the case involves both the elements of paragraph 1, Article 266-A of the RPC and Section 5(b) of R.A. No. 7610, We likewise examined the evidence of the prosecution, whether it focused on the specific force or intimidation employed by the offender or on the broader concept of coercion or influence to have carnal knowledge with the victim. In ruling that appellant should be convicted of rape under paragraph 1(a), Article 266-A of the RPC instead of violation of Section 5(b) of R.A. No. 7610, We explained:

> Here, the evidence of the prosecution unequivocally focused on the force or intimidation employed by Tubillo against HGE under Article 266-A(1)(a) of the RPC. The prosecution presented the testimony of HGE who narrated that Tubillo unlawfully entered the house where she was sleeping by breaking the padlock. Once inside, he forced himself upon her, pointed a knife at her neck, and inserted his penis in her vagina. She could not resist the sexual attack against her because Tubillo poked a bladed weapon at her neck. Verily, Tubillo employed brash force or intimidation to carry out his dastardly deeds.[63]

With this decision, We now clarify the principles laid down in *Abay, Pangilinan* and *Tubillo* to the effect that there is a need to examine the evidence of the prosecution to determine whether the person accused of rape should be prosecuted under the RPC or R.A. No. 7610 when the offended party is 12 years old or below 18.

First, if sexual intercourse is committed with an offended party who is a child less than 12 years old or is demented,

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[62] *People v. Pangilinan*, *supra* note 60, at 37.

[63] *People v. Tubillo*, *supra* note 58, at 107.

whether or not exploited in prostitution, it is always a crime of statutory rape; more so when the child is below 7 years old, in which case the crime is always qualified rape.

Second, when the offended party is 12 years old or below 18 and the charge against the accused is carnal knowledge through "force, threat or intimidation," then he will be prosecuted for rape under Article 266-A(1)(a) of the RPC. In contrast, in case of sexual intercourse with a child who is 12 years old or below 18 and who is deemed "exploited in prostitution or other sexual abuse," the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and the victim indulged in sexual intercourse either "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," which deemed the child as one "exploited in prostitution or other sexual abuse."

To avoid further confusion, We dissect the phrase "children exploited in prostitution" as an element of violation of Section 5(b) of R.A. No. 7610. As can be gathered from the text of Section 5 of R.A. No. 7610 and having in mind that the term "lascivious conduct"[64] has a clear definition which does not include "sexual intercourse," the phrase "children exploited in prostitution" contemplates four (4) scenarios: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse.

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[64] "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. [Section 2(h) Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

The term "other sexual abuse," on the other hand, is construed in relation to the definitions of "child abuse" under Section 3, Article I of R.A. No. 7610 and "sexual abuse" under Section 2(g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*.[65] In the former provision, "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse, among other matters. In the latter provision, "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.

In *Quimvel*, it was held that the term "coercion or influence" is broad enough to cover or even synonymous with the term "force or intimidation." Nonetheless, it should be emphasized that "coercion or influence" is used in Section 5[66] of R.A. No. 7610 to qualify or refer to the means through which "any adult, syndicate or group" compels a child to indulge in sexual intercourse. On the other hand, the use of "money, profit or any other consideration" is the other mode by which a child

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[65] Issued in October 1993.

[66] 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 to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal in its medium period*; x x x. (Emphasis supplied)

indulges in sexual intercourse, without the participation of "any adult, syndicate or group." In other words, "coercion or influence" of a child to indulge in sexual intercourse is clearly exerted NOT by the offender whose liability is based on Section 5(b)[67] of R.A. No. 7610 for committing sexual act with a child exploited in prostitution or other sexual abuse. Rather, the "coercion or influence" is exerted upon the child by "any adult, syndicate, or group" whose liability is found under Section 5(a)[68] for engaging in, promoting, facilitating or inducing child prostitution, whereby the sexual intercourse is the necessary consequence of the prostitution.

For a clearer view, a comparison of the elements of rape under the RPC and sexual intercourse with a child under Section 5(b) of R.A. No. 7610 where the offended party is between 12 years old and below 18, is in order.

Rape under Article 266-A(1) (a,b,c) under the RPC	**Section 5(1) of R.A. No. 7610**
1. Offender is a man;	1. Offender is a man;
2. Carnal knowledge of a woman;	2. Indulges in sexual intercourse with a female child exploited in prostitution or other sexual abuse, who is 12 years old or below 18 or above 18 under special circumstances;
3. Through force, threat or intimidation; when the offended party is deprived of reason or otherwise unconscious; and by means of fraudulent machination or grave abuse of authority	3. Coercion or influence of any adult, syndicate or group is employed against the child to become a prostitute

[67] *Id.*

[68] Section 5. *Child Prostitution and Other Sexual Abuse*. — x x x.

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
(1) Acting as a procurer of a child prostitute;
(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

As can be gleaned above, "force, threat or intimidation" is the element of rape under the RPC, while "due to coercion or influence of any adult, syndicate or group" is the operative phrase for a child to be deemed "exploited in prostitution or other sexual abuse," which is the element of sexual abuse under Section 5(b) of R.A. No. 7610. The "coercion or influence" is not the reason why the child submitted herself to sexual intercourse, but it was utilized in order for the child to become a prostitute. Considering that the child has become a prostitute, the sexual intercourse becomes voluntary and consensual because that is the logical consequence of prostitution as defined under Article 202 of the RPC, as amended by R.A. No. 10158 where the definition of "prostitute" was retained by the new law:[69]

> Article 202. *Prostitutes; Penalty*. — For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.
>
> Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding 200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court.

Therefore, there could be no instance that an Information may charge the same accused with the crime of rape where "force, threat or intimidation" is the element of the crime under the RPC, and at the same time violation of Section 5(b) of R.A. No. 7610 where the victim indulged in sexual intercourse because she is exploited in prostitution **either** "for money, profit or any other consideration **or** due to coercion or influence of any

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(3) Taking advantage of influence or relationship to procure a child as prostitute;
(4) Threatening or using violence towards a child to engage him as a prostitute; or
(5) Giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

[69] *AN ACT DECRIMINALIZING VAGRANCY, AMENDING FOR THIS PURPOSE ARTICLE 202 OF ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE.*

adult, syndicate or group" — the phrase which qualifies a child to be deemed "exploited in prostitution or other sexual abuse" as an element of violation of Section 5(b) of R.A. No. 7610.

Third, if the charge against the accused where the victim is 12 years old or below 18 is sexual assault under paragraph 2, Article 266-A of the RPC, then it may happen that the elements thereof are the same as that of lascivious conduct under Section 5(b) of R.A. No. 7610, because the term "lascivious conduct" includes introduction of any object into the genitalia, anus or mouth of any person.[70] In this regard, We held in *Dimakuta* that in instances where a "lascivious conduct" committed against a child is covered by R.A. No. 7610 and the act is likewise covered by sexual assault under paragraph 2, Article 266-A of the RPC [punishable by *prision mayor*], the offender should be held liable for violation of Section 5(b) of R.A. No. 7610 [punishable by *reclusion temporal medium*], consistent with the declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development. But when the offended party is below 12 years of age or is demented, the accused should be prosecuted and penalized under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610, because the crime of sexual assault is considered statutory, whereby the evidence of force or intimidation is immaterial.

Assuming that the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information — *e.g.*, carnal knowledge or sexual intercourse was due to "force

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[70] Section 3(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases states that "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.

or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1(a) in relation to Section 5(b) of R.A. No. 7610," although this may be a ground for quashal of the Information under Section 3(f)[71] of Rule 117 of the Rules of Court — and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. Indeed, while R.A. No. 7610 is a special law specifically enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development, We hold that it is contrary to the legislative intent of the same law if the lesser penalty (*reclusion temporal medium to reclusion perpetua*) under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18.

Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, is not only the more recent law, but also deals more particularly with all rape cases, hence, its short title "*The Anti-Rape Law of 1997*." R.A. No. 8353 upholds the policies and principles of R.A. No. 7610, and provides a "stronger deterrence and special protection against child abuse," as it imposes a more severe penalty of *reclusion perpetua* under Article 266-B of the RPC, or even the death penalty if the victim is (1) under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or

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[71] Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

x x x x x x x x x

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

common-law spouse of the parent of the victim; or (2) when the victim is a child below 7 years old.

It is basic in statutory construction that in case of irreconcilable conflict between two laws, the later enactment must prevail, being the more recent expression of legislative will.[72] Indeed, statutes must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence, and if several laws cannot be harmonized, the earlier statute must yield to the later enactment, because the later law is the latest expression of the legislative will.[73] Hence, Article 266-B of the RPC must prevail over Section 5(b) of R.A. No. 7610.

In sum, the following are the applicable laws and penalty for the crimes of acts of lasciviousness or lascivious conduct and rape by carnal knowledge or sexual assault, depending on the age of the victim, in view of the provisions of paragraphs 1 and 2 of Article 266-A and Article 336 of the RPC, as amended by R.A. No. 8353, and Section 5(b) of R.A. No. 7610:

Designation of the Crime & Imposable Penalty

Age of Victim: / **Crime Committed:**	Under 12 years old or demented	12 years old or below 18, or 18 under special circumstances[74]	18 years old and above
Acts of Lasciviousness committed against	Acts of Lasciviousness under Article 336 of	Lascivious conduct[75] under Section 5(b) of	Not applicable

[72] *Republic of the Philippines v. Yahon*, 736 Phil. 397, 410 (2014).

[73] *Id.* at 410-411.

[74] The "children" refers to a person 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. [Section 3(a), R.A. No. 7610]

"Child" shall refer to a person below eighteen (18) years of age or one over said age and who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of himself fully because of a physical or mental disability or condition or of protecting himself from abuse. [Section 2(a), Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

[75] "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks,

children exploited in prostitution or other sexual abuse	the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	
Sexual Assault committed against children exploited in prostitution or other sexual abuse	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable
Sexual Intercourse committed against children exploited in prostitution or other sexual abuse	Rape under Article 266-A(1) of the RPC: *reclusion perpetua*, except when the victim is below 7 years old in which case death penalty shall be imposed[76]	Sexual Abuse[77] under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable
Rape by carnal knowledge	Rape under Article 266-A(1) in relation to Art. 266-B of the RPC: *reclusion perpetua*, except when the victim is below 7 years old in which case death penalty shall be imposed	Rape under Article 266-A(1) in relation to Art. 266-B of the RPC: *reclusion perpetua*	Rape under Article 266-A(1) of the RPC: *reclusion perpetua*
Rape by Sexual Assault	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Sexual Assault under Article 266-A(2) of the RPC: *prision mayor*

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. [Section 2(h), Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

[76] Subject to R.A. No. 9346 entitled "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*."

[77] "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. [Section 3(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

For the crime of acts of lasciviousness or lascivious conduct, the nomenclature of the crime and the imposable penalty are based on the guidelines laid down in *Caoili*. For the crimes of rape by carnal knowledge and sexual assault under the RPC, as well as sexual intercourse committed against children under R.A. No. 7610, the designation of the crime and the imposable penalty are based on the discussions in *Dimakuta*,[78] *Quimvel*[79] and *Caoili*, in line with the policy of R.A. No. 7610 to provide stronger deterrence and special protection to children from all forms of abuse, neglect, cruelty, exploitation, discrimination, and other conditions prejudicial to their development. It is not amiss to stress that the failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged, for what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information.[80] Nevertheless, the designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly.[81]

Justice Caguioa asks us to abandon our rulings in *Dimakuta, Quimvel* and *Caoili*, and to consider anew the viewpoint in his Separate Dissenting Opinion in *Quimvel* that the provisions of R.A. No. 7610 should be understood in its proper context, *i.e.*, that it only applies in the specific and limited instances where the victim is a child "subjected to prostitution or other sexual abuse." He asserts that if the intention of R.A. No. 7610 is to penalize all sexual abuses against children under its provisions to the exclusion of the RPC, it would have expressly stated so and would have done away with the qualification that the child

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[78] *Supra* note 22.

[79] *Supra* note 35; penned by Associate Justice Presbitero J. Velasco, Jr.

[80] *People v. Ursua,* G.R. No. 218575, October 4, 2017, 842 SCRA 165, 178; *Malto v. People, supra* note 44, at 135-136.

[81] *Id.*

be "exploited in prostitution or subjected to other sexual abuse." He points out that Section 5(b) of R.A. No. 7610 is a provision of specific and limited application, and must be applied as worded — a separate and distinct offense from the "common" or ordinary acts of lasciviousness under Article 336 of the RPC. In support of his argument that the main thrust of R.A. No. 7610 is the protection of street children from exploitation, Justice Caguioa cites parts of the sponsorship speech of Senators Santanina T. Rasul, Juan Ponce Enrile and Jose D. Lina, Jr.

We find no compelling reason to abandon our ruling in *Dimakuta, Quimvel* and *Caoili.*

In his Separate Concurring Opinion in *Quimvel*, the *ponente* aptly explained that if and when there is an absurdity in the interpretation of the provisions of the law, the proper recourse is to refer to the objectives or the declaration of state policy and principles under Section 2 of R.A. No. 7610, as well as Section 3(2), Article XV of the 1987 Constitution:

> [R.A. No. 7610] Sec. 2. Declaration of State Policy and Principles. — It is hereby declared to be the policy of the State to **provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development**; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts against the child are committed by the said parent, guardian, teacher or person having care and custody of the same.
>
> It shall be the policy of the State to protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.
>
> The best interests of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principle of First Call for

Children as enunciated in the United Nations Convention on the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life. [Emphasis added]

[Article XV 1987 Constitution] Section 3. The State shall defend:

x x x x x x x x x

(2) The **right of children to** assistance, including proper care and nutrition, and **special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development**.[82]

Clearly, the objective of the law, more so the Constitution, is to provide a special type of protection for children from all types of abuse. Hence, it can be rightly inferred that the title used in Article III, Section 5, "Child Prostitution and Other Sexual Abuse" does not mean that it is only applicable to children used as prostitutes as the main offense and the other sexual abuses as additional offenses, the absence of the former rendering inapplicable the imposition of the penalty provided under R.A. No. 7610 on the other sexual abuses committed by the offenders on the children concerned.

Justice Caguioa asserts that Section 5(b), Article III of R.A. No. 7610 is clear — it only punishes those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse. There is no ambiguity to speak of that which requires statutory construction to ascertain the legislature's intent in enacting the law.

We would have agreed with Justice Caguioa if not for Section 5 itself which provides who are considered as "children exploited in prostitution and other sexual abuse." Section 5 states that "[c]hildren, 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." Contrary to the view of

[82] Emphasis supplied.

Justice Caguioa, Section 5(b), Article III of R.A. No. 7610 is not as clear as it appears to be; thus, We painstakingly sifted through the records of the Congressional deliberations to discover the legislative intent behind such provision.

Justice Caguioa then asks: (1) if the legislature intended for Section 5(b), R.A. No. 7610 to cover any and all types of sexual abuse committed against children, then why would it bother adding language to the effect that the provision applies to "children exploited in prostitution or subjected to other sexual abuse?" and (2) why would it also put Section 5 under Article III of the law, which is entitled "Child Prostitution and Other Sexual Abuse?"

We go back to the record of the Senate deliberation to explain the history behind the phrase "child exploited in prostitution or subject to other sexual abuse."

Section 5 originally covers *Child Prostitution* only, and this can still be gleaned from Section 6 on *Attempt To Commit Child Prostitution*, despite the fact that both Sections fall under Article III on *Child Prostitution and Other Sexual Abuse*. Thus:

Section 6. *Attempt To Commit Child Prostitution*. — There is an attempt to commit child prostitution under Section 5, paragraph (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper case, under the Revised Penal Code.

Even Senator Lina, in his explanation of his vote, stated that Senate Bill 1209 also imposes the penalty of *reclusion temporal*

in its medium period to *reclusion perpetua* for those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution.[83] Senator Lina mentioned nothing about the phrases "subject to other sexual abuse" or "Other Sexual Abuse" under Section 5(b), Article III of R.A. No. 7610.

However, to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit, Senator Eduardo Angara proposed the insertion of the phrase "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, under Section 5(b), Article III of R.A. No. 7610.[84]

Further amendment of then Article III of R.A. No. 7610 on *Child Prostitution* was also proposed by then President *Pro Tempore* Sotero Laurel, to which Senator Angara agreed, in order to cover the "expanded scope" of "child abuse." Thus, Article III was amended and entitled "*Child Prostitution and Other Sexual Abuse*."[85] This is the proper context where the element that a child be "exploited in prostitution and other sexual abuse" or EPSOSA, came to be, and should be viewed.

We hold that it is under President Pro Tempore Laurel's amendment on "expanded scope'' of "child abuse" under Section 5(b) and the definition of "child abuse" under Section 3,[86] Article I of R.A. No. 7610 that should be relied upon in construing the

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[83] Record of the Senate, Vol. II, No. 58, December 2, 1991, pp. 793-794.

[84] Record of the Senate, Vol. I, No. 7, August 1, 1991, p. 262.

[85] *Id.*

[86] **Section 3.** ***Definition of Terms.*** —

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

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

element of "exploited under prostitution and other sexual abuse." In understanding the element of "exploited under prostitution and other sexual abuse," We take into account two provisions of R.A. No. 7610, namely: (1) Section 5, Article III, which states that "[c]hildren, 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 exploited in prostitution and other sexual abuse"; and (2) Section 3, Article I, which states that "child abuse" refers to the maltreatment, whether habitual or not, of the child, which includes, sexual abuse.

To clarify, once and for all, the meaning of the element of "exploited in prostitution" under Section 5(b), Article III of R.A. No. 7610,[87] We rule that it contemplates 4 scenarios, namely: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious

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(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

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

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

x x x x x x x x x

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or for 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.

conduct; (c) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulges in sexual intercourse.

Note, however, that the element of "exploited in prostitution" does not cover a male child, who for money, profit or any other consideration, or due to coercion or influence of any adult, syndicate, or group, indulges in sexual intercourse. This is because at the time R.A. No. 7610 was enacted in 1992, the prevailing law on rape was Article 335 of the RPC where rape can only be committed by having carnal knowledge of a woman under specified circumstances. Even under R.A. No. 8353 which took effect in 1997, the concept of rape remains the same — it is committed by a man who shall have carnal knowledge of a woman under specified circumstances. As can be gathered from the Senate deliberation on Section 5(b), Article III of R.A. No. 7610, it is only when the victim or the child who was abused is a male that the offender would be prosecuted thereunder because the crime of rape does not cover child abuse of males.[88]

The term "other sexual abuse," on the other hand, should be construed in relation to the definitions of "child abuse" under Section 3,[89] Article I of R.A. No. 7610 and "sexual abuse" under Section 2(g)[90] of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*.[91] In the former provision, "child abuse" refers to the maltreatment, whether **habitual or not**, of the child which includes sexual abuse, among other matters. In the latter provision, "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. Thus, the term "other sexual abuse" is broad enough to include all other acts of sexual abuse

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[88] Record of the Senate, Vol. IV, No. 116, May 9, 1991, pp. 333-334.

[89] *Supra* note 85.

[90] *Supra* note 42.

[91] Issued in October 1993.

other than prostitution. Accordingly, a single act of lascivious conduct is punished under Section 5(b), Article III, when the victim is 12 years old and below 18, or 18 or older under special circumstances. In contrast, when the victim is under 12 years old, the proviso of Section 5(b) states that the perpetrator should be prosecuted under Article 336 of the RPC for acts of lasciviousness, whereby the lascivious conduct itself is the sole element of the said crime. This is because in statutory acts of lasciviousness, as in statutory rape, the minor is presumed incapable of giving consent; hence, the other circumstances pertaining to rape — force, threat, intimidation, etc. — are immaterial.

Justice Caguioa also posits that the Senate deliberation on R.A. No. 7610 is replete with similar disquisitions that all show the intent to make the law applicable to cases involving child exploitation through prostitution, sexual abuse, child trafficking, pornography and other types of abuses. He stresses that the passage of the laws was the Senate's act of heeding the call of the Court to afford protection to a special class of children, and not to cover any and all crimes against children that are already covered by other penal laws, such as the RPC and Presidential Decree No. 603, otherwise known as the *Child and Youth Welfare Code*. He concludes that it is erroneous for us to rule that R.A. No. 7610 applies in each and every case where the victim although he or she was not proved, much less, alleged to be a child "exploited in prostitution or subjected to other sexual abuse." He invites us to go back to the ruling in *Abello* that "since R.A. No. 7610 is a special law referring to a particular class in society, the prosecution must show that the victim truly belongs to this particular class to warrant the application of the statute's provisions. Any doubt in this regard we must resolve in favor of the accused."

Justice Estela M. Perlas-Bernabe also disagrees that R.A. No. 7610 would be generally applicable to all cases of sexual abuse involving minors, except those who are under 12 years of age. Justice Perlas-Bernabe concurs with Justice Caguioa that Section 5(b), Article III of R.A. No. 7610 only applies in instances where the child-victim is "*exploited in prostitution*

or subject to other sexual abuse" (EPSOSA). She asserts that her limited view, as opposed to the *ponencia's* expansive view, is not only supported by several textual indicators both in law and the deliberations, but also squares with practical logic and reason. She also contends that R.A. No. 7610 was enacted to protect those who, like the child-victim in *People v. Ritter*, willingly engaged in sexual acts, not out of desire to satisfy their own sexual gratification, but because of their "vulnerable pre-disposition as exploited children. She submits that, as opposed to the RPC where sexual crimes are largely predicated on the lack of consent, Section 5(b) fills in the gaps of the RPC by introducing the EPSOSA element which effectively dispenses with the need to prove the lack of consent at the time the act of sexual abuse is committed. Thus, when it comes to a prosecution under Section 5(b), consent at the time the sexual act is consummated is, unlike in the RPC, not anymore a defense.

We are unconvinced that R.A. No. 7610 only protects a special class of children, *i.e.*, those who are "exploited in prostitution or subjected to other sexual abuse," and does not cover all crimes against them that are already punished by existing laws. It is hard to understand why the legislature would enact a penal law on child abuse that would create an unreasonable classification between those who are considered as "exploited in prostitution and other sexual abuse" or EPSOSA and those who are not. After all, the policy is to provide stronger deterrence and special protection to children from all forms of abuse, neglect, cruelty, exploitation, discrimination and other conditions prejudicial to their development.

In the extended explanation of his vote on Senate Bill No. 1209,[92] Senator Lina emphasized that the bill complements the efforts the Senate has initiated towards the implementation of a national comprehensive program for the survival and development of Filipino children, in keeping with the

[92] *AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE AND EXPLOITATION, PROVIDING LEGAL PRESUMPTIONS AND PENALTIES FOR ITS VIOLATIONS.*

Constitutional mandate that "*[t]he State shall defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development*."[93] Senator Lina also stressed that the bill supplies the inadequacies of the existing laws treating crimes committed against children, namely, the RPC and the Child and Youth Welfare Code, in the light of the present situation, *i.e.*, current empirical data on child abuse indicate that a stronger deterrence is imperative.[94]

In the same vein, Senator Rasul expressed in her Sponsorship Speech the same view that R.A. No. 7610 intends to protect all children against all forms of abuse and exploitation, thus:

> There are still a lot of abuses and injustices done to our children who suffer not only from strangers, but sadly, also in the hands of their parents and relatives. We know for a fact that the present law on the matter, the Child and Welfare Code (PD No. 603) has very little to offer to abuse children. We are aware of the numerous cases not reported in media.
>
> In the Filipino Family structure, a child is powerless; he or she is not supposed to be heard and seen. Usually, it is the father or the mother who has a say in family matters, and children, owing to their limited capability, are not consulted in most families. Many children may be suffering from emotional, physical and social abuses in their homes, but they cannot come out in the open; besides, there is a very thin line separating discipline from abuse. This becomes wider when the abuse becomes grave and severe.
>
> Perhaps, more lamentable than the continuing child abuses and exploitation is the seeming unimportance or the lack of interest in the way we have dealt with the said problem in the country. No less than the Supreme Court, in the recent case of *People v. Ritter*, held that we lack criminal laws which will adequately protect street children from exploitation of pedophiles. But as we know, we, at the Senate have not been remiss in our bounden duty to sponsor bills which will ensure the protection of street children from the tentacles of

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[93] Record of the Senate, December 2, 1991, Volume II, No. 58, pp. 793-794.

[94] *Id.*

sexual exploitation. Mr. President, now is the time to convert these bills into reality.

In our long quest for solutions to problems regarding children, which problems are deeply rooted in poverty, I have felt this grave need to sponsor a bill, together with Senators Lina and Mercado, which would ensure the children's protection from all forms of abuse and exploitation, to provide stiffer sanction for their commission and carry out programs for prevention and deterrence to aid crisis intervention in situations of child abuse and exploitation.

Senate Bill No. 1209 translates into reality the provision of our 1987 Constitution on "THE FAMILY," and I quote:

Sec. 3. The State shall defend:

x x x x x x x x x

(2) The **right of children** to assistance, including proper care and nutrition, and **special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development**.

This is a specific provision peculiar to the Philippines. No other Constitution in the whole world contains this mandate. Keeping true to this mandate, Mr. President, and the UN Convention on the Rights of the Child which has been drafted in the largest global summit, of which we have acceded, we should waste no time in passing this significant bill into law. This is a commitment; thus, we should not thrive on mere promises. We, the legislature of this country, must have that political will to transform this promise into a vibrant reality.

Children's normal growth and development, considering their young minds and fragile bodies, must not be stunted. We legislators must pave the way for the sustained progress of our children. Let not a child's opportunity for physical, spiritual, moral, social and intellectual well-being be stunted by the creeping cruelty and insanity that sometimes plague the minds of the adults in the society who, ironically, are the persons most expected to be the guardians of their interest and welfare.[95]

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[95] Record of the Senate on Senate Bill No. 1209, Volume III, No. 104, pp. 1204-1205. (Emphasis added).

Justice Caguioa further submits that Section 5(b) of R.A. No. 7610 cannot be read in isolation in the way that *Dimakuta, Quimvel* and *Caoili* do, but must be read in the whole context of R.A. No. 7610 which revolves around (1) child prostitution, (2) other sexual abuse in relation to prostitution and (3) the specific acts punished under R.A. No. 7610, namely, child trafficking under Article IV, obscene publications and indecent shows under Article V, and sanctions for establishments where these prohibited acts are promoted, facilitated or conducted under Article VII. He adds that even an analysis of the structure of R.A. No. 7610 demonstrates its intended application to the said cases of child exploitation involving children "exploited in prostitution or subjected to other sexual abuse." Citing the exchange between Senators Pimentel and Lina during the second reading of Senate Bill No. 1209 with respect to the provision on attempt to commit child prostitution, Justice Caguioa likewise posits that a person can only be convicted of violation of Article 336 in relation to Section 5(b), upon allegation and proof of the unique circumstances of the children "exploited in prostitution or subjected to other sexual abuse."

We disagree that the whole context in which Section 5(b) of R.A. No. 7610 must be read revolves only around child prostitution, other sexual abuse in relation to prostitution, and the specific acts punished under R.A. No. 7610. In fact, the provisos of Section 5(b) itself explicitly state that it must also be read in light of the provisions of the RPC, thus: "*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*."

When the first proviso of Section 5(b) states that "when the victim is under 12 years of age shall be prosecuted under the RPC," it only means that the elements of rape under then Article 335, paragraph 3 of the RPC [now Article 266-A, paragraph 1(d)], and of acts of lasciviousness under Article 336 of the

RPC, have to be considered, alongside the element of the child being "exploited in prostitution and or other sexual abuse," in determining whether the perpetrator can be held liable under R.A. No. 7610. The second proviso of Section 5(b), on the other hand, merely increased the penalty for lascivious conduct when the victim is under 12 years of age, from *prision correccional* to *reclusion temporal* in its medium period, in recognition of the principle of statutory acts of lasciviousness, where the consent of the minor is immaterial.

Significantly, what impels Us to reject Justice Caguioa's view that acts of lasciviousness committed against children may be punished under **either** Article 336 of the RPC [with *prision correccional*] **or** Acts of Lasciviousness under Article 336 of the RPC, in relation to Section 5(b) of R.A. No. 7610 [with *reclusion temporal medium*]/Lascivious Conduct under Section 5(b) of R.A. No. 7610 [with *reclusion temporal medium* to *reclusion perpetua*], is the provision under Section 10 of R.A. No. 7610.

As pointed out by the *ponente* in *Quimvel*, where the victim of acts of lasciviousness is under 7 years old, Quimvel cannot be merely penalized with *prision correccional* for acts of lasciviousness under Article 336 of the RPC when the victim is a child because it is contrary to the letter and intent of R.A. No. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. The legislative intent is expressed under Section 10, Article VI of R.A. No. 7610 which, among others, increased by one degree the penalty for certain crimes when the victim is a child under 12 years of age, to wit:

> Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. —
>
> x x x x x x x x x
>
> For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under

twelve (12) years of age. **The penalty for the commission of acts punishable under Article 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years of age**.[96]

The *ponente* explained that to impose upon *Quimvel* an indeterminate sentence computed from the penalty of *prision correccional* under Article 336 of the RPC would defeat the purpose of R.A. No. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination. **First**, the imposition of such penalty would erase the substantial distinction between acts of lasciviousness under Article 336 and acts of lasciviousness with consent of the offended party under Article 339,[97] which used to be punishable by *arresto mayor*, and now by *prision correccional* pursuant to Section 10, Article VI of R.A. No. 7610. **Second**, it would

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[96] See Separate Concurring Opinion in *Quimvel v. People*, *supra* note 36. (Emphasis added).

[97] ARTICLE 339. *Acts of Lasciviousness with the Consent of the Offended Party*. — The penalty of *arresto mayor* shall be imposed to punish any other acts of lasciviousness committed by the same persons and the same circumstances as those provided in Articles 337 and 338.

ARTICLE 337. *Qualified Seduction*. — The seduction of a virgin over twelve years and under eighteen years of age, committed by any person in public authority, priest, house-servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by *prision correccional* in its minimum and medium periods.

The penalty next higher in degree shall be imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over eighteen years of age.

Under the provisions of this Chapter, seduction is committed when the offender has carnal knowledge of any of the persons and under the circumstances described herein.

ARTICLE 338. *Simple Seduction*. — The seduction of a woman who is single or a widow of good reputation, over twelve but under eighteen years of age, committed by means of deceit, shall be punished by *arresto mayor*.

inordinately put on equal footing the acts of lasciviousness committed against a child and the same crime committed against an adult, because the imposable penalty for both would still be *prision correccional*, save for the aggravating circumstance of minority that may be considered against the perpetrator. **Third**, it would make acts of lasciviousness against a child a probationable offense, pursuant to the Probation Law of 1976,[98] as amended by R.A. No. 10707.[99] Indeed, while the foregoing implications are favorable to the accused, they are contrary to the State policy and principles under R.A. No. 7610 and the Constitution on the special protection to children.

Justice Caguioa also faults that a logical leap was committed when the *ponencia* posited that the Section 10, Article VI, R.A. No. 7610 amendment of the penalties under Articles 337, 339, 340 and 341 of the RPC, also affected Article 336 on acts of lasciviousness. He argues that given the clear import of Section 10 to the effect that the legislature expressly named the provisions it sought to amend through R.A. No. 7610, amendment by implication cannot be insisted on.

We disagree. Articles 337 (Qualified Seduction), 339 (Acts of Lasciviousness with the Consent of the Offended Party), 340 (Corruption of Minor) and 341 (White Slave Trade) of the RPC, as well as Article 336 (Acts of Lasciviousness) of the RPC, fall under Title Eleven of the RPC on Crimes against Chastity. All these crimes can be committed against children. Given the policy of R.A. No. 7610 to provide stronger deterrence and special protection against child abuse, We see no reason why the penalty for acts of lasciviousness committed against children should remain to be *prision correccional* when Section 5(b), Article III of R.A. No. 7610 penalizes those who commit

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[98] Presidential Decree No. 968.

[99] *An Act Amending Presidential Decree No. 968*, otherwise known as the "*Probation Law of 1976*", as amended. Approved on November 26, 2015. Section 9 of the Decree, as amended, provides that the benefits thereof shall not be extended to those "(a) sentenced to serve a maximum term of imprisonment of more than six (6) years." Note: The duration of the penalty of *prision correccional* is 6 months and 1 day to 6 years.

lascivious conduct with a child exploited in prostitution or subject to other sexual abuse with a penalty of *reclusion temporal* in its medium period when the victim is under 12 years of age.

Contrary to the view of Justice Caguioa, there is, likewise, no such thing as a recurrent practice of relating the crime committed to R.A. No. 7610 in order to increase the penalty, which violates the accused's constitutionally protected right to due process of law. In the interpretation of penal statutes, the rule is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused,[100] and at the same time preserve the obvious intention of the legislature.[101] A strict construction of penal statutes should also not be permitted to defeat the intent, policy and purpose of the legislature, or the object of the law sought to be attained.[102] When confronted with apparently conflicting statutes, the courts should endeavor to harmonize and reconcile them, instead of declaring the outright invalidity of one against the other, because they are equally the handiwork of the same legislature.[103] In this case, We are trying to harmonize the applicability of the provisions of R.A. No. 7610 *vis-à-vis* those of the RPC, as amended by R.A. No. 8353, in order to carry out the legislative intent to provide stronger deterrence and special protection against all forms of child abuse, exploitation and discrimination.

Pertinent parts of the deliberation in Senate Bill No. 1209 underscoring the legislative intent to increase the penalties as a deterrent against all forms of child abuse, including those covered by the RPC and the Child and Youth Welfare Code, as well as to give special protection to all children, read:

Senator Lina. x x x

For the information and guidance of our Colleagues, the phrase "child abuse" here is more descriptive than a definition that specifies

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[100] *Centeno v. Judge Villalon-Pornillos*, 306 Phil. 219, 230 (1994).

[101] *U.S. v. Go Chico*, 14 Phil. 128, 140 (1909).

[102] *People v. Manantan*, 115 Phil. 657, 665 (1962).

[103] *Akbayan-Youth v. Comelec*, 407 Phil. 618, 639 (2001).

the particulars of the acts of child abuse. As can be gleaned from the bill, Mr. President, there is a reference in Section 10 to the "Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development."

We refer, for example, to the Revised Penal Code. There are already acts described and punished under the Revised Penal Code and the Child and Youth Welfare Code. These are all enumerated already, Mr. President. There are particular acts that are already being punished.

But we are providing stronger deterrence against child abuse and exploitation by increasing the penalties when the victim is a child. That is number one. We define a child as "one who is 15 years and below." [*Later amended to those below 18, including those above 18 under special circumstances*]

The President Pro Tempore. Would the Sponsor then say that this bill repeals, by implication or as a consequence, the law he just cited for the protection of the child as contained in that Code just mentioned, since this provides for stronger deterrence against child abuse and we have now a Code for the protection of the child?

Senator Lina. We specified in the bill, Mr. President, increase in penalties. That is one. But, of course, that is not everything included in the bill. There are other aspects like making it easier to prosecute these cases of pedophilia in our country. That is another aspect of this bill.

The other aspects of the bill include the increase in the penalties on acts committed against children; and by definition, children are those below 15 years of age.

So, it is an amendment to the Child and Youth Welfare Code, Mr. President. This is not an amendment by implication. We made direct reference to the Articles in the Revised Penal Code and in the Articles in the Child and Youth Welfare Code that are amended because of the increase in the penalties.

The President Pro Tempore. Would Senator Lina think then that, probably, it would be more advisable to specify the amendments and amend the particular provision of the existing law rather than put up a separate bill like this?

Senator Lina. We did, Mr. President. In Section 10, we made reference to...

The President Pro Tempore. The Chair is not proposing any particular amendment. This is just an inquiry for the purpose of making some suggestions at this stage where we are now in the period of amendments.

Senator Lina. We deemed it proper to have a separate Act, Mr. President, that will include all measures to provide stronger deterrence against child abuse and exploitation. **There are other aspects that are included here other than increasing the penalties that are already provided for in the Revised Penal Code and in the Child and Youth Welfare Code when the victims are children.**

Aside from the penalties, there are other measures that are provided for in this Act. Therefore, to be more systematic about it, instead of filing several bills, we thought of having a separate Act that will address the problems of children below 15 years of age. This is to emphasize the fact that this is a special sector in our society that needs to be given special protection. So this bill is now being presented for consideration by the Chamber.[104]

The aforequoted parts of the deliberation in Senate Bill No. 1209 likewise negate the contention of Justice Perlas-Bernabe that "to suppose that R.A. No. 7610 would generally cover acts already punished under the Revised Penal Code (RPC) would defy the operational logic behind the introduction of this special law." They also address the contention of Justice Caguioa that the passage of the same law was the Senate's act of heeding the call of the Court to afford protection to a special class of children, and not to cover any and all crimes against children that are already covered by other penal laws, like the RPC and P.D. No. 603.

As pointed out by Senator Lina, the other aspect of S.B. No. 1209, is to increase penalties on acts committed against children; thus, direct reference was made to the Articles in the RPC and in the Articles in the Child and Youth Welfare Code that are amended because of the increase in the penalties. The said legislative intent is consistent with the policy to provide stronger

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[104] Record of the Senate, Vol. I , No. 7, August 1, 1991, pp. 258-259. (Emphasis added).

deterrence and special protection of children against child abuse, and is now embodied under Section 10, Article VI of R.A. No. 7610, *viz.*:

> For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under twelve (12) years of age. The penalty for the commission of acts punishable under Articles 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with the consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years age.

Justice Perlas-Bernabe and Justice Caguioa are both correct that R.A. No. 7610 was enacted to fill the gaps in the law, as observed by the Court in *People v. Ritter*. However, they may have overlooked that fact that the Congressional deliberations and the express provisions of R.A. No. 7610 all point to the intention and policy to systematically address the problems of children below 15 years of age [later increased to below 18], which Senator Lina emphasized as a special sector in our society that needs to be given special protection.[105]

Justice Perlas-Bernabe also noted that a general view on the application of R.A. No. 7610 would also lead to an unnerving incongruence between the law's policy objective and certain penalties imposed thereunder. She pointed out that under Article 335 of the RPC, prior to its amendment by R.A. No. 8353, the crime of rape committed against a minor who is not under 12 and below 18, is punished with the penalty of *reclusion perpetua*, while under Section 5(b), Article III of R.A. No. 7610, the crime of sexual abuse against a child EPSOSA is punished only with a lower penalty of *reclusion temporal* in its medium period to *reclusion perpetua*. She concluded that it would not make

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[105] *Id.*

sense for the Congress to pass a supposedly stronger law against child abuse if the same carries a lower penalty for the same act of rape under the old RPC provision.

Justice Perlas-Bernabe's observation on incongruent penalties was similarly noted by the *ponente* in his Separate Concurring Opinion in *Quimvel*, albeit with respect to the penalties for acts of lasciviousness committed against a child, but he added that the proper remedy therefor is a corrective legislation:

> Curiously, despite the clear intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty [*reclusion temporal* medium] when the victim is under 12 years old is lower compared to the penalty [*reclusion temporal* medium to *reclusion perpetua*] when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31,[106] Article XII of R.A. 7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum, whereas as the minimum term in the case of the older victims shall be taken from *prision mayor medium* to *reclusion temporal minimum*. It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints, but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law. To my mind, a corrective legislation

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[106] Section 31. *Common Penal Provisions*. —

x x x x x x x x x

(c) The penalty provided herein shall be imposed in its **maximum period** when the perpetrator is an **ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity**, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked. [Emphasis added]

is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child.[107]

To support his theory that the provisions of R.A. No. 7610 are intended only for those under the unique circumstances of the children being "exploited in prostitution or subjected to other sexual abuse," Justice Caguioa quoted pertinent portions of the Senate deliberation on the provision on attempt to commit child prostitution," which concededly do not affect Article 336 of the RPC on acts of lasciviousness. Senator Lina provided with a background, not of the provision of Section 5(b), but of Section 6 of R.A. No. 7610 on attempt to commit child prostitution, thus:

Senator Lina. x x x Mr. President, Article 336 of Act No. 3815 will remain unaffected by this amendment we are introducing here. As a backgrounder, the difficulty in the prosecution of so-called "pedophiles" can be traced to this problem of having to catch the malefactor committing the sexual act on the victim. And those in the law enforcement agencies and in the prosecution service of the Government have found it difficult to prosecute. Because if an old person, especially foreigner, is seen with a child with whom he has no relation—blood or otherwise — and they are just seen in a room and there is no way to enter the room and to see them *in flagrante delicto*, then it will be very difficult for the prosecution to charge or to hale to court these pedophiles.

So we are introducing into this bill, Mr. President, an act that is already considered an attempt to commit child prostitution. This, in no way, affects the Revised Penal Code provisions on acts of lasciviousness or qualified seduction.[108]

Justice Caguioa's reliance on the foregoing statements of Senator Lina is misplaced. While Senator Lina was referring to the specific provision on attempt to commit child prostitution under Section 6, Article III of R.A. No. 7610, Senator Aquilino Pimentel Jr.'s questions were directed more on the general effect of Senate Bill No. 1209 on the existing provisions of the RPC

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[107] Citations omitted.

[108] Record of the Senate, Vol. IV, No. 116, May 9, 1991, pp. 334-335.

on child sexual abuse, which elicited from Senator Lina the intent to provide higher penalties for such crimes, to wit:

Senator Pimentel. I understand the Gentleman's opinion on that particular point. But my question really is much broader. I am sorry that it would seem as if I am trying to be very meticulous about this.

Senator Lina. It is all right.

Senator Pimentel. But the point is, there are existing laws that cover the sexual abuse of children already, particularly female children. What I am trying to say is, what effect will the distinguished Gentleman's bill have on these existing laws, particularly provisions of the Revised Penal Code. That is why I tried to cite the case of rape—having sexual intercourse with a child below 12 years of age, seduction instances, qualified abduction, or acts of lasciviousness, involving minors; meaning to say, female below 18 years of age. There are already existing laws on this particular point.

Senator Lina. Mr. President, there will also be a difference in penalties when the person or the victim is 12 years old or less. That is another effect. So, there is a difference.

For example, in qualified seduction, the penalty present for all persons between age of 13 to 17 is *prision correccional*; for acts of lasciviousness under the proposal, similar acts will be *prision mayor* if the child is 12 years or less.

Under qualified seduction, the present penalty is *prision correccional*, minimum and medium. Under the proposal, it will be *prision correccional* maximum to *prision mayor* minimum, and so on and so forth.

Even in facts of lasciviousness, with consent of the offended party, there is still a higher penalty. In corruption of minors, there will be a higher penalty. When murder is committed, and the victim is under 12 years or less, there will be a higher penalty from *reclusion temporal* to *reclusion perpetua*. The penalty when the culprit is below 12 years or less will be *reclusion perpetua*. The intention is really to provide a strong deterrence and special protection against child abuse and exploitation.

Senator Pimentel. So, the net effect of this amendment, therefore, is to amend the provisions of the Revised Penal Code, insofar as they relate to the victims who are females below the age of 12.

Senator Lina. That will be the net effect, Mr. President.

Senator Pimentel. We probably just have to tighten up our provisions to make that very explicit. Mr. President.

Senator Lina. Yes. During the period of individual amendments, Mr. President, that can be well taken care of.[109]

Quoting the sponsorship speech of Senator Rasul and citing the case of *People v. Ritter*,[110] Justice Caguioa asserts that the enactment of R.A. No. 7610 was a response of the legislature to the observation of the Court that there was a gap in the law because of the lack of criminal laws which adequately protect street children from exploitation of pedophiles.

Justice Caguioa is partly correct. Section 5(b) of R.A. No. 7610 is separate and distinct from common and ordinary acts of lasciviousness under Article 336 of the RPC. However, when the victim of such acts of lasciviousness is a child, as defined by law, We hold that the penalty is that provided for under Section 5(b) of R.A. No. 7610 — *i.e.*, *reclusion temporal medium* in case the victim is under 12 years old, and *reclusion temporal medium* to *reclusion perpetua* when the victim is between 12 years old or under 18 years old or above 18 under special circumstances — and not merely *prision correccional* under Article 336 of the RPC. Our view is consistent with the legislative intent to provide stronger deterrence against all forms of child abuse, and the evil sought to be avoided by the enactment of R.A. No. 7610, which was exhaustively discussed during the committee deliberations of the House of Representatives:

HON. [PABLO] P. GARCIA: Thank you, Mr. Chairman. This problem is also bogging me for quite some time because there has been so much cry against this evil in our society. But, then until now, neither the courts nor those in the medical world have come up with the exact definition of pedophilia. I have two standard dictionaries—Webster and another one an English dictionary, Random Dictionary and the term "pedophilia" is not there. Although, we have

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[109] *Id.* at 336-337.

[110] 272 Phil. 532 (1991).

read so much literature, articles about pedophilia and it is commonly understood as we might say a special predilection for children. "Pedo" coming from the Greek word "pedo." But whether this would apply to children of either sex, say male or female is not also very clear. It is a sexual desire for its very unusual out of the ordinary desire or predilection for children. Now, in our country, this has gain[ed] notoriety because of activities of foreigners in Pagsanjan and even in Cebu. But most of the victims I have yet to hear of another victim than male. Of course, satisfaction of sexual desire on female, young female, we have instances of adults who are especially attracted to the young female children, say below the ages of 12 or 15 if you can still classify these young female children. So our first problem is whether pedophilia would apply only to male victims or should it also apply to female victims?

I am trying to make this distinction because we have already a law in our jurisdiction. I refer to the Revised Penal Code where sexual intercourse with a child below 12 automatically becomes statutory rape whether with or without consent. In other words, force or intimidation is not a necessary element. If a person commits sexual intercourse with a child below 12, then he automatically has committed statutory rape and the penalty is stiff. Now, we have really to also think deeply about our accepted definition of sexual intercourse. Sexual intercourse is committed against… or is committed by a man and a woman. There is no sexual intercourse between persons of the same sex. The sexual intercourse, as defined in the standard dictionaries and also as has been defined by our courts is always committed between a man and a woman. And so if we pass here a law, which would define pedophilia and include any sexual contact between persons of different or the same sexes, in other words, homosexual or heterosexual, then, we will have to be overhauling our existing laws and jurisprudence on sexual offenses.

For example, we have in our Revised Penal Code, qualified seduction, under Article 337 of the Revised Penal Code, which provides that the seduction of a virgin over 12 and under 18 committed by any person in public authority: priest, house servant, domestic guardian, teacher, or person who in any capacity shall be entrusted with the education or custody of the woman seduced, shall be punished by etc. etc. Now, if we make a general definition of pedophilia then shall that offender, who, under our present law, is guilty of pedophilia? I understand that the consensus is to consider a woman or a boy below 15 as a child and therefore a potential victim of pedophilia.

And so, what will happen to our laws and jurisprudence on seduction? The Chairman earlier mentioned that possible we might just amend our existing provisions on crimes against chastity, so as to make it stiffer, if the victim or the offended party is a minor below a certain age, then there is also seduction of a woman who is single or a widow of good reputation, over 12 but under 18. Seduction, as understood in law, is committed against a woman, in other words, a man having sexual intercourse with a woman. That is how the term is understood in our jurisprudence. So I believe Mr. Chairman, that we should rather act with caution and circumspection on this matter. Let us hear everybody because we are about to enact a law which would have very drastic and transcendental effects on our existing laws. In the first place, we are not yet very clear on what is pedophilia. We have already existing laws, which would punish these offenses.

As a matter of fact, for the information of this Committee, in Cebu, I think that it is the first conviction for an offense which would in our understanding amounts to pedophilia. A fourteen-year old boy was the victim of certain sexual acts committed by a German national. The fiscal came up with an information for acts of lasciviousness under the Revised Penal Code and that German national was convicted for the offense charged. Now, the boy was kept in his rented house and subjected to sexual practices very unusual, tantamount to perversion but under present laws, these offenses such as... well, it's too, we might say, too obscene to describe, cannot be categorized under our existing laws except acts of lasciviousness because there is no sexual intercourse. Sexual intercourse in our jurisdiction is as I have stated earlier, committed by a man and a woman. And it is a sexual contact of the organ of the man with the organ of the woman. But in the case of this German national, if there was any sexual contact it was between persons of the same sex. So, he was convicted. He's a detention prisoner and there is also deportation proceeding against him. In fact, he has applied for voluntary deportation, but he is to serve a penalty of *prision correccional* to *prision mayor*. So, that is the situation I would say in which we find ourselves. I am loath to immediately act on this agitation for a definition of a crime of pedophilia. There is no I think this Committee should study further the laws in other countries. Whether there is a distinct crime known as pedophilia and whether this can be committed against a person of the same sex or of another sex, or whether this crime is separate and distinct from the other crimes against honor or against chastity in their respective jurisdictions. This is a social evil but it has to be addressed with the tools we have at hand. If we have to forge another

tool or instrument to find to fight this evil, then I think we should make sure that we are not doing violence for destroying the other existing tools we have at hand. And maybe there is a need to sharpen the tools we have at hand, rather than to make a new tool to fight this evil. Thank you very much, Mr. Chairman.[111]

Moreover, contrary to the claim of Justice Caguioa, We note that the Information charging Tulagan with rape by sexual assault in Criminal Case No. SCC-6210 not only distinctly stated that the same is "*Contrary to Article 266-A, par. 2 of the Revised Penal Code in relation to R.A. 7610*," but it also sufficiently alleged all the elements of violation of Section 5(b) of R.A. No. 7610, in this wise:

Elements of Section 5(b) of R.A. No. 7610	**Information in Criminal Case No. SCC-6210**
1. The accused commits the act of sexual intercourse or lascivious conduct.	1. That sometime in the month of September 2011 x x x, the above-named accused [Tulagan] x x x did then and there, willfully, unlawfully and feloniously inserted his finger into the vagina of said AAA, against her will and consent.
2. The said act is performed with a child exploited in prostitution or other sexual abuse. Section 5 of R.A. No. 7610 deems as "*children exploited in prostitution and other sexual abuse*" those children, whether male or female, (1) who for money, profit or any other consideration or (2) due to the **coercion or influence** of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct.	2. [T]he above-name accused, **by means of force, intimidation and with abuse of superior strength** forcibly laid complainant AAA, x x x in a cemented pavement, and x x x inserted his finger into the vagina of said AAA, against her will and consent.
3. The child, whether male or female, is below 18 years of age.	3. AAA is a 9-year-old minor.

[111] Deliberation of the Committee on Justice, December 19, 1989.

In *Quimvel*, We ruled that the Information in *Olivarez v. Court of Appeals*[112] is conspicuously couched in a similar fashion as the Information in the case against Quimvel. We explained that the absence of the phrase "*exploited in prostitution or subject to other sexual abuse*" or even a specific mention of "*coercion*" or "*influence*" was never a bar for us to uphold the finding of guilt against an accused for violation of R.A. No. 7610. Just as We held that it was enough for the Information in *Olivarez* to have alleged that the offense was committed by means of "*force and intimidation*," We must also rule that the Information in the case at bench does not suffer from the alleged infirmity.

We likewise held in *Quimvel* that the offense charged can also be elucidated by consulting the designation of the offense as appearing in the Information. The designation of the offense is a critical element required under Sec. 6, Rule 110 of the Rules of Court for it assists in apprising the accused of the offense being charged. Its inclusion in the Information is imperative to avoid surprise on the accused and to afford him of opportunity to prepare his defense accordingly. Its import is underscored in this case where the preamble states that the crime charged is "*Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610.*"

We held that for purposes of determining the proper charge, the term "coercion or influence" as appearing in the law is broad enough to cover "force and intimidation" as used in the Information; in fact, as these terms are almost used synonymously, it is then "of no moment that the terminologies employed by R.A. No. 7610 and by the Information are different."[113] We also ruled that a child is considered one "exploited in prostitution or subjected to other sexual abuse" when the child indulges in sexual intercourse or lascivious conduct "under the coercion or influence of any adult."[114] Thus, We rule that the above-quoted Information in Criminal Case

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[112] 503 Phil. 421 (2005).

[113] *People v. Francisco Ejercito*, G.R. No. 229861, July 2, 2018.

[114] *Id.*

No. SCC-6210 sufficiently informs Tulagan of the nature and cause of accusation against him, namely: rape by sexual assault under paragraph 2, Article 266-A of the RPC in relation to R.A. No. 7610.

We also take this opportunity to address the position of Justice Caguioa and Justice Perlas-Bernabe, which is based on dissenting opinions[115] in *Olivarez* and *Quimvel*. Citing the Senate deliberations, the dissenting opinions explained that the phrase "or any other consideration or due to coercion or influence of any adult, syndicate or group," under Section 5(b) of R.A. No. 7610, was added to merely cover situations where a child is abused or misused for sexual purposes without any monetary gain or profit. The dissenting opinions added that this was significant because profit or monetary gain is essential in prostitution; thus, the lawmakers intended that in case all other elements of prostitution are present, but the monetary gain or profit is missing, the sexually abused and misused child would still be afforded the same protection of the law as if he or she were in the same situation as a child exploited in prostitution.[116]

We partly disagree with the foregoing view. The amendment introduced by Senator Eduardo Angara not only covers cases wherein the child is misused for sexual purposes not because of money or profit, and coercion or intimidation, but likewise expanded the scope of Section 5 of R.A. No. 7610 to cover not just child prostitution but also "*other sexual abuse*" in the broader context of child abuse," thus:

Senator Angara. I refer to line 9, "who for money or profit." I would like to amend this, Mr. President, to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit, so that we can cover those situations and not leave a loophole in this section.

This proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE

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[115] Penned by Senior Associate Justice Antonio T. Carpio.

[116] See Justice Carpio's Dissenting Opinion in *Quimvel v. People, supra* note 35.

COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, etcetera.

The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?

Senator Angara. No, no. Not necessarily, Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. What I am trying to cover is the other consideration. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.

I am contending, Mr. President, that there may be situations where the child may not have been used for profit or ...

The President Pro Tempore. So, it is no longer prostitution. Because the essence of prostitution is profit.

Senator Angara. Well, the Gentleman is right. Maybe the heading ought to be expanded. But, still, the President will agree that that is a form or manner of child abuse.

The President Pro Tempore. What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

Senator Angara. The new section will read something like this, Mr. President: MINORS, 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, et cetera.

Senator Lina. It is accepted, Mr. President.

The President Pro Tempore. Is there any objection? [*Silence*] Hearing none, the amendment is approved.

How about the title, "Child Prostitution," shall we change that too?

Senator Angara. Yes, Mr. President, to cover the expanded scope.

The President Pro Tempore. Is that not what we would call probably "child abuse"?

Senator Angara. Yes, Mr. President.

The President Pro Tempore. Is that not defined on line 2, page 6?

Senator Angara. Yes, Mr. President. Child prostitution and other sexual abuse.

The President Pro Tempore. Subject to rewording. Is there any objection? [*Silence*] Hearing none, the amendment is approved. Any other amendments?[117]

Indeed, the Angara amendment explains not just the rationale of the body of Section 5(b) of R.A. No. 7610 to cover a loophole or situation where the minor may have been coerced or intimidated to indulge in lascivious conduct. The amendment of President *Pro Tempore* Laurel, however, also affects the title of Article III, Section 5 of R.A. No. 7610, *i.e.*, "Child Prostitution and Other Sexual Abuse." It is settled that if a chapter and section heading has been inserted merely for convenience or reference, and not as integral part of the statute, it should not be allowed to control interpretation.[118] To our mind, however, the amendment highlights the intention to expand the scope of Section 5 to incorporate the broader concept of "child abuse," which includes acts of lasciviousness under Article 336 of the RPC committed against "children," as defined under Section 3 of R.A. No. 7610. Records of the Senate deliberation show that "child prostitution" was originally defined as "minors, whether male or female, who, for money or profit, indulge in sexual intercourse or lascivious conduct are deemed children exploited in prostitution."[119] With the late addition of the phrase "or subject to other sexual abuse," which connotes "child abuse," and in line with the policy of R.A. No. 7610 to provide stronger deterrence and special protection of children against child abuse, We take it to mean that Section 5(b) also intends to cover those crimes of child sexual abuse already punished under the RPC, and not just those children exploited in prostitution or subjected to other sexual abuse, who are coerced or intimidated to indulge

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[117] Record of the Senate, Vol. I, No. 7, August 1, 1991, p. 262.

[118] *Commissioner of Customs v. Relunia*, 105 Phil. 875 (1959).

[119] Records of the Senate, Vol. IV, No. 116, May 9, 1991, p. 33.

in sexual intercourse or lascivious conduct. This is the reason why We disagree with the view of Justice Perlas-Bernabe that the first proviso under Section 5(b) — which provides that "*when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under x x x the Revised Penal Code, for rape or lascivious conduct, as the case may be*" — is a textual indicator that R.A. No. 7610 has a specific application only to children who are pre-disposed to "consent" to a sexual act because they are "exploited in prostitution or subject to other sexual abuse," thereby negating the *ponente's* theory of general applicability.

In *People v. Larin*,[120] We held that 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 influence of any adult, syndicate or group. Under R.A. No. 7610, children are "persons below eighteen years of age or those unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of their age or mental disability or condition." Noting that the law covers not only a situation in which a child is abused for profit, but also one in which a child, through coercion or intimidation, engages in any lascivious conduct, We ruled that Section 5(b) of R.A. No. 7610 penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse of children. We stressed that this is clear from the deliberations of the Senate, and that the law does not confine its protective mantle only to children under twelve (12) years of age.

In *Amployo v. People*,[121] citing *Larin*, We observed that Section 5 of R.A. No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child engages in any lascivious conduct through coercion or intimidation. As case law has it, intimidation need not necessarily be irresistible.

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[120] 357 Phil. 987 (1998).

[121] *Supra* note 17.

It is sufficient that some compulsion equivalent to intimidation annuls or subdues the free exercise of the will of the offended party. This is especially true in the case of young, innocent and immature girls who could not be expected to act with equanimity of disposition and with nerves of steel. Young girls cannot be expected to act like adults under the same circumstances or to have the courage and intelligence to disregard the threat.

In *Olivarez vs. Court of Appeals*,[122] We held that a child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. We found that the 16-year old victim in that case was sexually abused because she was coerced or intimidated by petitioner to indulge in a lascivious conduct. We stated that it is inconsequential that the sexual abuse occurred only once because, as expressly provided in Section 3(b) of R.A. 7610, the abuse may be habitual or not. We also observed that Article III of R.A. 7610 is captioned as "Child Prostitution and Other Sexual Abuse" because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, not necessarily for money or profit, hence, the law covers not only child prostitution but also other forms of sexual abuse.

In *Garingarao v. People*,[123] We ruled that a child is deemed subject to other sexual abuse when the child is the victim of lascivious conduct under the coercion or influence of any adult. In lascivious conduct under the coercion or influence of any adult, there must be some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. We further ruled that it is inconsequential that sexual abuse under R.A. No. 7610 occurred only once. Section 3(b) of R.A. No. 7610 provides that the abuse may be

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[122] *Supra* note 111. Penned by Associate Justice Consuelo Ynares-Santiago, with Associate Justices Leonardo A. Quisumbing and Adolfo S. Azcuna, concurring; and Chief Justice Hilario G. Davide, Jr. joining the dissent of Associate Justice Antonio T. Carpio.

[123] 669 Phil. 512 (2011).

habitual or not. Hence, the fact that the offense occurred only once is enough to hold an accused liable for acts of lasciviousness under R.A. No. 7610.

In *Quimvel*,[124] We stressed that Section 5(a) of R.A. No. 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children. This is even made clearer by the deliberations of the Senate, as cited in the landmark ruling of *People v. Larin*. We also added that the very definition of "child abuse" under Section 3(b) of R.A. No. 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of, for it refers to the maltreatment whether habitual or not, of the child. Thus, a violation of Section 5(b) of R.A. No. 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual offense.

In *Caoili*,[125] We reiterated that R.A. No. 7610 finds application when the victims of abuse, exploitation or discrimination are children or those "persons below 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 has been settled that Section 5(b) of R.A. No. 7610 does not require a prior or contemporaneous abuse that is different from what is complained of, or that a third person should act in concert with the accused. Section 5 of R.A. No. 7610 does not merely cover a situation of a child being abused for profit, but also one in which a child is coerced to engage in lascivious conduct.

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[124] *Supra* note 35.

[125] *Supra* note 27, at 144.

Meanwhile, Justice Marvic Mario Victor F. Leonen partly agrees with the *ponencia* that insertion of a finger into a minor's vagina deserves a higher penalty than *prision mayor* under Article 266-A, paragraph 2 in relation to Article 266-B of the RPC. However, he asserts that non- consensual insertion of a finger in another's genitals is rape by carnal knowledge under Article 266-A, paragraph 1 of the RPC. He also reiterates his view in *People v. Quimvel* that Article 336 of the RPC has already been rendered ineffective with the passage of R.A. No. 8353.

We stand by our ruling in *Caoili* that the act of inserting a finger in another's genitals cannot be considered rape by carnal knowledge, thus:

> The language of paragraphs 1 and 2 of Article 266-A of the RPC, as amended by R.A. No. 8353. provides the elements that substantially differentiate the two forms of rape, *i.e.*, rape by sexual intercourse and rape by sexual assault. It is through legislative process that the dichotomy between these two modes of rape was created. To broaden the scope of rape by sexual assault, by eliminating its legal distinction from rape through sexual intercourse, calls for judicial legislation which We cannot traverse without violating the principle of separation of powers. The Court remains steadfast in confining its powers within the constitutional sphere of applying the law as enacted by the Legislature.
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> In fine, given the material distinctions between the two modes of rape introduced in R.A. No. 8353, the variance doctrine cannot be applied to convict an accused of rape by sexual assault if the crime charged is rape through sexual intercourse, since the former offense cannot be considered subsumed in the latter.[126]

We also maintain the majority ruling in *Quimvel* that Sec. 4 of R.A. No. 8353 did not expressly repeal Article 336 of the RPC for if it were the intent of Congress, it would have expressly done so. *Apropos* is the following disquisition in *Quimvel*:

> *x x x* Rather, the phrase in Sec. 4 states: "*deemed amended, modified, or repealed accordingly*" *qualifies* "*Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders,*

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[126] *Supra* note 27, at 143.

administrative orders, rules and regulations inconsistent with or contrary to the provisions of [RA 8353]."

As can be read, repeal is not the only fate that may befall statutory provisions that are inconsistent with RA 8353. It may be that mere amendment or modification would suffice to reconcile the inconsistencies resulting from the latter law's enactment. In this case, Art. 335 of the RPC, which previously penalized rape through carnal knowledge, has been replaced by Art. 266-A. Thus, the reference by Art. 336 of the RPC to any of the circumstances mentioned on the erstwhile preceding article on how the crime is perpetrated should now refer to the circumstances covered by Art. 266-A as introduced by the Anti-Rape Law.

We are inclined to abide by the Court's long-standing policy to disfavor repeals by implication for laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject. The failure to particularly mention the law allegedly repealed indicates that the intent was not to repeal the said law, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws. Here, RA 8353 made no specific mention of any RPC provision other than Art. 335 as having been amended, modified, or repealed. And as demonstrated, the Anti Rape Law, on the one hand, and Art. 336 of the RPC, on the other, are not irreconcilable. The only construction that can be given to the phrase "*preceding article*" is that Art. 336 of the RPC now refers to Art. 266-A in the place of the repealed Art. 335. It is, therefore, erroneous to claim that Acts of Lasciviousness can no longer be prosecuted under the RPC.

It is likewise incorrect to claim that Art. 336 had been rendered inoperative by the Anti-Rape Law and argue in the same breath the applicability of Sec. 5(b) of RA 7610. x x x

x x x x x x x x x

If Art. 336 then ceased to be a penal provision in view of its alleged incompleteness, then so too would Sec. 5(b) of RA 7610 be ineffective since it defines and punishes the prohibited act by way of reference to the RPC provision.

The decriminalization of Acts of Lasciviousness under the RPC, as per Justice Leonen's theory, would not sufficiently be supplanted by RA 7610 and RA 9262, otherwise known as the Anti-Violence Against Women and their Children Law (Anti-VAWC Law). Under RA 7610, only minors can be considered victims of the enumerated

forms of abuses therein. Meanwhile, the Anti-VAWC law limits the victims of sexual abuses covered by the RA to a wife, former wife, or any women with whom the offender has had a dating or sexual relationship, or against her child. Clearly, these laws do not provide ample protection against sexual offenders who do not discriminate in selecting their victims. One does not have to be a child before he or she can be victimized by acts of lasciviousness. Nor does one have to be a woman with an existing or prior relationship with the offender to fall prey. Anyone can be a victim of another's lewd design. And if the Court will subscribe to Justice Leonen's position, it will render a large portion of our demographics (*i.e.*, adult females who had no prior relationship to the offender, and adult males) vulnerable to sexual abuses.[127]

To be sure, deliberation of Senate Bill No. 950 which became R.A. No. 8353 reveals the legislative intent not to repeal acts of lasciviousness under Article 336 of the RPC as a crime against chastity, but only to reclassify rape as a crime against persons, thus:

Senator Enrile: x x x

As I indicated last week, I will support this bill but I would like to clarify some points just to set the matters into the Record.

Mr. President, the first thing I would like to find out is the status of this bill — whether this is going to be a statutory crime or a part of the crimes defined in the Revised Penal Code.

There is a big difference between these two concepts, Mr. President, because all of us who have studied law know in our course in Criminal Law two of crimes: Crimes which we call *malum prohibitum* which are statutory crimes and *mala in se* or crimes that would require intent. That is why we always recite the principle that *actus non facit reum, nisi mens sit rea*. Because in every crime defined in the Revised Penal Code, we required what they call a *mens rea*, meaning intent to commit a crime in almost all cases: attempted, frustrated and consummated.

Now, am I now to understand, Madam Sponsor, that this type of crime will be taken out of the Revised Penal Code and shall be covered by a special law making it a statutory crime rather than a crime that is committed with the accompaniment of intent.

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[127] *Supra* note 35, at 247.

Senator Shahani: Mr. President, we will recall that this was the topic of prolonged interpellations not only by Senator Enrile, but also by Senator Sotto. In consultation with Senator Roco — we were not able to get in touch with Senator Santiago — we felt that the purpose of this bill would be better served if we limited the bill to amending Article 335 of the Revised Penal Code, at the same time expanding the definition of rape, reclassifying the same as a crime against persons, providing evidentiary requirements and procedures for the effective prosecution of offenders, and institutionalizing measures for the protection and rehabilitation of rape victims and for other purposes. In other words, it stays within the Revised Penal Code, and rape is associated with criminal intent.

Having said this, it means that there will be a new chapter. They are proposing a new chapter to be known as Chapter III on rape, under Title 8 of the Revised Penal Code. There it remains as a crime against persons and no longer as a crime against chastity, but the criminal intent is retained.

Senator Enrile. So, the distinction between rape as a crime, although now converted from a crime against chastity to a crime against persons, and seduction and act of lasciviousness would be maintained. Am I correct in this, Mr. President?

Senator Shahani. That is correct, Mr. President.[128]

In light of the foregoing disquisition, We hold that Tulagan was aptly prosecuted for sexual assault under paragraph 2, Article 266-A of the RPC in Criminal Case. No. SCC-6210 because it was alleged and proven that AAA was nine (9) years old at the time he inserted his finger into her vagina. Instead of applying the penalty under Article 266-B of the RPC, which is *prision mayor*, the proper penalty should be that provided in Section 5(b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period. This is because AAA was below twelve (12) years of age at the time of the commission of the offense, and that the act of inserting his finger in AAA's private part undeniably amounted to "lascivious conduct."[129] Hence, the

[128] Record of the Senate, Bill on Second Reading, S. No. 950- Special Law on Rape, July 29, 1996.

[129] Section 3(h) of R.A. No. 7610 states that "lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia,

proper nomenclature of the offense should be Sexual Assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5(b), Article III of R.A. No. 7610.

Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Hence, Tulagan should be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

In Criminal Case No. SCC-6211 for statutory rape, We affirm that Tulagan should suffer the penalty of *reclusion perpetua* in accordance with paragraph 1(d), Article 266-A in relation to Article 266-B of the RPC, as amended by R.A. No. 8353.

Damages

For the sake of consistency and uniformity, We deem it proper to address the award of damages in cases of Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610, and Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610. Considering that the imposable penalties for the said two crimes are within the range of *reclusion temporal*, the award of civil indemnity and moral damages should now be fixed in the amount of ₱50,000.00 each. The said amount is based on *People v. Jugueta*[130] which awards civil indemnity and moral

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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.

[130] *Supra* note 13.

damages in the amount of ₱50,000.00 each in cases of homicide where the imposable penalty is *reclusion temporal*. In case exemplary damages are awarded due to the presence of any aggravating circumstance, to set a public example, or to deter elders who abuse and corrupt the youth, then an equal amount of ₱50,000.00 should likewise be awarded.

The said award of civil indemnity, moral damages and exemplary damages should be distinguished from those awarded in cases of: (1) Acts of Lasciviousness under Article 336 of the RPC where the imposable penalty is *prision correccional*, the amount of civil indemnity and moral damages should now be fixed at ₱20,000.00 while exemplary damages, if warranted, should also be ₱20,000.00; (2) Sexual Assault under paragraph 2, Article 266-A of the RPC where the imposable penalty is *prision mayor*, the award of civil indemnity and moral damages should be fixed at ₱30,000.00 each, while the award of exemplary damages, if warranted, should also be ₱30,000.00 pursuant to prevailing jurisprudence;[131] and (3) Lascivious conduct under Section 5(b) of R.A. No. 7610, when the penalty of *reclusion perpetua* is imposed, and the award of civil indemnity, moral damages and exemplary damages is ₱75,000.00 each.

The justification for the award of civil indemnity, moral damages and exemplary damages was discussed in *People v. Combate*,[132] as follows:

> First, **civil indemnity** *ex delicto* is the indemnity authorized in our criminal law for the offended party, in the amount authorized by the prevailing judicial policy and apart from other proven actual damages, which itself is equivalent to actual or compensatory damages in civil law. This award stems from Article 100 of the RPC which states, "Every person criminally liable for a felony is also civilly liable."
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> Civil liability *ex delicto* may come in the form of restitution, reparation, and indemnification. Restitution is defined as the compensation for loss; it is full or partial compensation paid by a criminal to a victim ordered as part of a criminal sentence or as a

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[131] *People v. Brioso, supra* note 48; *Ricalde v. People*, 751 Phil. 793 (2015).

[132] 653 Phil. 487 (2010).

condition for probation. Likewise, reparation and indemnification are similarly defined as the compensation for an injury, wrong, loss, or damage sustained. Clearly, all of these correspond to actual or compensatory damages defined under the Civil Code.

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The second type of damages the Court awards are **moral damages**, which are also compensatory in nature. *Del Mundo v. Court of Appeals* expounded on the nature and purpose of moral damages, *viz*.:

> **Moral damages**, upon the other hand, may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered. Although incapable of exactness and no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is imperative, nevertheless, that (1) injury must have been suffered by the claimant, and (2) such injury must have sprung from any of the cases expressed in Article 2219 and Article 2220 of the Civil Code x x x.

Similarly, in American jurisprudence, **moral damages** are treated as "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong." They may also be considered and allowed "for resulting pain and suffering, and for humiliation, indignity, and vexation suffered by the plaintiff as result of his or her assailant's conduct, as well as the factors of provocation, the reasonableness of the force used, the attendant humiliating circumstances, the sex of the victim, [and] mental distress."

The rationale for awarding **moral damages** has been explained in *Lambert v. Heirs of Rey Castillon:* "[T]he award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted."

Corollarily, **moral damages** under Article 2220 of the Civil Code also does not fix the amount of damages that can be awarded. It is discretionary upon the court, depending on the mental anguish or the suffering of the private offended party. The amount of moral damages can, in relation to civil indemnity, be adjusted so long as it does not exceed the award of civil indemnity.

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Being corrective in nature, **exemplary damages**, therefore, can be awarded, not only due to the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. In *People of the Philippines v. Cristino Cañada*, *People of the Philippines v. Pepito Neverio* and *People of the Philippines v. Lorenzo Layco, Sr.,* the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.[133]

In summary, the award of civil indemnity, moral damages and exemplary damages in Acts of Lasciviousness under Article 336 of the RPC, Acts of Lasciviousness in relation to Section 5(b) of R.A. No. 7610, Lascivious Conduct under Section 5(b) of R.A. No. 7610, Sexual Assault under paragraph 2, Article 266-A of the RPC, and Sexual Assault in relation to Section 5(b) of R.A. No. 7610, are as follows:

Crime	**Civil Indemnity**	**Moral Damages**	**Exemplary Damages**[134]
Acts of Lasciviousness under Article 336 of the RPC [Victim is of legal age]	₱20,000.00	₱20,000.00	₱20,000.00
Acts of lasciviousness in	₱50,000.00	₱50,000.00	₱50,000.00

[133] *Id.* at 504-508. (Emphasis added; citations omitted).

[134] If an aggravating circumstance is present or to set as a public example to deter sexual abuse.

relation to Section 5(b) of R.A. No. 7610 [Victim is a child under 12 years old or is demented]			
Sexual Abuse or Lascivious Conduct under Section 5(b) of R.A. No. 7610 [Victim is a child 12 years old and below 18, or above 18 under special circumstances]	₱75,000.00 (If penalty imposed is *reclusion perpetua*)	₱75,000.00 (If penalty imposed is *reclusion perpetua*)	₱75,000.00 (If penalty imposed is *reclusion perpetua*)
	₱50,000.00 (If penalty imposed is within the range of *reclusion temporal medium*)	₱50,000.00 (If penalty imposed is within the range of *reclusion temporal medium*)	₱50,000.00 (If penalty imposed is within the range of *reclusion temporal medium*)
Sexual Assault under Article 266-A(2) of the RPC [Victim is of legal age]	₱30,000.00	₱30,000.00	₱30,000.00
Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610 [Victim is a child under 12 years old or is demented]	₱50,000.00	₱50,000.00	₱50,000.00

It is settled that an award of civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape, and moral damages may be automatically awarded in rape cases without need of proof of mental and physical suffering. The award of exemplary damages is also called for to set a public example and to protect the young from sexual abuse. As to the civil liability in Criminal Case No. SCC-6210 for sexual assault under paragraph 2, Article 266-A of the RPC, in relation to Section 5(b) of R.A. No. 7610, Tulagan should, therefore, pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

Anent the award of damages in Criminal Case No. SCC-6211 for statutory rape, We modify the same in line with the ruling in *People v. Jugueta*,[135] where We held that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages." Also in consonance with prevailing jurisprudence, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

Over and above the foregoing, We observe that despite the clear intent of R.A. No. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty for violation of Section 5(b) of R.A. No. 7610 [*reclusion temporal* medium] when the victim is under 12 years old is lower compared to the penalty [*reclusion temporal* medium to *reclusion perpetua*] when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31,[136] Article XII of R.A. No. 7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum,[137] whereas as the minimum term in the case of the

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[135] *Supra* note 13.

[136] Section 31. *Common Penal Provisions*. —

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(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked.

[137] Ranging from 12 years and 1 day to 14 years and 8 months.

older victims shall be taken from *prision mayor medium* to *reclusion temporal minimum*.[138] It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints,[139] but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law.[140] Thus, a corrective legislation is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child.

We further note that R.A. No. 8353 did not expressly repeal Article 336 of the RPC, as amended. Section 4 of R.A. No. 8353 only states that Article 336 of the RPC, as amended, and all laws, rules and regulations inconsistent with or contrary to the provisions thereof are deemed amended, modified or repealed, accordingly. There is nothing inconsistent between the provisions of Article 336 of the RPC, as amended, and R.A. No. 8353, except in sexual assault as a form of rape. To recall, R.A. No. 8353 only modified Article 336 of the RPC, as follows: (1) by carrying over to acts of lasciviousness the additional circumstances[141] applicable to rape, *viz*.: threat and fraudulent machinations or grave abuse of authority; (2) by retaining the circumstance that the offended party is under 12 years old, and including dementia as another one, in order for acts of lasciviousness to be considered as statutory, wherein evidence of force or intimidation is immaterial because the offended party who is under 12 years old or demented, is presumed incapable of giving rational consent; and (3) by removing from the scope of acts of lasciviousness and placing under the crime of rape by sexual assault the specific lewd act of inserting the offender's

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[138] Ranging from 8 years 1 day to 14 years and 8 months.

[139] *Lamb v. Phipps*, 22 Phil. 456 (1912).

[140] *People v. De Guzman*, 90 Phil. 132 (1951).

[141] Aside from the use of force or intimidation, or when the woman is deprived of reason or otherwise unconscious.

penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. Hence, Article 336 of the RPC, as amended, is still a good law despite the enactment of R.A. No. 8353 for there is no irreconcilable inconsistency between their provisions. When the lascivious act is not covered by R.A. No. 8353, then Article 336 of the RPC is applicable, except when the lascivious conduct is covered by R.A. No. 7610.

We are also not unmindful of the fact that the accused who commits acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b) of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period, than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*.

In *People v. Chingh*,[142] We noted that the said fact is undeniably unfair to the child victim, and it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. We held that despite the passage of R.A. No. 8353, R.A. No. 7610 is still a 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."[143]

In *Dimakuta*, We added that where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium and the said act is, likewise, covered by sexual assault under Art. 266-A, paragraph 2 of the RPC, which is punishable by *prision mayor*, the offender should be liable for violation of Section 5(b), Article III of R.A. No. 7610, where the law provides the higher penalty of *reclusion temporal* medium, if the offended party is a child. But if the victim is at least eighteen (18) years of age, the offender should

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[142] 661 Phil. 208 (2011).

[143] R.A. No. 7610, Art. I, Sec. 3(a).

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 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 of sexual abuse under R.A. No. 7610. The reason for the foregoing is that with respect to lascivious conduct, R.A. No. 7610 affords special protection and stronger deterrence against child abuse, as compared to R.A. No. 8353 which specifically amended the RPC provisions on rape.

Finally, despite the enactment of R.A. No. 8353 more than 20 years ago in 1997, We had been consistent in our rulings in *Larin, Olivarez*, and *Garingarao, Quimvel* and *Caoili,* all of which uphold the intent of R.A. No. 7610 to provide special protection of children and stronger deterrence against child abuse. Judicial stability compels to stand by, but not to abandon, our sound rulings: [1] that Section 5(b), Article III of R.A. No. 7610 penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse wherein a child engages in sexual intercourse or lascivious conduct through coercion or influence; and [2] that it is inconsequential that the sexual abuse occurred only once. Our rulings also find textual anchor on Section 5, Article III of R.A. No. 7610, which explicitly states that a child is deemed "exploited in prostitution or subjected to other sexual abuse," when the child indulges in sexual intercourse or lascivious conduct for money, profit or any other consideration, or under the coercion or influence of any adult, syndicate or group, as well as on Section 3(b), Article I thereof, which clearly provides that the term "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse.

If the lawmakers disagreed with our interpretation, they could have easily amended the law, just like what they did when they enacted R.A. No. 10591[144] [Amendment on the provision of

[144] *AN ACT PROVIDING FOR A COMPREHENSIVE LAW ON FIREARMS AND AMMUNITION AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF.*

use of firearm in the commission of a crime], R.A. No. 10951[145] [Amendments to certain penalty and fines under the Revised Penal Code] and R.A. No. 10707[146] [Amendments to the Probation Law] after We rendered *People v. Ladjaalam*,[147] *Corpuz v. People*,[148] *Colinares v. People* and *Dimakuta v. People*, respectively, and their silence could only be construed as acquiescence to our rulings.

WHEREFORE, PREMISES CONSIDERED, the appeal is **DENIED**. The Joint Decision dated February 10, 2014 of the Regional Trial Court in Criminal Case Nos. SCC-6210 and SCC-6211, as affirmed by the Court of Appeals Decision dated August 17, 2015 in CA-G.R. CR-HC No. 06679, is **AFFIRMED** with **MODIFICATIONS**. We find accused-appellant Salvador Tulagan:

1. Guilty beyond reasonable doubt of **Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610**, in Criminal Case No. SCC-6210, and is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Appellant is **ORDERED** to **PAY** AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

2. Guilty beyond reasonable doubt of **Statutory Rape under Article 266-A(1)(d) and penalized in Article 266-B of the Revised Penal Code**, in Criminal Case

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[145] *AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE,"* AS AMENDED.

[146] *Supra* note 98.

[147] 395 Phil. 1 (2005).

[148] 734 Phil. 353 (2014).

> No. SCC-6211, and is sentenced to suffer the penalty of *reclusion perpetua* with modification as to the award of damages. Appellant 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.

Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

Let a copy of this Decision be furnished the Department of Justice, the Office of the Solicitor General, the Office of the Court Administrator, and the Presiding Justice of the Court of Appeals, for their guidance and information, as well as the House of Representatives and the Senate of the Philippines, as reference for possible statutory amendments on the maximum penalty for lascivious conduct under Section 5(b), Article III of R.A. No. 7610 when the victim is under 12 years of age [*reclusion temporal medium*], and when the victim is 12 years old and below 18, or 18 or older under special circumstances [*reclusion temporal medium* to *reclusion perpetua*] under Section 3(a) of R.A. No. 7610.

SO ORDERED.

Bersamin, C.J., Carpio, del Castillo, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, and *Carandang, JJ*., concur.

Perlas-Bernabe, J., see separate opinion.

Leonen, J., concurring in the result, see separate opinion.

Jardeleza, J., joins the separate concurring and dissenting opinion of *J.* Caguioa.

Caguioa, J., see separate concurring and dissenting opinion.

Lazaro-Javier, J., no part.

SEPARATE OPINION

PERLAS-BERNABE, *J.*:

While I agree with the resulting verdict against accused-appellant Salvador Tulagan (Tulagan), I tender this Opinion to address the relevant points stated in the *ponencia* anent the proper application of Section 5 (b), Article III of Republic Act No. (RA) 7610[1] in sexual abuse cases involving minors. As will be made evident below, there is a fundamental difference between the *ponencia*'s and my underlying postulations, which therefore precludes me from concurring with the majority.

At its core, the *ponencia* propounds an expansive view on the application of Section 5 (b), Article III of RA 7610. Citing *Quimvel v. People*[2] (*Quimvel*), the *ponencia* explains that RA 7610 does not only cover a situation where a child is abused for profit but also one in which a child, through coercion or intimidation, engages in sexual intercourse or lascivious conduct.[3] To recall, the majority ruling in *Quimvel* observed that "[a]lthough the presence of an offeror or a pimp is the typical set up in prostitution rings, this does not foreclose the possibility of a child voluntarily submitting himself or herself to another's lewd design for consideration, monetary or otherwise, without third person intervention."[4] As such, "[i]t is immaterial whether or not the accused himself employed the coercion or influence to subdue the will of the child for the latter to submit to his sexual advances for him to be convicted under paragraph (b). [Section 5, Article III] of RA 7610 even provides that the offense can be committed by 'any adult, syndicate or group,' without qualification."[5] Based on these pronouncements, the *ponencia*

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[1] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES," approved on June 17, 1992.

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

[3] See *ponencia*, p. 51.

[4] *Quimvel v. People*, *supra* note 2, at 239.

[5] *Id*. at 239-240.

therefore concludes that the mere act of sexual abuse against any child qualifies him or her to be "subject to other sexual abuse," and hence, under the coverage of RA 7610.[6]

In addition, the *ponencia* points out that the policy of RA 7610 is "to provide stronger deterrence and special protection to children from all forms of abuse, neglect, cruelty, exploitation, discrimination and other conditions prejudicial to their development."[7] It further cites the sponsorship speeches of Senators Jose Lina (Sen. Lina) and Santanina Rasul (Sen. Rasul) to explain that the intent of RA 7610 is to protect all children against all forms of abuse,[8] as well as the amendment introduced by Senator Edgardo J. Angara (Sen. Angara), *i.e*., the addition of the phrase "or other sexual abuse" to "exploited in prostitution," which supposedly highlights the intention of Congress to expand the scope of Section 5, Article III of RA 7610 to incorporate the broader concept of "child abuse."[9] With these in tow, the *ponencia* thus finds it "hard to understand why the legislature would enact a penal law on child abuse that would create an unreasonable classification between those who are considered ['*exploited in prostitution or subject to other sexual abuse*' (EPSOSA for brevity)] and those who are not."[10] However, the *ponencia* qualifies that RA 7610 would not apply if the minor is under twelve (12) years of age since the accused would be punished under the provisions on statutory rape.[11]

With all due respect, I disagree that RA 7610 would be generally applicable to all cases of sexual abuse involving minors, except those who are under twelve (12) years of age. After much reflection, I instead concur with the views originally

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[6] See *ponencia*, pp. 51-53. See also Concurring Opinion of Associate Justice Diosdado M. Peralta in *Quimvel v. People*, *supra* note 2, at 272-285.

[7] *Ponencia*, p. 36.

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

[9] *Id*. at 50-52.

[10] *Id*. at 36.

[11] See *id*. at 19-20.

advanced by Senior Associate Justice Antonio T. Carpio (Justice Carpio) and Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa)[12] that Section 5 (b), Article III of RA 7610 only applies in instances where the child-victim is "*exploited in prostitution or subject to other sexual abuse*." To my mind, this limited view, as opposed to the *ponencia*'s expansive view, is not only supported by several textual indicators both in the law and the deliberations, it also squares with practical logic and reason, as will be explained below:

(1) As the law's title itself denotes, RA 7610 was intended to provide **stronger deterrence** and **special protection** against child abuse, exploitation and discrimination.[13] The idea of providing "stronger deterrence" and "special protection" connotes that Congress was not only establishing a more robust form of penal legislation, it was also creating something new. Thus, to suppose that RA 7610 would generally cover acts already punished under the Revised Penal Code (RPC) would defy the operational logic behind the introduction of this special law. Notably, the Court can take judicial notice of the fact that in the past decades of increasing modernity, Congress has been passing laws to penalize reprehensible acts which were not contemplated under the RPC. With respect to children, special penal laws such as the Child and Youth Welfare Code,[14] the Anti-Child Pornography Act of 2009,[15] and the Anti-Violence Against Women and Their Children Act of 2004[16] created new havens of protection which were previously uncharted by the

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[12] See Dissenting Opinions of Justice Carpio and Justice Caguioa in *Quimvel v. People*, *supra* note 2, at 253-263 and 296-323, respectively.

[13] See also Section 2 of RA 7610.

[14] Presidential Decree No. 603 approved on December 10, 1974.

[15] RA 9775 entitled "AN ACT DEFINING THE CRIME OF CHILD PORNOGRAPHY, PRESCRIBING PENALTIES THEREFOR AND FOR OTHER PURPOSES," approved on November 17, 2009.

[16] RA 9262 entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004.

RPC. As I see it, RA 7610, especially with its peculiar signification of children "exploited in prostitution or subject to other sexual abuse," should be similarly regarded as these laws.

To expound, neither the old provisions of the RPC nor existing jurisprudence at the time RA 7610 was passed ever mentioned the phrase "*exploited in prostitution or subject to other sexual abuse*." Commonsensically therefore, the concept of EPSOSA should be deemed as a novel introduction by legislature. The driving force behind this legislative innovation can be gleaned from the deliberations. As explicated in her Sponsorship Speech, Sen. Rasul recognized that one of the reasons for introducing Senate Bill No. 1209 (which later became RA 7610) was to address the lack of criminal laws involving abused children as noted by the Supreme Court in the case of *People v. Ritter* (*Ritter*).[17] Notably, in *Ritter*, the Court acquitted the accused of rape on the ground that the child was not proven to be below the statutory age of twelve (12) years old nor was it proven that the sexual intercourse was attended with force or intimidation.[18] Thus, it was observed:

> **[Sen.] Rasul.** x x x
>
> x x x x x x x x x
>
> But undoubtedly, the most disturbing, to say the least, is the persistent report of children being sexually exploited and molested for purely material gains. Children with ages ranging from three to 18 years are used and abused. x x x
>
> x x x x x x x x x
>
> x x x No less than the Supreme Court, in the recent case of *People vs. Ritter*, held that **we lack criminal laws which will adequately protect street children from exploitation by pedophiles.** x x x.[19]

Borne from this legal hiatus, RA 7610 was enacted to, practically speaking, protect those who, like the child-victim

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[17] 272 Phil. 532 (1991).

[18] See *id*. at 546-570.

[19] Record of the Senate, Vol. III, No. 104, March 19, 1991, p. 1204.

in *Ritter*, "willingly engaged" in sexual acts, not out of a desire to satisfy their own sexual gratification, but because of their **vulnerable pre-disposition as exploited children**. This vulnerable pre-disposition is embodied in the concept of EPSOSA, which, as opposed to the RPC, effectively dispenses with the need to prove the lack of consent at the time the act of sexual abuse is committed. Accordingly, when it comes to a prosecution under Section 5 (b), Article III of RA 7610, consent at the time the sexual act is consummated is, unlike in the RPC, not anymore a defense. It is in this light that RA 7610 fills in the gaps of the RPC.

With these in mind, it is thus my view that RA 7610, specifically with its introduction of the EPSOSA element, is a lucid recognition by Congress that a child need not be forced, intimidated or, in any manner prevailed upon, at the time of the act's commission to be considered sexually abused or exploited; rather, it is enough that the child is put under a vulnerable pre-disposition that leads him or her to "consent" to the sexual deed. This niche situation, whether based on monetary ("exploited in prostitution") or non-monetary ("or subject to other sexual abuse") considerations, is what Section 5 (b), Article III of RA 7610 uniquely punishes. And in so doing, RA 7610 expands the range of existing child protection laws and effectively complements (and not redundantly supplants) the RPC. This intended complementarity is extant in Sen. Lina's sponsorship speech on RA 7610, *viz*.:

> **[Sen.] Lina.** x x x
>
> Senate Bill No. 1209, Mr. President is intended to provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse. **It is intended to complement the provisions of the Revised Penal Code where the crimes committed are those which lead children to prostitution and sexual abuse, trafficking in children and use of the young in pornographic activities**.
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> x x x x x x x x x[20]
>
> (Emphasis and underscoring supplied)

[20] Record of the Senate, Vol. IV, No. 111, April 29, 1991, pp. 190-191.

(2) In relation to the first point, it is noteworthy that a general view on the application of RA 7610 would also lead to an unnerving incongruence between the law's policy objective and certain penalties imposed thereunder. For instance, if we were to subscribe to the *ponencia*'s theory that RA 7610 would generally apply to all sexual abuse cases involving minors twelve (12) years of age and above, then *why would RA 7610—which was supposedly intended to provide stronger deterrence and special protection against child abuse — provide for a lower penalty for child abuse committed through sexual intercourse than that provided under the then existing RPC framework?* For context, under Article 335 of the RPC prior to its amendment by RA 8353 (or the Anti-Rape Law of 1997), the crime of rape committed against a minor, who is not under twelve (12) years of age and not falling under the enumerated qualifying circumstances, is punished with the penalty of *reclusion perpetua* to death. On the other hand, under Section 5 (b), Article III of RA 7610, the crime of sexual abuse committed through sexual intercourse (or lascivious conduct) against a child EPSOSA is punished with the penalty of *reclusion temporal* in its medium period to *reclusion perpetua*. Clearly, it would not make sense for Congress to pass a supposedly stronger law against child abuse if the same carries a lower penalty for the same act of rape already punished under the old RPC provision.

This incongruence is only made possible if one considers Section 5 (b), Article III of RA 7610 to have overlapped with an act already punished under the existing penal code. Verily, this could not have been the intent of our lawmakers. On the other hand, respecting the complementarity between RA 7610 and RPC would cogently subserve the policy objective to provide stronger deterrence and special protection against child abuse. As Justice Caguioa astutely remarked, "[RA] 7610 and the RPC x x x have different spheres of application; they exist to complement each other such that there would be no gaps in our criminal laws."[21] Thus, given that the application of RA 7610 is **independent — and in fact, mutually exclusive — from** the

[21] See Concurring and Dissenting Opinion of Justice Caguioa, p. 33.

RPC's rape and acts of lasciviousness provisions, the penchant of the *ponencia*[22] to determine which law would apply based on which law provides the higher penalty therefor becomes unneccessary. Simply put, if **(a)** RA 7610 applies in a scenario where the accused sexually abuses a child who "consents" to the deed but is nonetheless EPSOSA, and **(b)** this case is treated separately and differently from the RPC scenario wherein the child does not consent to the sexual act because he is forced, intimidated, or otherwise prevailed upon by the accused, **then there would be no quandary in choosing which law to apply based on which provides the higher penalty therefor**. Neither would there be any need for corrective legislation as the *ponencia* suggests[23] if only RA 7610's provisions are interpreted correctly. Again, as originally and meticulously designed by Congress, the laws on sexual abuse of minors have their own distinct spheres of application: apply RA 7610 in scenario (a); apply the RPC in scenario (b). In understanding the intent of Congress to fill in the gaps in the law, it is my position that Section 5, Article III of RA 7610 must be treated as a *separate and distinct statutory complement which works side-by-side with the RPC*; it should not, as the *ponencia* assumes, be deemed as a fully comprehensive statute which substantively subsumes and even supplants the sexual abuse scenarios already covered by the RPC. If it were so, then RA 7610 should not have been crafted as a special penal law but as amendatory statute of the existing penal code.

(3) The proviso under Section 5 (b), Article III of RA 7610 — which provides that "*when the [victim] is under twelve (12) years of age, the perpetrators* ***shall be prosecuted under x x x the Revised Penal Code****, for rape or lascivious conduct, as the case may be*" — *is a textual indicator* that RA 7610 has a specific application only to children who are pre-disposed to "consent" to a sexual act because they are "exploited in prostitution or subject to other sexual abuse." For reference, Section 5 (b), Article III of RA 7610 reads in full:

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[22] See *ponencia*, pp. 38-40. See also *Dimakuta v. People,* 771 Phil. 641, 670-671 (2015).

[23] See *ponencia*, pp. 43-44.

Section 5. Child Prostitution and Other Sexual Abuse.— x x x

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; x x x

x x x x x x x x x
(Emphasis and underscoring supplied)

While the phrase "*shall be prosecuted under*" has not been discussed in existing case law, it is my view that the same is a clear instruction by the lawmakers to defer any application of Section 5 (b), Article III of RA 7610, irrespective of the presence of EPSOSA, when the victim is under twelve (12). As a consequence, when an accused is prosecuted under the provisions of the RPC, only the elements of the crimes defined thereunder must be alleged and proved. Necessarily too, unless further qualified, as in the second proviso, *i.e., 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*, the penalties provided under the RPC would apply.

In this relation, it may thus be ruminated: *why did RA 7610 defer application to the RPC, when the victim is under twelve (12) years of age*? After much thought, it is my opinion that this self-evident deference to the RPC hints on the meaning of EPSOSA and consequentially, Section 5 (b), Article III of RA 7610's niche application. As discussed, EPSOSA is a circumstantial pre-disposition which effectively taints the child's consent. As a "consent-tainting" element which is integral and unique to RA 7610, the proviso "shall be prosecuted under [the RPC]" recognizes that one cannot prosecute a sex offender under RA 7610 when a child is under twelve (12) years of age. **This is because the concept of consent is altogether immaterial**

when a child is below twelve (12) years of age because the latter is conclusively presumed to be incapable of giving consent.[24] In other words, since the question of consent will never be at issue when the victim is under twelve (12) years of age, then the application of Section 5 (b), Article III of RA 7610 becomes technically impossible.

The foregoing analysis, to my mind, reinforces the point that RA 7610 was meant to apply only to cases **where the consent of the child** (insofar as his pre-disposition to consent [which should be contradistinguished from consent at the time of the act's consummation which falls under the RPC]) **is at question**. To this end, *if RA 7610 was intended to apply to "all forms of sexual abuse" under a general reading of the law, then why does RA 7610 need to defer to the RPC provisions on statutory rape or lascivious conduct? If RA 7610 overlapped with and equally covered the acts punished under the RPC, then why the need of inserting a qualifying proviso when the child-victim is under twelve (12) years of ag*e? **Surely, if the intendment of RA 7610 was to generally apply to all forms of sexual abuse, then it could have very well applied to cases wherein the child is under twelve (12) years of age.** The explicit qualification contained in the first proviso of Section 5 (b), Article III of RA 7610 apparently negates the *ponencia*'s theory of general applicability.

Notably, the *ponencia* utilizes *the fact that the first proviso of Section 5 (b), Article III of RA 7610 explicitly mentions the RPC* as basis to support its position that Section 5 (b), Article III of RA 7610 should not only be limited to the unique context of "child prostitution, other sexual abuse in relation to prostitution, and the specific acts punished under RA 7610."[25] In other words, the *ponencia* theorizes that since Section 5 (b), Article III of RA 7610 mentions the RPC in its provisos, then *ipso facto* RA 7610 was meant to generally cover even acts of sexual abuse previously punished under the already existing

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[24] See *People v. Manaligod*, G.R. No. 218584, April 25, 2018.

[25] *Ponencia*, p. 38.

RPC. Accordingly, it submits the following interpretation: "[w]hen the first proviso of Section 5 (b) states that 'when the victim is under 12 years of age[, the perpetrators] shall be prosecuted under the RPC,' it only means that the elements of rape under then Article 335, paragraph 3 of the RPC [now Article 266-A, paragraph 1 (d)], and of acts of lasciviousness under Article 336 of the RPC, have to be considered, alongside the element of the child being 'exploited in prostitution and or other sexual abuse.'"[26]

I respectfully disagree. The fact that Section 5 (b), Article III of RA 7610 mentions the RPC does not automatically mean that it was meant to cover the acts already punished in the RPC. To properly interpret its sense, the context in which the RPC is mentioned must be taken into consideration; after all, words do not simply appear on the face of a statute without purposive and rational intention. Here, the RPC is mentioned in a proviso. Jurisprudence dictates that "[t]he office of a proviso is to limit the application of the law. It is contrary to the nature of a proviso to enlarge the operation of the law."[27] Simply stated, a proviso, by nature, is meant to either be a qualifier or an exception. As afore-discussed, it is my view that EPSOSA is a special element meant to address a situation not contemplated under the RPC. The general rule is that "[t]hose who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse" should be punished under Section 5 (b) of RA 7610 because this is the unique situation sought to be covered by the special law. However, if a child is below 12 the law conclusively presumes the lack of consent — may it be consent at the time the crime is consummated or consent as a pre-disposition to give in into a sexual act. Since consent is lacking in a case where the child is 12 years old, EPSOSA which is intrinsically a "consent-element" virtually vanishes from the equation. Therefore, *since there would never be a case of EPSOSA when the child is less than 12*, the proviso — being an exceptive clause which limits the application of the

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[26] *Id*.

[27] *Borromeo v. Mariano*, 41 Phil. 322, 326 (1921).

law, *i.e.*, Section 5 (b), Article III of RA 7610 — actually directs that the prosecution of accused should fall under the RPC where EPSOSA is not material. In this regard, the proviso serves as a statutory recognition of Section 5 (b), Article III of RA 7610's own limitations, hence, the need to defer prosecution under the elements of the RPC. To my mind, this interpretation, which only becomes possible under the proposed limited view of Section 5 (b), Article III of RA 7610, squares with the nature of a proviso.

Besides, the *ponencia*'s above-interpretation of the first proviso of Section 5 (b), Article III of RA 7610 (*i.e.*, that the elements of the RPC should be read alongside with the element of EPSOSA) does not carry any practical value *since the elements of rape and acts of lasciviousness when considered alongside the element of EPSOSA already constitute the crime punished under the general clause prior to the proviso*. In particular, the opening phrase of Section 5 (b), Article III of RA 7610 already punishes "[t]hose who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse." Thus, under the *ponencia*'s interpretation, the first proviso of Section 5(b) would practically add nothing to the law since when one is prosecuted under the opening phrase, the elements of rape and acts of lasciviousness[28] are already considered. As such, the opening phrase of Section 5 (b) of RA 7610 would have served the purpose of punishing a sex offender who has sexual intercourse

[28] The elements of rape are: "(1) sexual congress, (2) with a woman, (3) by force and without consent x x x." Meanwhile, "[t]he elements of the crime of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done (a) by using force or intimidation or (b) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex." (*People v. Dela Cuesta*, 430 Phil. 742, 751-752 [2002].)

With the exception of the EPSOSA element, the above-stated elements, *when committed against a child*, are substantively present in the crime of violation of Section 5 (b), Article III of RA 7610: (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. (See *Olivarez v. Court of Appeals*, 503 Phil. 421, 431 [2005].)

or commits acts of lasciviousness against a child, even without the first proviso.

(4) In the deliberations of RA 7610, Sen. Lina explained that despite the presence of monetary considerations, the prosecution of the accused will still be under Article 335 of the RPC, and the concept of Rape under the RPC shall be followed, *viz*.:

Senator Pimentel. At any rate, Mr. President, before a clean copy is finally made available, perhaps, the distinguished Gentleman can tell us already **what will be the effect of this particular amendment on the rape provisions of the Revised Penal Code**. Would it mean that the rape of a female child below 12 years old, whether or not there is force, but there is no profit motive constitutes rape? In other words, are we limiting the scope of the crime of rape of a child below 12 years old to that particular instance?

[Sen.] Lina. No, Mr. President, as stated in the Committee amendment which has just been approved but which, of course, can still stand some individual amendments during the period of individual amendment, it is stated that, "PROVIDED, THAT WHEN THE VICTIM IS TWELVE (12) YEARS OR LESS, THE PERPETRATOR SHALL BE PROSECUTED UNDER ARTICLE 335, PAR. 3, AND ARTICLE 336 OF R.A. 3815, AS AMENDED."

Article 335 of the Revised Penal Code, Mr. President, is, precisely, entitled: "When And How Rape Is Committed." So, **prosecution will still be under Article 335, when the victim is 12 years old or below**.

Senator Pimentel. Despite the presence of monetary considerations?

[Sen.] Lina. Yes, Mr. President. It will still be rape. **We will follow the concept as it has been observed under the Revised Penal Code**. Regardless **of monetary consideration, regardless of consent**, the perpetrator will still be charged with statutory rape.

x x x x x x x x x[29]

(Emphases and underscoring supplied)

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[29] Record of the Senate, Vol. IV, No. 116, May 9, 1991 , pp. 333-334.

Hence, to support the preceding point, there seems to be a conscious *delineation* by members of Congress between the concept of Rape under the RPC and the violation under Section 5, Article III of RA 7610.

To be sure, the fact that the original phrase "exploited in prostitution" was later extended to include the phrase "or subject to other sexual abuse" is not sufficient basis to break this delineation. As the deliberations further show, the intent behind the addition is to plug the loophole on exploitative circumstances that are not based on non-monetary considerations:

[Sen.] Angara. I refer to line 9, **"who for money or profit." I would like to amend this, Mr. President, to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit, so that we can cover those situations and not leave loophole in this section.**

The proposal I have is something like this: WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, *et cetera*.

The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?

[Sen.] Angara. No, no. Not necessarily, Mr. President, because we are still talking of the child who is being misused for sexual purposes either for money or for consideration. **What I am trying to cover is the other consideration. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.**

I am contending, Mr. President, that there may be situations where the child may not have been used for profit or...

The President Pro Tempore. So, it is no longer prostitution. Because the essence of prostitution is profit.

[Sen.] Angara. Well, the Gentleman is right. Maybe the heading ought to be expanded. But, still, the President will agree that that is a form or manner of child abuse.

The President Pro Tempore. What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

[Sen.] Angara. The new section will read something like this, Mr. President: MINORS, WHETHER MALE OR FEMALE, WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE IN SEXUAL INTERCOURSE, *et cetera*."[30] (Emphases supplied)

As Justice Carpio rationalized in *Quimvel*, "[t]he phrase 'or any other consideration or due to the coercion or influence of any adult, syndicate or group' was added to merely cover situations where a child is abused or misused for sexual purposes without any monetary gain or profit. This was significant because profit or monetary gain is essential in prostitution. Thus, the lawmakers intended that in case all the other elements of prostitution are present, but the monetary gain or profit is missing, the sexually abused and misused child would still be afforded the same protection of the law as if he or she were in the same situation as a child exploited in prostitution."[31]

Clearly therefore, the phrase "or subject to other sexual abuse" was meant only to expand the range of circumstances that are nonetheless, relevant to the child's circumstantial pre-disposition and hence, should not be confounded with the act of sexual abuse which is a separate and distinct element under the law.[32]

(5) Finally, a literal reading of the law itself confirms that the phrase "exploited in prostitution or subject to other sexual abuse" was intended to be appreciated separately from the act of sexual abuse itself. For reference, Section 5, Article III of RA 7610 states:

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

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[30] Record of the Senate, Vol. I, No. 7, August 1, 1991, pp. 261-263.

[31] See Dissenting Opinion of Justice Carpio in *Quimvel v. People*, *supra* note 2, at 257-258.

[32] See *id*. at 256-260.

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 c**ommit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse**; x x x

x x x x x x x x x

(Emphases and underscoring supplied)

As plainly worded, the law punishes those who commit the act of sexual intercourse or lascivious conduct with *a child* "*exploited in prostitution or* ***subject*** *to other sexual abuse*." The word "subject" is a clear qualification of the term "child," which means it is descriptive of the same. Hence, if Congress intended to equate the term "*subject to other sexual abuse*" with the act of sexual intercourse or lascivious conduct itself, then it could have easily phrased the provision as: "those who commit the act of sexual intercourse or lascivious conduct with children."

However, it is fairly evident that with the coining of the new phrase "a child exploited in prostitution or subject to other sexual abuse," Congress intended to establish a special classification of children, *i.e.*, those EPSOSA, which is further suggested by the term "*deemed*." It is a cardinal rule in statutory construction 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.[33] As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[34]

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[33] *Amores v. House of Representatives Electoral Tribunal*, 636 Phil. 600, 608 (2010), citing *Twin Ace Holdings Corporation v. Rufina and Company*, 523 Phil. 766, 777 (2006).

[34] *Padua v. People*, 581 Phil. 489, 501 (2008).

CONCLUSION

Based on the foregoing analysis, I therefore submit the following table of application:

Acts done by the accused consist of:	*Crime committed if the victim is under twelve (12) years old or demented*	*Crime committed if the victim is twelve (12) years old or older but below eighteen (18), or is eighteen (18) years old but under special circumstances*[35]	*Crime committed if victim is eighteen (18) years old and above*
Acts of Lasciviousness	Statutory[36] Acts of Lasciviousness under Article 336 of the RPC in relation to[37] the second proviso of Section 5 (b), Article III of RA 7610 **Penalty**: *Reclusion temporal* in its medium period **NOTE:** Based on the first proviso of Section 5 (b), Article III of RA	If committed against a child not EPSOSA, the crime committed would be **Acts of Lasciviousness** under Article 336 of the RPC Penalty: ***Prision Correccional*** If committed against a child EPSOSA, the crime committed would be **Violation of Section 5 (b),**	Acts of Lasciviousness under Article 336 of the RPC Penalty: ***Prision Correccional***

[35] Or "is 18 years or older but under special circumstances (as defined in RA 7610) and engaged in prostitution or subjected to other sexual abuse."

[36] The word "Statutory," while not stated in the law, has been used as a matter of practice to indicate that the sexual act is committed against a child below the age of twelve (12), as in its application in its often-used term "Statutory Rape."

[37] The phrase "in relation to" is used, as a matter of practice, to indicate that a provision of a penal law which defines the crime is related to another provision that provides the penalty imposable therefor.

	7610, even if the victim is a child EPSOSA, the prosecution shall be under the RPC; hence, if the child is less than twelve (12), EPSOSA is irrelevant	**Article III of RA 7610 through Lascivious Conduct** (term used in the Implementing Rules and Regulations [IRR][38]) and the penalty would be ***reclusion temporal* in its medium period to *reclusion perpetua*.**[39]	
Sexual Assault	Statutory Sexual Assault under Article 266-A (2) of the RPC, as amended by RA 8353 in relation to the second proviso of Section 5 (b), Article III of RA 7610	If committed against a child not EPSOSA, **Sexual Assault** under Article 266-A (2) of the RPC, as amended by RA 8353 **Penalty: *prision mayor***	Sexual Assault under Article 266- A (2) of the RPC. **Penalty: *prision mayor***

[38] Section 2 (h) of the IRR (Rules and Regulations on the Reporting and Investigation of Child Abuse Cases) provides:

Section 2. *Definition of Terms*. x x x

x x x x x x x x x

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;

x x x x x x x x x

[39] By operation of the second proviso of Section 5 (b), Article III of RA 7610; see discussion on pages 14-15.

	Penalty: *Reclusion temporal* in its medium period **NOTE:** Based on the first proviso of Section 5 (b), Article III of RA 7610, even if the victim is a child EPSOSA, the prosecution shall be under the RPC; hence, if the child is less than 12, EPSOSA is irrelevant	If committed against a child EPSOSA, the crime would be **Violation of Section 5 (b), Article III of RA 7610 through Lascivious Conduct** (concept of "sexual assault" subsumed under the term "Lascivious Conduct" used in the IRR[40]) and the penalty would be ***reclusion temporal* in its medium period to *reclusion perpetua***[41]	
Carnal knowledge/Rape by Sexual Intercourse	Statutory Rape under Article 266-A (1) (d) of the RPC, as amended by RA 8353 **Penalty: *reclusion perpetua***, except when the victim is below seven (7) years old in which case death penalty shall be imposed **NOTE:** Based on the first proviso	If committed against a child not EPSOSA, Rape under Article 266-A (1) of the RPC, as amended by RA 8353 **Penalty: *reclusion perpetua*** If committed against a child EPSOSA, the crime would be **Violation of Section 5 (b),**	Rape under Article 266-A (1) of the RPC, as amended by RA 8353 **Penalty: *reclusion perpetua***

[40] See note 38.

[41] By operation of the second proviso of Section 5 (b), Article III of RA 7610; see discussion on pages 14-15.

	of Section 5 (b), Article III of RA 7610, even if the victim is a child EPSOSA, the prosecution shall be under the RPC; hence, if the child is less than twelve (12), EPSOSA is irrelevant	**Article III of RA 7610 through Sexual Abuse** (term used in the IRR[42]) and the penalty would be ***reclusion temporal* in its medium period to *reclusion perpetua***	

Notably, as earlier mentioned, when the child-victim is under twelve (12) years of age and, hence, conclusively presumed to be incapable of giving consent, Section 5 (b), Article III of RA 7610 instructs that the prosecution of the accused shall be under the provisions of the RPC and, hence, making it unnecessary to determine the presence or absence of EPSOSA. Accordingly:

Under twelve (12) years old cases

(*1*) If done through sexual intercourse, the crime is "*Rape*" under Article 266-A (1) of the RPC, as amended by RA 8353;

(*2*) If done through acts classified as sexual assault, the crime is "*Sexual Assault*" under Article 266-A (2) of the RPC, as amended by RA 8353; and

(*3*) If done through lascivious conduct not classified as sexual assault, the crime is "*Acts of Lasciviousness*" under Article 336 of the RPC.

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[42] Section 2 (g) of the IRR (Rules and Regulations on the Reporting and Investigation of Child Abuse Cases) provides:

Section 2. *Definition of Terms*. x x x

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;

x x x x x x x x x

In instances of Rape, the prescribed penalty is *reclusion perpetua*, subject to the existence of qualifying circumstances.

However, in cases of Sexual Assault or Acts of Lasciviousness, it is my position that the second proviso in Section 5 (b), Article III of RA 7610, which provides that "*the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period*": ***first***, amended the prescribed penalty of *prision correccional* under Article 336 of the RPC on Acts of Lasciviousness; and ***second***, ought to prevail over the prescribed penalty of *prision mayor* under Article 266-A, par. 2, in relation to Article 266-B, of the RPC, as amended by RA 8353, albeit the latter law is the more recent statutory enactment. The reasons on this second point are: (**1**) pursuant to its IRR, the concept of lascivious conduct under Section 5, Article III of RA 7610 was already broad enough to cover the specific acts prescribed under Article 266-A, par. 2 of RA 8353[43] and, hence, already subsumes the concept of Sexual Assault; (**2**) RA 8353 introduced the concept of "sexual assault" essentially to punish graver forms of acts of lasciviousness which were not accounted for in the RPC (not in RA 7610); and (**3**) at any rate, the penalty imposed for Sexual Assault under RA 8353 does not take into account the fact that the act is committed against a child-victim under twelve (12) years of age. Accordingly, based on these substantive considerations (and not solely on penalty gravity[44]), RA 8353's lesser penalty of *prison correctional* imposed in general cases of Sexual Assault cannot prevail over Section 5 (b), Article III of RA 7610's penalty of *reclusion temporal* in its medium period in cases where the lascivious conduct, irrespective of kind, is committed against a child-victim under 12.

As a final note, I am well-aware of the ruling in *People v. Ejercito*[45] (*Ejercito*) wherein the former Second Division of this Court had ruled that RA 8353 (amending the RPC) should

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[43] See note 38.

[44] See *People v. Ejercito*, G.R. No. 229861, July 2, 2018.

[45] *Id*.

now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b), Article III of RA 7610.[46] To recount, the conclusion was largely based on the following premise:

> [T]he x x x provisions of RA 8353 already accounted for the circumstance of minority under certain peculiar instances. **The consequence therefore is a clear overlap with minority as an element of the crime of sexual intercourse against a minor under Section 5 (b) of RA 7610**. However, as it was earlier intimated, RA 8353 is not only the more recent statutory enactment but more importantly, the more comprehensive law on rape; therefore, the Court herein clarifies that in cases where a minor is raped through sexual intercourse, the provisions of RA 8353 amending the RPC ought to prevail over Section 5 (b) of RA 7610 although the latter also penalizes the act of sexual intercourse against a minor.[47] (Emphasis and underscoring supplied)

However, it must now be clarified that the above-stated overlap on the concept of minority in the *Ejercito* case is an observation only made possible when applying the then-prevailing *Quimvel* ruling. Again, *Quimvel* did not recognize that EPSOSA is a special and unique element that is peculiar to RA 7610. However, as herein discussed, RA 7610 actually introduced the EPSOSA element which was not contemplated under the RPC, as amended by RA 8353. This means that RA 8353 cannot now overlap with the RA 7610 since the latter contains a peculiar element which is unique to it; hence, applying the principle of *lex specialis derogant generali*,[48] Section 5 (b), Article III of RA 7610 ought to prevail when the EPSOSA element is alleged and proven in a particular case.

To this end, it goes without saying that when the circumstance of a child EPSOSA is not alleged in the Information and later, proven during trial, it is erroneous to prosecute — much more,

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[46] See *id*.

[47] See *id*.

[48] See *Barcelote v. Republic*, G.R. No. 222095, August 7, 2017, 834 SCRA 564, 578.

convict — the accused under Section 5 (b), Article III of RA 7610, else his constitutional right to be informed of the nature and cause of the accusation against him be violated.[49] Insofar as this case is concerned, the EPSOSA element is missing from both Informations in Criminal Case Nos. SCC-6210 and SCC-6211. Nonetheless, EPSOSA is immaterial given that the child-victim is, in both instances, under twelve (12) years of age. Hence, same as the result reached by the *ponencia* albeit our fundamental differences in reasoning, Tulagan should be convicted of:

(a) In Criminal Case No. SCC-6210, Statutory Sexual Assault under Article 266-A (2) of the RPC, as amended by RA 8353, in relation to the second proviso of Section 5 (b), Article III of RA 7610, and thereby, meted with the penalty of *reclusion temporal* in its medium period; and

(b) In Criminal Case No. SCC-6211, Statutory Rape under Article 266-A (1) (d) of the RPC, as amended by RA 8353, and thereby, meted with the penalty of *reclusion perpetua*.

Meanwhile, anent the damages to be awarded, I fully support the *ponencia*'s prudent decision to adjust the same based on the jurisprudential[50] equivalence of the above-stated penalties. Hence, Tulagan should pay the adjusted amounts of: (*a*) in Criminal Case No. SCC-6210, ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages; and (*b*) in Criminal Case No. SCC-6211, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

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[49] "It must be stressed that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation against him to ensure that his due process rights are observed. Thus, every indictment must embody the essential elements of the crime charged with reasonable particularity as to the name of the accused, the time and place of commission of the offense, and the circumstances thereof. Hence, to consider matters not specifically alleged in the Information, even if proven in trial, would be tantamount to the deprivation of the accused's right to be informed of the charge lodged against him." (*People v. Bagamano*, 793 Phil. 602, 608-609 [2016]; citations omitted.)

[50] See *People v. Jugueta*, 783 Phil. 806, 847-853 (2016).

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur in the result.

This case involves a nine (9)-year-old minor who was raped and subjected to sexual assault. The majority and the various separate opinions appear to have used this case as an opportunity to interpret Republic Act No. 7610,[1] Article III, Section 5(b)[2] in relation to the sexual abuse of minors aged 12 to below 18 years old.

It is a unanimous Court that will agree that the rape and sexual abuse of a child below 12 years old deserves the full enforcement of the provisions under Article 266-A[3] of the Revised Penal Code and Republic Act No. 7610.

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[1] The Special Protection of Children Against Abuse, Exploitation and Discrimination Act (1992).

[2] Rep. Act No. 7610, Art. III, Sec. 5 provides:

> 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.
>
> . . . .
>
> (b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.]

[3] REV. PEN. CODE, Art. 266-A provides:

> Article 266-A. Rape: When And How Committed. — Rape is committed:
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;

Several permutations of the penalties have been suggested. Various tables, charts, and diagrams have been submitted to discuss penalties relating to the crime — which Associate Justice Estela Perlas-Bernabe (Associate Justice Perlas-Bernabe) refers to as EPSOSA (or children exploited in prostitution or subject to other sexual abuse[4]— committed against victims aged 12 to below 18 years old. Considering, however, that the victim here was below 12 years old, every discussion on victims aged 12 to below 18 years old will be mere *obiter dictum*.

I wish, however, to offer a few points.

I agree with the majority that the insertion of a finger into a minor's vagina deserves a higher penalty than *prision mayor* under Article 266-A, Paragraph 2[5] (sexual assault) in relation to Article 266-B[6] of the Revised Penal Code. Republic Act No. 7610[7] was enacted not only to protect children from prostitution, but also to protect them from *any* sexual abuse due to the coercion or influence of any adult.

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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.

[4] See *Dissenting Opinion of J. Perlas-Bernabe*, p. 2.

[5] REV. PEN. CODE, Article 266-A provides:

Article 266-A. Rape; When And How Committed. — Rape is committed —

. . . . . .

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

[6] REV. PEN. CODE, Article 266-B. Penalty. —

. . . . . .

Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

[7] The Special Protection of Children Against Abuse, Exploitation and Discrimination Act.

I must, however, reiterate my opinion in *People v. Caoili*.[8]

The nonconsensual insertion of a finger in another's genitals is rape by carnal knowledge under Article 266-A, Paragraph 1[9] of the Revised Penal Code.

The finger, when used in a sexual act, is not an instrument or an object. It is as much a part of the human body as a penis. When consensual, it can be used to give sexual pleasure. When forced, it can be used to defile another's body. Equating the finger to a separate instrument or object misunderstands the gravity of the offense.

Likewise, I reiterate my view in *Quimvel v. People*[10] on the doubtful effectivity of Article 336 of the Revised Penal Code. Article 336 has already been rendered ineffective with the passage of Republic Act No. 8353, or the Anti-Rape Law of 1997.

The present case involves an appeal from the August 17, 2015 Decision of the Court of Appeals, finding accused-appellant Salvador Tulagan guilty beyond reasonable doubt of sexual assault under Article 266-A, paragraph 2 and statutory rape under Article 266-A, paragraph 1(d) of the Revised Penal Code.[11]

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[8] See *J.* Leonen, Dissenting Opinion in *People v. Caoili*, G.R. No. 196342, August 8, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/196342_leonen.pdf> [Per *J.* Tijam, *En Banc*].

[9] REV. PEN. CODE, Article 266-A provides:

Article 266-A. Rape; When And How Committed. — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) 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.

[10] See *J.* Leonen, Dissenting Opinion in *Quimvel v. People*, G.R. No. 214497, April 18, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html? file=/jurisprudence/2017/april2017/214497_leonen.pdf> [Per *J.* Velasco, *En Banc*].

[11] *Ponencia*, pp. 1-2.

Accused-appellant was charged in two (2) separate Informations. In Criminal Case No. SCC-6210:

> That sometime in the month of September 2011, at . . ., and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation and with abuse of superior strength forcibly laid complainant AAA, a 9-year-old minor in a cemented pavement, and did then and there, willfully, unlawfully and feloniously inserted his finger into the vagina of the said AAA, against her will and consent.

In Criminal Case No. SCC-6211:

> That on or about October 8, 2011 at . . ., and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation and with abuse of superior strength, did then and there, willfully, unlawfully and feloniously have sexual intercourse with complainant AAA, a 9-year-old minor against her will and consent to the damage and prejudice of said AAA, against her will and consent.[12]

According to the majority's narration of facts, sometime in September 2011, AAA was peeling corn with her cousin when accused-appellant, a neighbor of AAA's grandmother, approached her, opened her legs, and inserted his finger in her vagina.[13]

On another occasion, at around 11:00 a.m. on October 8, 2011, AAA was playing with her cousin in front of accused-appellant's house. Accused-appellant brought her inside his house. He ordered her to keep quiet and lie on the floor while he removed her short pants and underwear. He then undressed himself, kissed her cheeks, and inserted his penis into her vagina. AAA felt pain and cried but accused-appellant held her down. AAA kept quiet about the incident until her aunt examined her and found her genitals swollen.[14]

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[12] *Ponencia*, p. 2.

[13] *Ponencia*, p. 3.

[14] *Id*.

Upon examination by Dr. Brenda Tumacder, it was found that AAA had a healed laceration at the 6 o'clock position in her hymen and a dilated and enlarged vaginal opening.[15]

Both the Regional Trial Court and the Court of Appeals found accused-appellant guilty beyond reasonable doubt of sexual assault and statutory rape.

The majority affirms the convictions but modified the disposition, as follows:

> WHEREFORE, PREMISES CONSIDERED, the appeal is DENIED. The Joint Decision dated February 10, 2014 of the Regional Trial Court in Criminal Case Nos. SCC-6210 and SCC-6211, as affirmed by the Court of Appeals Decision dated August 17, 2015 in CA-G.R. CR-HC No. 06679, is AFFIRMED with MODIFICATIONS. We find the accused-appellant Salvador Tulagan:
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> 1. Guilty beyond reasonable doubt of Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code, in relation to Section 5(b) of Republic Act No. 7610, in Criminal Case No. SCC-6210, and is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Appellant is ORDERED to PAY AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.
>
> 2. Guilty beyond reasonable doubt of Statutory Rape under Article 266-A(1)(d) and penalized in Article 266-B of the Revised Penal Code, in Criminal Case No. SCC-6211, and is sentenced to suffer the penalty of *reclusion perpetua* with modification as to the award of damages. Appellant 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[.]
>
> Legal interest of six percent (6%) per annum is imposed on all damages awarded from the date of finality of this Decision until fully paid.

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[15] *Ponencia*, p. 3.

Let a copy of this Decision be furnished the Department of Justice, the Office of the Prosecutor General, the Office of the Court Administrator, and the Presiding Justice of the Court of Appeals, for their guidance and information, as well as the House of Representatives and the Senate of the Philippines, as reference for possible statutory amendments in light of the foregoing observations.

SO ORDERED.[16] (Emphasis supplied)

I take no issue with the majority's findings of fact or conclusion that accused-appellant is guilty of statutory rape. I do, however, wish to address a few points in the Decision and the opinions submitted by Associate Justice Alfredo Benjamin S. Caguioa (Associate Justice Caguioa) and Associate Justice Perlas-Bernabe.

I

Much of the debate here centers on the proper interpretation of Article III, Section 5(b) of Republic Act No. 7610.

Article III, Section 5 reads:

ARTICLE III
Child Prostitution and Other Sexual Abuse

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:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

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[16] *Ponencia*, pp. 66-67.

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; *Provided*, That when the victims 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

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment. (Emphasis in the original)

I cannot subscribe to Associate Justice Caguioa's interpretation that Section 5 only refers to children subjected to prostitution. A plain reading of this provision shows two (2) offenses: (1) child prostitution and (2) other sexual abuse.

Children subjected to prostitution are those "who for money, profit, or any other consideration . . . indulge in sexual intercourse or lascivious conduct[.]" Children subjected to other sexual abuse are those who "due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct[.]"

Under the law, the State must "provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination."[17] Children do not willingly indulge in sexual

[17] Rep. Act No. 7610 (1992), Art. I, Sec. 2.

intercourse or lascivious conduct with an adult. There is always an element of intimidation or coercion involved. Thus, the crime is not merely punishable under the Revised Penal Code, but also under Republic Act No. 7610.

As Associate Justice Diosdado M. Peralta eloquently explained in *Dimakuta v. People*:[18]

> Article 226-A, paragraph 2 of the RPC, punishes inserting of the penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person if the victim did not consent either it was done through force, threat or intimidation; or when the victim is deprived of reason or is otherwise unconscious; or by means of fraudulent machination or grave abuse of authority as sexual assault as a form of rape. However, 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 *prision 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 Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (18) years 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.
>
> There could be no other conclusion, a child is presumed by law to be incapable of giving rational consent to any lascivious act, taking into account the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth, as well as, in harmony with the foremost consideration of the child's best interests in all actions concerning him or her. This is equally consistent with the declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development; provide sanctions for their commission and carry

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[18] 771 Phil. 641 (2015) [Per *J.* Peralta, *En Banc*].

out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination. Besides, if it was the intention of the framers of the law to make child offenders liable only of Article 266-A of the RPC, which provides for a lower penalty than R.A. No. 7610, the law could have expressly made such statements.[19]

Consent, within the context of sexual relations, is structured around questions of patriarchy and sexual maturity.

Girls may believe themselves to have consented to sexual intercourse if they thought themselves powerless to refuse. Marital rape is difficult to prosecute if the woman believes that it is her "wifely duty" to always give in to the husband's sexual demands.

The age of sexual consent in the Philippines is 12 years old.[20] According to United Nations International Children's Emergency Fund, this is "one [1] of the lowest globally and the lowest in the Asia-Pacific region."[21] The average age of consent is 16 years old.[22]

The age of majority, however, is 18 years old.[23] Minors, or those below 18, have no capacity to enter into *any* contracts[24] or marriage.[25] Yet, strictly reading the provisions of the Revised

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[19] *Id*. at 670-671 citing *Malto v. People*, 560 Phil. 119, 139-142 (2007) [Per *J.* Corona, First Division] and Rep. Act No. 7610 (1992), Art. I, Sec. 2.

[20] See REV. PEN. CODE, Art. 266-A (d), as amended.

[21] UNIVERSITY OF THE PHILIPPINES MANILA, THE UNIVERSITY OF EDINBURGH, CHILD PROTECTION NETWORK FOUNDATION AND UNICEF PHILIPPINES, A SYSTEMATIC REVIEW OF THE DRIVERS OF VIOLENCE AFFECTING CHILDREN IN THE PHILIPPINES. MANILA: UNICEF PHILIPPINES (2016). *available* at <https://resourcecentre.savethechildren.net/sites/default/files/documents/a_systematic_literature_review_of_the_drivers_of_vac.pdf> 71 (last accessed on March 11, 2019).

[22] *Id*.

[23] FAMILY CODE, Art. 234, as amended.

[24] CIVIL CODE, Art. 1327(1).

[25] FAMILY CODE, Art. 35.

Penal Code, any minor above 12 years old may validly consent to sexual intercourse and lascivious conduct with an adult.

This may have found support in science. According to neurologists, the prefontal cortex and the parietal cortex develop at puberty or around 12 years old.[26] At this age, children may already be cognitively aware of the concept of consent. Among the policies espoused by Republic Act No. 7610, however, is that the "best interests of children shall be the paramount consideration in all actions concerning them[.]"[27] This means that despite victims reaching the age where they could have reasonable discernment, courts still need to determine how consent to sexual conduct was obtained.

Article III, Section 5(b) *generally* applies to those who engage in sexual intercourse or are subjected to other sexual abuse. However, reference must be made to the law's chapeau:

> 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 law itself requires that children in EPSOSA must have either consented due to money, profit, or other consideration, or must have consented due to the "coercion or influence of any adult[.]"

The difference in age, by itself, is indicative of coercion and intimidation. In *People v. Errojo*:[28]

> At a tender age of fourteen, innocent of the ways of the world, complainant is no match to the accused-appellant, a forty-one year

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[26] Suparna Choudhury, Sarah-Jayne Blakemore, Tony Charman, *Social cognitive development during adolescence*, 1 SOCIAL COGNITIVE AND AFFECTIVE NEUROSCIENCE 165-174 (2006). *available at* <https://doi.org/10.1093/scan/ns1024> (last visited on March 11, 2019).

[27] Rep. Act No. 7610 (1992), Art. I, Sec. 2.

[28] 299 Phil. 51 (1994) (Per *J.* Nocon, Second Division].

old married individual who sexually assaulted her. The sheer force and strength of the accused-appellant would have easily overcome any resistance that complainant could have put up. What more if the assault was committed with a deadly knife, the sight of which would have necessarily evoked fear in complainant. Thus, it is understandable if she easily succumbed to the sexual intrusion.[29]

Similarly, in *People v. Clado*:[30]

This Court has noted in several cases that minors could be easily intimidated and cowed into silence even by the mildest threat against their lives. At the time of the commission of the crimes, Salve was a fifteen- year old girl who had just arrived in town to tend the beauty parlor of her sister. She was left all alone that night and intimidation would explain why she did not put up a determined resistance against her defiler.[31] (Citation omitted)

In these cases, this Court determined that the minor's age played a major part in whether he or she could rationally give consent to any sexual act with an adult. This Court had to consider that the vast difference in age between the victim and the offender could be indicative of coercion and intimidation. For this reason, Republic Act No. 7610 penalizes sexual offenses against children not covered by the statutory age of consent.

However, there are simply factual situations that cannot be fully encompassed by the permutations suggested.

For example, it is unclear whether a 19-year-old person can be prosecuted for this crime if he or she had sexual intercourse with a minor aged 17 and a half years old. It cannot be determined if that minor was under the "coercion or influence" of the adult if it appears that it was a consensual sexual relationship.

It also cannot be fathomed if a 12-year-old child will *willingly* engage in sexual conduct with a 25-year-old adult. With age disparity and the moral ascendancy the adult exercises over

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[29] *Id*. at 60.

[30] 397 Phil. 813 (2000) [Per *J*. Gonzaga-Reyes, Third Division].

[31] *Id*. at 826.

the child, there may be some form of coercion or intimidation against the child for the child to succumb to the adult's sexual advances.

Hence, this is not the proper time to discuss the permutations of the different penalties to be imposed under Republic Act No. 7610. Any suggested permutations of the penalties should be discussed when the proper factual situations appear before this Court.

II

The majority notes that "[Republic Act] No. 8353 did not expressly repeal Article 336 of the [Revised Penal Code], as amended."[32]

I disagree.

Republic Act No. 8353[33] has rendered ineffective the provision on acts of lasciviousness in the Revised Penal Code.

Article 336 defines acts of lasciviousness as:

> ARTICLE 336. Acts of lasciviousness. — Any person who shall commit any act of lasciviousness upon other persons of either sex, *under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional*. (Emphasis supplied)

Under this provision, a lascivious act is punishable if it is committed under the circumstances mentioned in Article 335 of the Revised Penal Code, which provides:

> ARTICLE 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
> 2. When the woman is deprived of reason or otherwise unconscious; and
> 3. When the woman is under twelve years of age or is demented.

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[32] *Ponencia*, p. 59.

[33] The Anti-Rape Law of 1997.

The crime of rape shall be punished by *reclusion perpetua*.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on occasion of the rape, the victim has become insane, the penalty shall be death.

When the rape is attempted or frustrated and a homicide is committed by reason or on occasion thereof, the penalty shall be *reclusion perpetua* to death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
2. when the victim is under the custody of the police or military authorities.
3. when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity.
4. when the victim is a religious or a child below seven (7) years old.
5. when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease.
6. when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency.
7. when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation. (*As amended by R.A. No. 7659.*) (Emphasis in the original)

Article 335, however, has already been repealed by Republic Act No. 8353.[34] The provisions on rape were transferred from

[34] Rep. Act No. 8353, Sec. 4 provides:

SECTION 4. Repealing Clause. — Article 335 of Act No. 3815, as amended, and all laws, acts, presidential decrees, executive orders, administrative orders, rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified or repealed accordingly.

Title Eleven to Title Eight of the Revised Penal Code, reflecting its reconceptualization from being a crime against chastity to being a crime against persons.

In effect, acts of lasciviousness cease to be a crime under Article 336 of the Revised Penal Code. This provision is rendered incomplete and ineffective since its elements can no longer be completed. The acts constituting it no longer exist in the Revised Penal Code.

In any case, the ineffectivity of Article 336 does not preclude acts of lasciviousness from being punishable under different laws such as Republic Act No. 7610 or Republic Act No. 9262.[35] These laws, likewise, carry more severe penalties[36] than Article 336,[37] providing better protection for victims of lascivious acts not constituting rape.

III

I stated in *Caoili* that "[t]he persistence of an archaic understanding of rape relates to our failure to disabuse ourselves

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[35] Anti-Violence Against Women and Their Children Act of 2004.

[36] Rep. Act No. 7610 (1992), Art. III, Sec. 5 provides:

Section 5. (b) . . . That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.]

Rep. Act No. 9262, Secs. 5 and 6 provides:

SECTION 5. Acts of Violence Against Women and Their Children. — The crime of violence against women and their children is committed through any of the following acts:

. . . . . .

(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family[.]

SECTION 6. Penalties. — The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:

. . . . . .

(e) Acts falling under Section 5(g) shall be punished by *prision mayor*[.]

[37] This crime is punishable by *prision correccional*.

of the notion that carnal knowledge or sexual intercourse is merely a reproductive activity."[38] That pattern continues here, where the majority states:

> [T]he term "rape by sexual assault" is a misnomer, as it goes against the traditional concept of rape, which is carnal knowledge of a woman without her consent or against her will. In contrast to sexual assault which is a broader term that includes acts that gratify sexual desire (such as cunnilingus, felatio, sodomy or even rape), the classic rape is particular and its commission involves only the reproductive organs of a woman and a man. *Compared to sexual assault; rape is severely penalized because it may lead to unwanted procreation; or to paraphrase the words of the legislators, it will put an outsider into the woman who would bear a child, or to the family, if she is married*.[39] (Emphasis supplied)

This explanation, however, defies reality. A woman who was raped through insertion of a finger does not suffer less than a woman who was raped by penile penetration. One (1) crime is not less heinous than the other. In *People v. Quintos*:[40]

> The classifications of rape in Article 266-A of the Revised Penal Code are relevant only insofar as these define the manners of commission of rape. However, it does not mean that one manner is less heinous or wrong than the other. Whether rape is committed by nonconsensual carnal knowledge of a woman or by insertion of the penis into the mouth of another person, the damage to the victim's dignity is incalculable. . . . [O]ne experience of sexual abuse should not be trivialized just because it was committed in a relatively unusual manner.
>
> "The prime purpose of [a] criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order." Crimes are punished as retribution so that society would understand that the act punished was wrong.

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[38] *J.* Leonen, Dissenting Opinion in *People v. Caoili,* G.R. No. 196342, August 8, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/196342_leonen.pdf> 12 [Per *J.* Tijam, *En Banc*].

[39] *Ponencia*, p. 9.

[40] 746 Phil. 809 (2014) [Per *J.* Leonen, Second Division].

> Imposing different penalties for different manners of committing rape creates a message that one experience of rape is relatively trivial or less serious than another. It attaches different levels of wrongfulness to equally degrading acts. Rape, in whatever manner, is a desecration of a person's will and body. In terms of penalties, treating one manner of committing rape as greater or less in heinousness than another may be of doubtful constitutionality.[41] (Citations omitted)

The idea that one (1) kind of rape is punished more severely than the other because of "unwanted procreation" only serves to undermine the law's reconceptualization of rape as a crime against persons. It reduces a woman to an untouched hymen that must be protected by the man who will eventually claim her—or worse, as a mere womb for the propagation of that man's seed.

The worth of a woman's dignity is not measured solely by her virtue. This Court cannot continue to convict rapists on the basis that women need to be kept chaste and virginal. Rape is a crime against the victim. It is not a crime against her father's or husband's honor.

This Court has already taken strides to address our prudish views on women's sexuality. *People v. Amarela*[42] recognized that the stereotype of a demure and reserved Filipina has no place in a modern society. A Filipina can either be as demure or as promiscuous as she desires. Her sexual proclivities, or lack thereof, has no bearing on whether she can be a victim of rape. The commission of the crime is solely attributable to the rapist, not the victim. Thus:

> The "women's honor" doctrine surfaced in our jurisprudence sometime in 1960. In the case of *People v. Taño*, the Court affirmed the conviction of three (3) armed robbers who took turns raping a person named Herminigilda Domingo. The Court, speaking through Justice Alejo Labrador, said:

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[41] *Id.* at 832-833.

[42] G.R. Nos. 225642-43, January 17, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/225642-43.pdf> [Per *J.* Martires, Third Division].

> It is a well-known fact that women, especially Filipinos, would not admit that they have been abused unless that abuse had actually happened. This is due to their natural instinct to protect their honor. We cannot believe that the offended party would have positively stated that intercourse took place unless it did actually take place.

This opinion borders on the fallacy of *non sequit[u]r*. And while the factual setting back then would have been appropriate to say it is natural for a woman to be reluctant in disclosing a sexual assault; today, we simply cannot be stuck to the Maria Clara stereotype of a demure and reserved Filipino woman. We, should stay away from such mindset and accept the realities of a woman's dynamic role in society today; she who has over the years transformed into a strong and confidently intelligent and beautiful person, willing to fight for her rights.[43]

This Court explained further in *Perez v. People*[44] that we must be careful in correcting gender stereotypes in rape cases. Despite strides to change long-held misconceptions, we cannot deny the continued existence of a patriarchal dominance in social relationships. We must acknowledge that due to this pervasive cultural norm, it will still take courage for women to come forward and testify against the men who dominate them:

> This Court in *Amarela*, however, did not go as far as denying the existence of patriarchal dominance in many social relationships. Courts must continue to be sensitive to the power relations that come clothed in gender roles. In many instances, it does take courage for girls or women to come forward and testify against the boys or men in their lives who, perhaps due to cultural roles, dominate them. Courts must continue to acknowledge that the dastardly illicit and lustful acts of men are often veiled in either the power of coercive threat or the inconvenience inherent in patriarchy as a culture.
>
> Even if it were true that AAA was infatuated with the accused, it did not justify the indignity done to her. At the tender age of 12,

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[43] *Id*. at 7 citing *People v. Taño*, 109 Phil. 912 (1960) [Per *J*. Labrador, *En Banc*].

[44] G.R. No. 201414, April 18, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/201414.pdf> [Per *J*. Leonen, Third Division].

adolescents will normally be misled by their hormones and mistake regard or adoration for love. The aggressive expression of infatuation from a 12-year-old girl is never an invitation for sexual indignities. Certainly, it does not deserve the accused's mashing of her breasts or the insertion of his finger into her vagina.

Consistent with our pronouncement in *Amarela*, AAA was no *Maria Clara*. Not being the fictitious and generalized demure girl, it does not make her testimony less credible especially when supported by the other pieces of evidence presented in this case.[45] (Emphasis in the original)

Thus, providing a lesser punishment for the forceful insertion of a finger into the vagina, solely because it will not result in an unwanted pregnancy, is a step backwards.

Sexual intercourse is more than a means of procreation. It is a powerful expression of intimacy between human beings. It "requires the shedding of all inhibitions and defenses to allow humans to explore each other in their most basic nakedness."[46] Sexual intercourse may involve penile penetration, or a whole other spectrum of sexual acts that do not require penetration at all. Ultimately, it is the human being's choice whom to be intimate with and what that intimacy may involve.

Rape is the violation of this choice. It is not punished simply because a penis forcefully penetrated a vagina. The crime is vile and heinous because it takes away a victim's fundamental autonomy to choose with whom she would share intimacy. It violates a victim's autonomy over her own body.

This Court's continued refusal to recognize the forceful insertion of a finger into a woman's vagina as rape by sexual intercourse only shows that rape, at least in the eyes of this Court, has remained a crime against chastity. Severe punishment

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

[46] *J.* Leonen, Dissenting Opinion in *People v. Caoili*, G.R. No. 196342, August 8, 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/196342_leonen.pdf > 11 [Per *J*. Tijam, *En Banc*].

is still reserved only for acts that could potentially embarrass the husband by introducing "an outsider" to his wife's womb. Lesser punishment is meted to acts that do not involve male ejaculation, but nonetheless defile the woman and damage her dignity.

Laws punishing rape should be read from the point of view of the victim. The finger is as much a weapon of forced sexual penetration as the penis. All victims of forced sexual acts suffer the same indignity. Thus, the offender must be charged with the same crime.

Nonetheless, I reiterate that this case is not the right vehicle to fully discuss the permutations of the law for victims aged 12 to below 18 years old. Any discussion will only amount to hypotheticals and an almost advisory opinion on the matter, considering that the victim here is not between those ages. I propose that this Court await the proper case to deal with the factual situations that will arise in the application of the law when the victim is aged 12 to below 18 years old.

Hence, I can only concur in the result.

Accordingly, I vote to **DISMISS** the appeal. The Regional Trial Court February 10, 2014 Joint Decision, in Criminal Case Nos. SCC-6210 and SCC-6211, and the Court of Appeals August 17, 2015 Decision, in CA-G.R. CR-HC No. 06679, should be **AFFIRMED** with the necessary modifications.

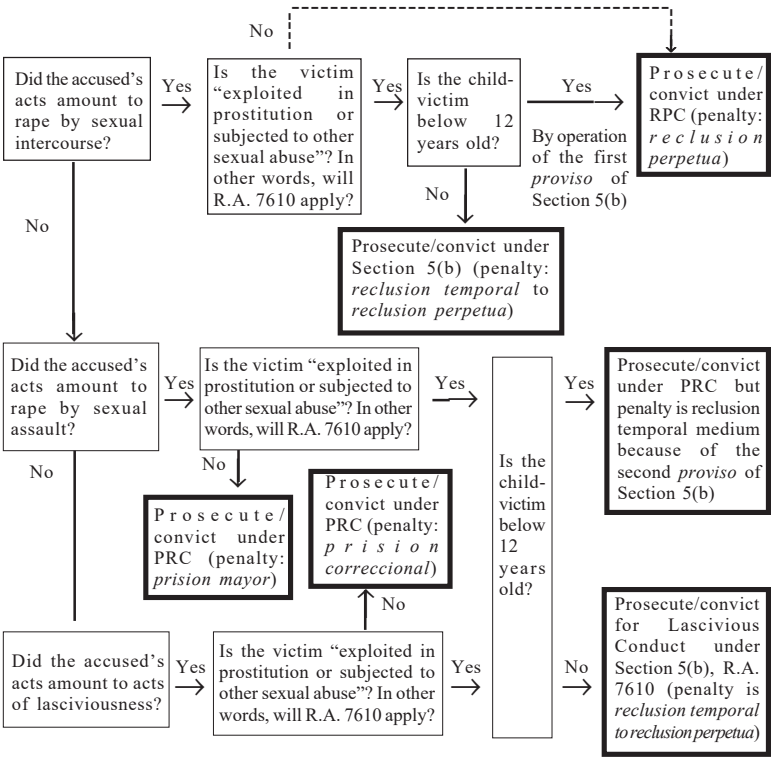
CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

I concur partly in the result, but express my disagreement with some pronouncements in the *ponencia*.

My view of the relevant laws and their respective applications is straightforward and simple: apply Section 5(b) of Republic Act No. (R.A.) 7610 upon the concurrence of both allegation **and** proof that the victim is "exploited in prostitution or subjected to other sexual abuse," and in its absence — or in all other

cases — apply the provisions of the Revised Penal Code (RPC), as amended by R.A. 8353. To illustrate the simplicity of my position, which I argue is the correct interpretation of the foregoing laws, I took the liberty of presenting it using the flowchart below:



The *ponencia* attempts at length to reconcile, for the guidance of the Bench and the Bar, the provisions on Acts of Lasciviousness, Rape and Sexual Assault under the RPC, as amended by R.A. 8353, and the provisions on Sexual Intercourse and Lascivious Conduct under Section 5(b) of R.A. 7610. In the *ponencia*, the following matrix[1] is put forth regarding the

[1] See *Ponencia*, pp. 29-30.

designation or nomenclature of the crimes and the corresponding imposable penalties, depending on the age and circumstances of the victim:

Crime Committed:	Victim is under 12 years old or demented	Victim is 12 years old or older but below 18, or is 18 years old but under special circumstances[2]	Victim is 18 years old and above
Acts of Lasciviousness committed against children exploited in prostitution or subjected to other sexual abuse	Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	Lascivious conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable
Sexual Assault committed against children exploited in prostitution or subjected to other sexual abuse	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable
Sexual Intercourse	Rape under Article 266-A(1)	Sexual Abuse under Section	Not applicable

[2] As defined under Section 3(a), R.A. 7610, "Children" refers to 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.

committed against children exploited in prostitution or subjected to other sexual abuse	of the RPC: *reclusion perpetua*, except when the victim is below 7 years old in which case death penalty shall be imposed	5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	
Rape by carnal knowledge	Rape under Article 266-A(1) in relation to Art. 266-B of the RPC: *reclusion perpetua*, except when the victim is below 7 years old in which case death penalty shall be imposed	Rape under Article 266-A(1) in relation to Art. 266-B of the RPC: *reclusion perpetua*	Rape under Article 266-A (1) of the RPC: *reclusion perpetua*
Rape by Sexual Assault	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Sexual Assault under Article 266-A(2) of the RPC: *prision mayor*

The above table is recommended by the *ponencia* in recognition of the fact that the **current state of jurisprudence on the matter is confusing.**

I salute this laudable objective of the *ponencia*.

However, I submit that the said objective could be better achieved by re-examining the landmark cases on the matter, namely the cases of *Dimakuta v. People*[3] (*Dimakuta*), *Quimvel v. People*[4] (*Quimvel*), and *People v. Caoili*[5] (*Caoili)* and recognizing that these were **based on misplaced premises.**

For one, the rulings in the aforementioned cases were based on the mistaken notion that it is necessary to apply R.A. 7610 to **all** cases where a child is subjected to sexual abuse because of the higher penalties therein; that is, there was always a need to look at the highest penalty provided by the different laws, and apply the law with the highest penalty because this would then be in line with the State policy "to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development."[6] This way of thinking was first implemented in *Dimakuta* where the Court held:

> Article 226-A, paragraph 2 of the RPC, punishes inserting of the penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person if the victim did not consent either it was done through force, threat or intimidation; or when the victim is deprived of reason or is otherwise unconscious; or by means of fraudulent machination or grave abuse of authority as sexual assault as a form of rape. **However, 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 *prision 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,

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[3] 771 Phil. 641 (2015).

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

[5] G.R. No. 196342, August 8, 2017, 835 SCRA 107.

[6] R.A. 7610, Sec. 2.

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 eighteen (18) years 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.

There could be no other conclusion, a child is presumed by law to be incapable of giving rational consent to any lascivious act, **taking into account the constitutionally enshrined State policy to promote the physical, moral, spiritual, intellectual and social well-being of the youth, as well as, in harmony with the foremost consideration of the child's best interests in all actions concerning him or her. This is equally consistent with the declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development**; provide sanctions for their commission and carry out a program for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation, and discrimination. Besides, if it was the intention of the framers of the law to make child offenders liable only of Article 266-A of the RPC, which provides for a lower penalty than R.A. No. 7610, the law could have expressly made such statements.[7] (Additional emphasis and underscoring supplied)

This premise, which I believe should be revisited, was based on another premise, which I also believe to be erroneous and should likewise be revisited: that R.A. 7610 was enacted to cover any and all types of sexual abuse committed against children.

Focusing first on R.A. 7610, I ask the Court to consider anew the viewpoint I first put forth in my Separate Dissenting Opinion in *Quimvel*, that the provisions of R.A. 7610 should be understood in their proper context, *i.e.*, **that they apply only to the specific and limited instances where the victim is a child "exploited in prostitution or subjected to other sexual abuse."**

Foremost rule in construing a statute is verba legis; thus, when a statute is

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[7] *Supra* note 3, at 670-671.

clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation

As I stated in my dissent in *Quimvel*, if the intention of R.A. 7610 is to penalize all sexual abuses against children under its provisions *to the exclusion of the RPC*, it would have expressly stated so and would have done away with the qualification that the child be "exploited in prostitution or subjected to other sexual abuse." Indeed, it bears to stress that when the statute speaks unequivocally, there is nothing for the courts to do but to apply it: meaning, Section 5(b), R.A. 7610 is a provision of specific and limited application, and must be applied as worded — a separate and distinct offense from the "common" or "ordinary" acts of lasciviousness under Article 336 of the RPC.[8]

The *ponencia* reasons that "when there is an absurdity in the interpretation of the provisions of the law, the proper recourse is to refer to the objectives or the declaration of state policy and principles"[9] under the law in question.

While I agree that the overall objectives of the law or its declaration of state policies may be consulted in ascertaining the meaning and applicability of its provisions, it must be emphasized that there is no room for statutory construction when the letter of the law is clear. Otherwise stated, a condition *sine qua non* before the court may construe or interpret a statute is that there be doubt or ambiguity in its language.[10] In this case, Section 5(b) of R.A. 7610 states:

SEC. 5. *Child Prostitution and Other Sexual Abuse*. — x x x

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

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[8] *J.* Caguioa, Dissenting Opinion in *Quimvel v. People*, *supra* note 4, at 298.

[9] *Ponencia*, p. 31. Emphasis supplied.

[10] *United Paracale Mining Co., Inc. v. Dela Rosa*, 293 Phil. 117, 123-124 (1993).

(b) **Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse**; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.] (Emphasis and underscoring supplied)

The letter of Section 5(b), R.A. 7610 is clear: it only punishes those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse. There is no ambiguity to speak of that necessitates the Court's exercise of statutory construction to ascertain the legislature's intent in enacting the law.

Verily, the legislative intent is already made manifest in the letter of the law which, again, states that the person to be punished by Section 5(b) is the one who committed the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse (or what Justice Estela M. Perlas-Bernabe calls as EPSOSA, for brevity).

Even with the application of the aids to statutory construction, the Court would still arrive at the same conclusion

The *ponencia* disagrees, and asserts that "[c]ontrary to the view of Justice Caguioa, Section 5(b), Article III of R.A. No. 7610 is not as clear as it appears to be."[11] This admission alone should have ended the discussion, consistent with the fundamental established principle that penal laws are strictly construed against the State and liberally in favor of the accused, ***and that any reasonable doubt must be resolved in favor of the accused.***[12]

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[11] *Ponencia*, p. 33.

[12] *J.* Ynares-Santiago, Dissenting Opinion in *People v. Lacson*, 459 Phil. 330, 380 (2003).

In addition, even if it is conceded, for the sake of argument, that there is room for statutory construction, the same conclusion would still be reached.

Expressio unius est exclusio alterius. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others.[13] The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[14] **In the present case, if the legislature intended for Section 5(b), R.A. 7610 to cover any and all types of sexual abuse committed against children, then why would it bother adding language to the effect that the provision applies to "children exploited in prostitution or subjected to other sexual abuse"?** Relevantly, why would it also put Section 5 under Article III of the law, which is entitled "Child Prostitution and Other Sexual Abuse"?

A closer scrutiny of the structure of Section 5 of R.A. 7610 further demonstrates its intended application: to cover only cases of prostitution, **or other related sexual abuse *akin to prostitution* but may or may not be for consideration or profit**. In my considered opinion, the structure of Section 5 follows the more common model or progression of child prostitution or other forms of sexual exploitation. The entire Section 5 of R.A. 7610 provides:

> 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:
>
> (a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

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[13] *Centeno v. Villalon-Pornillos*, 306 Phil. 219, 228 (1994).

[14] *Id*. at 228.

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration, goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse: *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: *Provided*, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

From the above, it is clear that Section 5(a) punishes the procurer of the services of the child, or in layman's parlance, the pimp. Section 5(b), in turn, punishes the person who himself (or herself) commits the sexual abuse on the child. Section 5(c) finally then punishes any other person who derives profit or advantage therefrom, such as, but are not limited to, owners of establishments where the sexual abuse is committed.

This is the reason why I stated in my opinion in *Quimvel* that no requirement of a prior sexual affront is required to be charged and convicted under Section 5(b) of R.A. 7610. Here, the person who has sexual intercourse or performs lascivious acts upon the child, even if this were the very first act by the child, already makes the person liable under Section 5(b), because

the very fact that someone had procured the child to be used for another person's sexual gratification in exchange for money, profit or other consideration already qualifies the child as a child exploited in prostitution.

Thus, in cases where any person, under the circumstances of Section 5(a), procures, induces, or threatens a child to engage in any sexual activity with another person, even without an allegation or showing that the impetus is money, profit or other consideration, the first sexual affront by the person to whom the child is offered already triggers Section 5(b) because the circumstance of the child being offered to another already qualifies the child as one subjected to other sexual abuse. Similar to these situations, the first sexual affront upon a child shown to be performing in obscene publications and indecent shows, or under circumstances falling under Section 6, is already a violation of Section 5(b) because these circumstances are sufficient to qualify the child as one subjected to other sexual abuse.

This is also the reason why the definition of "child abuse" adopted by the *ponencia* — based on Section 3,[15] R.A. 7610 and Section 2(g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases* — does not require the element of habituality to qualify an act as "child abuse" or "sexual abuse."[16] However, this absence of habituality as an element of the crime punished by Section 5(b), R.A. 7610 does not mean that the law would apply in each and every case of

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[15] (b) "*Child abuse*" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

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

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

[16] *Ponencia*, pp. 34-36.

sexual abuse. To the contrary, it only means that the first act of sexual abuse would be punishable by Section 5(b), R.A. 7610 if done under the circumstances of being "exploited in prostitution or subjected to other sexual abuse." For example, if the child-victim was newly recruited by the prostitution den, even the first person who would have sexual intercourse with her under said conditions would be punished under Section 5(b), R.A. 7610.

Moreover, the deliberations of R.A. 7610 support the view that Section 5(b) is limited only to sexual abuses committed against children that are EPSOSA. I thus quote anew Senator Rasul, one of R.A. 7610's sponsors, who, in her sponsorship speech, stated:

Senator Rasul. x x x

x x x x x x x x x

But undoubtedly, the most disturbing, to say the least, is the persistent report of children being sexually exploited and molested **for purely material gains**. Children with ages ranging from three to 18 years are used and abused. We hear and read stories of rape, manhandling and sexual molestation in the hands of cruel sexual perverts, local and foreigners alike. As of October 1990, records show that 50 cases of physical abuse were reported, with the ratio of six females to four males. x x x

x x x x x x x x x

x x x No less than the Supreme Court, in the recent case of *People vs. Ritter*, held that **we lack criminal laws which will adequately protect street children from exploitation by pedophiles**. x x x[17] (Emphasis and underscoring supplied)

To recall, *People v. Ritter*[18] is a 1991 case which involved an Austrian national who was charged with rape with homicide for having ultimately caused the death of Rosario, a street child, by inserting a foreign object into her vagina during the course of performing sexual acts with her. Ritter was acquitted based

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[17] RECORD OF THE SENATE, Vol. III, No. 104, March 19, 1991, p. 1204.

[18] 272 Phil. 532 (1991).

on reasonable doubt on account of, among others, the failure of the prosecution to (1) establish the age of Rosario to be within the range of statutory rape, and (2) show force or intimidation as an essential element of rape i**n the face of the finding that Rosario was a child prostitute who willingly engaged in sexual acts with Ritter**. While the Court acquitted Ritter, it did make the observation that there was, at that time, a "lack of criminal laws which will adequately protect street children from exploitation by pedophiles, pimps, and, perhaps, their own parents or guardians **who profit from the sale of young bodies**."[19]

The enactment of R.A. 7610 was the response by the legislature to the observation of the Court that there was a gap in the law. Of relevance is the exchange between Senators Enrile and Lina, which I quote anew, that confirms that the protection of street children from exploitation is the foremost thrust of R.A. 7610:

> **Senator Enrile.** Pareho silang hubad na hubad at naliligo. Walang ginagawa. Walang touching po, basta naliligo lamang. Walang akapan, walang touching, naliligo lamang sila. Ano po ang ibig sabihin noon? Hindi po ba puwedeng sabihin, kagaya ng standard na ginamit natin, na UNDER CIRCUMSTANCES WHICH WOULD LEAD A REASONABLE PERSON TO BELIEVE THAT THE CHILD IS ABOUT TO BE SEXUALLY EXPLOITED, OR ABUSED.
>
> **Senator Lina.** Kung mayroon pong balangkas or amendment to cover that situation, tatanggapin ng Representation na ito. Baka ang sitwasyong iyon ay hindi na ma-cover nito sapagkat, at the back of our minds, Mr. President, **ang sitwasyong talagang gusto nating ma-address ay maparusahan iyong tinatawag na "pedoph[i]lia" or prey on our children**. Hindi sila makakasuhan sapagkat their activities are undertaken or are committed in the privacy of homes, inns, hotels, motels and similar establishments.[20] (Emphasis and underscoring supplied)

And when he explained his vote, Senator Lina stated the following:

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[19] *Id*. at 569. Emphasis and underscoring supplied.

[20] RECORD OF THE SENATE, Vol. I, No. 7, August 1, 1991, pp. 264-265.

With this legislation, child traffickers could be easily prosecuted and penalized. Incestuous abuse and those where victims are under twelve years of age are penalized gravely, ranging from *reclusion temporal* to *reclusion perpetua*, in its maximum period. **It also imposes the penalty of *reclusion temporal in its medium period to reclusion perpetua***, equivalent to a 14-30 year prison term **for those** "(a) who promote or facilitate child prostitution; (b) **commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution**; (c) derive profit or advantage whether as manager or owner of an establishment where the prostitution takes place or of the sauna, disco, bar resort, place of entertainment or establishment serving as a cover or which engages in a prostitution in addition to the activity for which the license has been issued to said establishment.[21] (Emphasis and underscoring supplied)

The Senate deliberations on R.A. 7610 are replete with similar disquisitions that all show the intent to make the law applicable to cases involving child exploitation through prostitution, sexual abuse, child trafficking, pornography and other types of abuses. To repeat, the passage of the law was the Senate's act of heeding the call of the Court to afford protection ***to a special class of children*** and ***not* to cover any and all crimes against children that are already covered by other penal laws, such as the RPC and Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code.**

The Angara Amendment, which added the phrase "who for money, profit, or any other consideration or due to coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct" in Section 5(b), relied upon by the *ponencia* to support its argument that the law applies in each and every case where the victim of the sexual abuse is a child,[22] does not actually support its proposition. The deliberations on the said Angara Amendment are quoted in full below if only to understand the whole context of the amendment:

Senator Angara: I see. Then, I move to page 3, Mr. President, Section 4, if it is still in the original bill.

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[21] RECORD OF THE SENATE, Vol. II, No. 58, December 2, 1991, pp. 793-794.

[22] *Ponencia*, p. 33.

Senator Lina: Yes, Mr. President.

Senator Angara: I refer to line 9, "who for money or profit". I would like to amend this, Mr. President, to cover a situation where the minor may have been coerced or intimidated into this lascivious conduct, not necessarily for money or profit, so that we can cover those situations and not leave a loophole in this section.

The proposal I have is something like this: "WHO FOR MONEY, PROFIT, OR ANY OTHER CONSIDERATION OR DUE TO THE COERCION OR INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP INDULGE, et cetera.

The President Pro Tempore. I see. That would mean also changing the subtitle of Section 4. Will it no longer be child prostitution?

Senator Angara. No, no. Not necessarily, Mr. President, because **we are still talking of the child who is being misused for sexual purposes either for money or for consideration. *What I am trying to cover is the other consideration*. Because, here, it is limited only to the child being abused or misused for sexual purposes, only for money or profit.**

I am contending, Mr. President, that there may be situations where the child may not have been used for profit or...

The President Pro Tempore. So, it is no longer prostitution. Because the essence of prostitution is profit.

Senator Angara. Well, the Gentleman is right. Maybe the heading ought to be expanded. But, still, the President will agree that that is a form or manner of child abuse.

The President Pro Tempore. What does the Sponsor say? Will the Gentleman kindly restate the amendment?

ANGARA AMENDMENT

Senator Angara. The new section will read something like this, Mr. President: MINORS, 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, et cetera.

Senator Lina. It is accepted, Mr. President.[23] (Emphasis and underscoring supplied)

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[23] RECORD OF THE SENATE, Vol. I, No. 7, August 1, 1991, pp. 261-262.

Clear from the said deliberations is the intent to still limit the application of Section 5(b) to a situation where the child is used for sexual purposes **for a consideration**, although it need not be monetary. **The Angara Amendment, even as it adds the phrase "due to the coercion or influence of any adult, syndicate or group", did not transform the provision into one that has universal application, like the provisions of the RPC.** To repeat, Section 5(b) only applies in the specific and limited instances where the child-victim is EPSOSA.

The *ponencia* further argues that the interpretation of Section 5(b), R.A. 7610 in the cases of *Dimakuta, Quimvel*, and *Caoili* is more consistent with the objective of the law,[24] and of the Constitution,[25] to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development. It adds that:

> The term "other sexual abuse," on the other hand, should be construed in relation to the definitions of "child abuse" under Section 3, Article I of R.A. No. 7610 and "sexual abuse" under Section 2(g) of the *Rules and Regulations on the Reporting and Investigation of Child Abuse Cases*. In the former provision, "child abuse" refers to the maltreatment, **whether habitual or not**, of the child which includes sexual abuse, among other matters. In the latter provision, "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. x x x[26] (Emphasis in the original)

With utmost respect to the distinguished *ponente*, these arguments unduly extend the letter of the Section 5(b) of R.A. 7610 for the sake of supposedly reaching its objectives. For sure, these arguments violate the well-established rule that penal statutes are to be strictly construed against the government **and**

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[24] Expressed in its Declaration of State Policy and Principles (Section 2).

[25] 1987 CONSTITUTION, Art. XV, Sec. 3(2).

[26] *Ponencia*, pp. 35-36.

liberally in favor of the accused.[27] In the interpretation of a penal statute, the tendency is to give it careful scrutiny, and to construe it with such strictness as to safeguard the rights of the defendant.[28] As the Court in *People v. Garcia*[29] reminds:

> x x x "Criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. **In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted. Only those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation.** They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought." x x x[30] (Emphasis and underscoring supplied)

What is more, the aforementioned objective of R.A. 7610 and the Constitution — that is, to afford special protection to children from all forms of abuse, neglect, cruelty and discrimination, and other conditions prejudicial to their development — is actually achieved, not by the unwarranted expansion of Section 5(b) in particular, but by the law itself read as a whole.

The statements of Senators Lina and Rasul,[31] relied upon by the *ponencia*, to the effect that R.A. 7610 was passed in keeping with the Constitutional mandate that "[t]he State shall defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their

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[27] *People v. Subido*, 160-A Phil. 51, 59 (1975).

[28] *Id*. at 59.

[29] 85 Phil. 651 (1950).

[30] *Id*. at 656, citing Crawford, *Statutory Construction*, pp. 460-462.

[31] See *Ponencia,* pp. 37-39.

development" do not support the expanded interpretation of Section 5(b) at all. In fact, the Senators were lauding the enactment into law of R.A. 7610 because it provided a holistic approach in protecting children from various abuses and forms of neglect that were not punished by law before its enactment. To illustrate, the following are the novel areas for the protection of children that are covered through the enactment of R.A. 7610:

1. Protection of children from **Child Prostitution and Other Sexual Abuse** (Sections 5 and 6, Article III, R.A. 7610);
2. Protection of children against **Child Trafficking** (Sections 7 and 8, Article IV, R.A. 7610);
3. Protection of children from being used in **Obscene Publications and Indecent Shows** (Section 9, Article V, R.A. 7610);
4. Other forms of abuse, including the **use of children for illegal activities** (Section 10, Article VI, R.A. 7610);
5. Protection of children against **Child Labor** (Section 12, Article VIII, R.A. 7610);
6. Special protection for **Children of Indigenous Cultural Communities** (Sections 17-21, Article IX, R.A. 7610); and
7. Rights of **Children in Situations of Armed Conflict** (Sections 22- 26, Article X, R.A. 7610).

The *ponencia* further uses the extended explanation by Senator Lina of his vote on the bill that became R.A. 7610 to support its position. The *ponencia* argues:

> In the extended explanation of his vote on Senate Bill No. 1209, Senator Lina emphasized that the bill complements the efforts the Senate has initiated towards the implementation of a national comprehensive program for the survival and development of Filipino children, in keeping with the Constitutional mandate that "*[t]he State shall defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development*." Senator Lina also stressed that the bill supplies the inadequacies of the existing laws treating crimes committed against

children, namely, the RPC and the Child and Youth Welfare Code, in the light of the present situation, *i.e.*, current empirical data on child abuse indicate that a stronger deterrence is imperative.[32]

For full context, however, Senator Lina's explanation is quoted in its entirety below:

EXPLANATION OF VOTE OF SENATOR LINA

x x x x x x x x x

The following is the written Explanation of Vote submitted by Senator Lina:

In voting for this measure, we keep in mind some thirty (30) million children who are below 18 years of age, of which about 25.3 million are children below fifteen years of age. **Of these number, it is estimated that at least one percent (1%) are subject to abuse, exploitation, neglect, and of crimes *related to trafficking*.**

These are the vulnerable and sensitive sectors of our society needing our care and protection so that they will grow to become mature adults who are useful members of the society and potential leaders of our Nation.

This bill which is a consolidation of Senate Bill No. 487, (one of the earlier bills I filed), and Senate Bill No. 727 authored by Senator Mercado with amendments introduced by Senators Rasul, Shahani, Tañada and the members of the Committee on Women and Family Relations, complements the efforts we have initiated towards the implementation of a national comprehensive program for the survival and development of Filipino children, in keeping with the Constitutional mandate that "*The State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development*" (Article XV, Section 3, par. 2), and also with the duty we assumed as signatory of the United Nations Convention on the Rights of the Child.

Republic Act No. 6972 (which was approved on November 23, 1990), The Barangay Level Total Development and Protection of Children Act provides the foundation for a network of barangay-

[32] *Id*. at 37.

level crises intervention and sanctuaries for endangered children up to six years of age who need to be rescued from an unbearable home situation, and RA 7160, The Local Government Code of 1991 (which was approved on November 26, 1991) mandates every barangay, as soon as feasible, to set up such center to serve children up to six years of age. These laws embody the institutional *protective mechanisms* while this present bill provides a *mechanism for strong deterrence* against the commission of abuse and exploitation.

This bill which I co-sponsored supplies the inadequacies of our existing laws treating crimes committed against children, namely, the Revised Penal Code and the Child and Youth Welfare Code, in the light of the present situation. Current empirical data on child abuse indicate that a stronger deterrent is imperative.

Child abuse is now clearly defined and more encompassing as to include "the act of unreasonably depriving a child of basic needs for survival, such as food and shelter or a combination of both or a case of an isolated event where the injury is of a degree that if not immediately remedied could seriously impair the child's growth and development or result in permanent incapacity or death."

With this legislation, *child traffickers* could be easily prosecuted and penalized. Incestuous abuse and those where victims are under twelve years of age are penalized gravely, ranging from *reclusion temporal* to *reclusion perpetua*, in its maximum period. **It also imposes the penalty of *reclusion temporal in its medium period to reclusion perpetua*, equivalent to a 14-30 year prison term for those "(a) who promote or facilitate child prostitution; (b) commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution; (c) derive profit or advantage whether as manager or owner of an establishment where the prostitution takes place or of the sauna, disco, bar resort, place of entertainment or establishment serving as a cover or which engages in a prostitution in addition to the activity for which the license has been issued to said establishment.["]**

Attempt to commit child prostitution and child trafficking, including the act of inducing or coercing a child to perform in obscene publications or indecent shows whether live or in video, are also penalized. And additional penalties are imposed if the offender is a foreigner, a government official or employee.

For the foregoing reasons, I vote *Yes*, and I believe that as an elected legislator, this is one of the best legacies that I can leave to our children and youth.[33] (Emphasis and underscoring supplied)

If read in its entirety — instead of placing emphasis on certain paragraphs — the vote of Senator Lina, therefore, supports the argument that the law applies ***only to specific and limited instances***. Senator Lina even discussed Section 5(b) in particular in the above extended explanation, still within the context of prostitution.

Thus, to emphasize, R.A. 7610 was being lauded for being the response to the Constitutional mandate for the State to provide special protection to children from all forms of neglect, abuse, cruelty or exploitation because **it provides for protection of children in special areas where there were gaps in the law prior to its enactment.** This is the reason why, as the *ponencia* itself recognizes, "the enactment of R.A. No. 7610 was a response of the legislature to the observation of the Court [in *People v. Ritter*] that there was a gap in the law because of the lack of criminal laws which adequately protect street children from exploitation of pedophiles."[34]

That R.A. 7610 was the legislature's attempt in providing a comprehensive law to adequately protect children from ***all*** forms of abuse, neglect, cruelty or exploitation, is best expressed in the law's Section 10(a) (not Section 5(b)), which provides:

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

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

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[33] RECORD OF THE SENATE, Vol. II, No. 58, December 2, 1991, pp. 793-794.

[34] See *Ponencia*, p. 47.

To stress, R.A. 7610 as a whole tried to cover as many areas where children experience abuse, neglect, cruelty, or exploitation, and where it fails to explicitly provide for one, the catch-all provision in Section 10(a) was crafted to cover it. Again, these — the other provisions of R.A. 7610, complemented by its catch-all provision in Section 10(a) — are the reasons why R.A. 7610 was being lauded for providing protection to children from ***all*** forms of abuse, neglect, cruelty, or exploitation. **It is definitely not the expanded interpretation of Section 5(b) created by *Dimakuta, Quimvel*, and *Caoili,* as reiterated in the *ponencia*.**

Other reasons put forth by the ponencia

In further rebutting the point I and Justice Perlas-Bernabe raised — that a person could be convicted of violation of Article 336 in relation to Section 5(b) only upon allegation and proof of the unique circumstance of being EPSOSA — the *ponencia* reasons that "the provisos of Section 5(b) itself explicitly state that it must also be read in light of the provisions of the RPC, thus: '*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*.'"[35]

With due respect, I fail to see how the above provisos supposedly negate the points Justice Perlas-Bernabe and I raised. The provisos only provide that the perpetrators shall be prosecuted under the RPC when the victim is below 12 years old, and then impose the corresponding penalty therefor. **The provisos provide for nothing more.**To illustrate clearly, the provisos only provide for the following:

> General rule: when the child-victim is "exploited in prostitution and other sexual abuse" or EPSOSA, then the perpetrator should be prosecuted under Section 5(b), R.A. 7610. Penalty: *reclusion temporal* medium period to *reclusion perpetua*.

[35] *Id*. at 39.

a. Effect of first proviso only: if (1) the act constitutes Rape by sexual intercourse and (2) the child-victim, still EPSOSA, is below 12 years old, then the perpetrator should be prosecuted under the Rape provision of the RPC. Penalty: *reclusion perpetua*.

b. Effect of the first and second provisos, combined: if (1) the act constitutes Lascivious Conduct[36] and (2) the child-victim, still EPSOSA, is below 12 years old, then the perpetrator should be prosecuted under the Acts of Lasciviousness or Rape by Sexual Assault provisions of the RPC. Penalty: *reclusion temporal* in its medium period.

Verily, it is hard to see how the provisos supposedly negate the assertion that Section 5(b) only applies when the child victim is EPSOSA.

At this juncture, I would like to digress and thresh out a point of divergence between my view and Justice Perlas-Bernabe's. According to her, the afore-quoted *provisos* are "a textual indicator that RA 7610 has a specific application only to children who are pre-disposed to 'consent' to a sexual act because they are 'exploited in prostitution or subject to other sexual abuse.'"[37] She further explains her view:

> While the phrase "*shall be prosecuted under*" has not been discussed in existing case law, it is my view that the same is a clear instruction by the lawmakers to defer any application of Section 5 (b), Article III of RA 7610, **irrespective of the presence of EPSOSA**, when the

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[36] Which includes all other acts not sexual acts not constituting Rape by Sexual Intercourse because the Implementing Rules and Regulations of RA 7610 defines "lascivious conduct" as "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[.]" RULES AND REGULATIONS ON THE REPORTING AND INVESTIGATION OF CHILD ABUSE CASES, Sec. 2(h).

[37] *J.* Perlas-Bernabe, Separate Opinion, p. 5.

victim is under twelve (12). As a consequence, when an accused is prosecuted under the provisions of the RPC, only the elements of the crimes defined thereunder must be alleged and proved. Necessarily too, unless further qualified, as in the second proviso, *i.e., 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*, the penalties provided under the RPC would apply.[38] (Emphasis and underscoring supplied)

On her proposed table of penalties, Justice Perlas-Bernabe reiterates her point that the element of being EPSOSA becomes irrelevant when the victim is below 12 years old because of the operation of the provisos under Section 5(b) of R.A. 7610.

I partially disagree.

I concur with Justice Perlas-Bernabe's view only to the extent that when Section 5(b), R.A. 7610 defers to the provisions of the RPC when the victim is below 12 years old, then this means that "only the elements of the crimes defined thereunder must be alleged and proved."[39] However, I would have to express my disagreement to the sweeping statement that when the victim is below 12 years old, that the element of being EPSOSA becomes irrelevant.

Again, at the risk of being repetitive, Section 5(b) of R.A. 7610 is a penal provision which has a special and limited application that requires the element of being EPSOSA for it to apply. **Differently stated, it is the element of being EPSOSA that precisely triggers the application of Section 5(b) of R.A. 7610. Hence, the *provisos*— both the one referring the prosecution of the case back to the RPC, and the other which increases the penalties for lascivious conduct — would apply only when the victim is both below 12 years old and EPSOSA.**

The blanket claim that being EPSOSA is irrelevant when the victim is below 12 years old leads to the exact same evils that this opinion is trying to address, *i.e.*, the across-the-board

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[38] *Id*. at 6.

[39] *Id*.

application of Section 5(b) of R.A. 7610 in each and every case of sexual abuse committed against children, although limited only to the instance that the victim is below 12 years old.

This indiscriminate application of the *provisos* in Section 5(b) of R.A. 7610 does not seem to matter when the act committed by the accused constitutes rape by sexual intercourse. To illustrate, the direct application of the RPC or its application through the first *proviso* of Section 5(b) would lead to the exact same result: a punishment or penalty of *reclusion perpetua* on the accused upon conviction.

The same is not true, however, when the act constitutes only lascivious conduct. I refer to the tables below for ease of reference:

Act committed constitutes **Acts of Lasciviousness**	Penalty
a. Victim is below 12, not EPSOSA (thus, Article 336 of the RPC is directly applied)	*Prision correccional*
b. Victim is below 12, but EPSOSA (thus, the provisos of Section 5(b) apply)	*Reclusion temporal* in its medium period
Act committed constitutes **Rape by Sexual Assault**	Penalty
a. Victim is below 12, not EPSOSA (thus, Article 226-A(2) of the RPC, as amended by R.A. 8353 is directly applied)	*Prision mayor*
b. Victim is below 12, but EPSOSA (thus, the provisos of Section 5(b) applies)	*Reclusion temporal* in its medium period

Thus, as shown by the foregoing table, the element of being EPSOSA is relevant when the victim is below 12 years old **as**

the penalties will be increased to those provided for by R.A. 7610.

The *ponencia* further points out that "[i]t is hard to understand why the legislature would enact a penal law on child abuse that would create an unreasonable classification between those who are considered as x x x EPSOSA and those who are not."[40]

On the contrary, the reasons of the legislature are not that hard to understand.

The classification between the children considered as EPSOSA and those who are not is a reasonable one. Children who are EPSOSA may be considered a class of their own, whose victimizers deserve a specific punishment. For instance, the legislature, in enacting R.A. 9262 or the *Anti-Violence Against Women and Their Children Act*, created a distinction between (1) women who were victimized by persons with whom they have or had a sexual or dating relationship and (2) all other women-victims of abuse. This distinction is valid, and no one argues that R.A. 9262 applies or should apply in each and every case where the victim of abuse is a woman.

The *ponencia* then insists that a perpetrator of acts of lasciviousness against a child that is not EPSOSA cannot be punished by merely *prision correccional* for to do so would be "contrary to the letter and intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, exploitation and discrimination."[41] The *ponencia* makes the foregoing extrapolation from the second to the last paragraph of Section 10 of R.A. 7610, which provides:

> For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262, paragraph 2, and 263, paragraph 1 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be *reclusion perpetua* when the victim is under twelve (12) years of age. **The penalty for**

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[40] *Ponencia*, p. 37.

[41] *Id*. at 40.

the commission of acts punishable under Articles 337, 339, 340 and 341 of Act No. 3815, as amended, the Revised Penal Code, for the crimes of qualified seduction, acts of lasciviousness with the consent of the offended party, corruption of minors, and white slave trade, respectively, shall be one (1) degree higher than that imposed by law when the victim is under twelve (12) years of age. (Emphasis and underscoring supplied)

Again, I submit that a logical leap is committed: since R.A. 7610 increased the penalties under Articles 337, 339, 340 and 341 of the RPC, the *ponencia* posits that this likewise affected Article 336 of the RPC or the provisions on acts of lasciviousness. However, as the deliberations of R.A. 7610, quoted[42] by the *ponencia* itself, show:

Senator Lina. x x x

For the information and guidance of our Colleagues, the phrase "child abuse" here is more descriptive than a definition that specifies the particulars of the acts of child abuse. As can be gleaned from the bill, Mr. President, there is a reference in Section 10 to the "Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development."

We refer, for example, to the Revised Penal Code. There are already acts described and punishable under the Revised Penal Code and the Child and Youth Welfare Code. These are all enumerated already, Mr. President. There are particular acts that are already being punished.

But we are providing a stronger deterrence against child abuse and exploitation by increasing the penalties when the victim is a child. That is number one. We define a child as "one who is 15 years and below.

The President Pro Tempore. Would the Sponsor then say that this bill repeals, by implication or as a consequence, the law he just cited for the protection of the child as contained in that Code just mentioned, since this provides for stronger deterrence against child abuse and we have now a Code for the protection of the child? Would that Code be now amended by this Act, if passed?

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[42] See *id*. at 42-43; RECORD OF THE SENATE, Vol. I, No. 7, August 1, 1991, pp. 258-259.

Senator Lina. We specified in the bill, Mr. President, increase in penalties. That is one. But, of course, that is not everything included in the bill. There are other aspects like making it easier to prosecute these cases of pedophilia in our country. That is another aspect of the bill.

The other aspects of the bill include the increase in the penalties on acts committed against children; and by definition, children are those below 15 years of age.

So, it is an amendment to the Child and Youth Welfare Code, Mr. President. This is not an amendment by implication. We made direct reference to the Articles in the Revised Penal Code and in the Articles in the Child and Youth Welfare Code that are amended because of the increase in penalties. (Emphasis and underscoring supplied)

Given the clear import of the above — *that the legislature expressly named the provisions it sought to amend through R.A. 7610* — the *ponencia* cannot now insist on an **amendment by implication**. The position that Section 5(b), R.A. 7610 rendered Article 336 of the RPC inoperative when the victim is a child, despite the lack of a manifest intention to the effect as expressed in the letter of the said provision, is unavailing. Differently stated, an **implied partial repeal cannot be insisted upon in the face of the express letter of the law.** I therefore believe that any continued assertion that Section 5(b) of R.A. 7610 applies to any and all cases of acts of lasciviousness committed against children, whether under the context of being EPSOSA or not, is not in accordance with the law itself.

When Section 5(b), R.A. 7610 applies

As demonstrated above, both literal and purposive tests, therefore, show that there is nothing in the language of the law or in the Senate deliberations that supports the conclusion that Section 5(b), R.A. 7610 subsumes all instances of sexual abuse against children.

Thus, for a person to be convicted of violating Section 5(b), R.A. 7610, the following essential elements need to be proved: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the said act is performed with a child "exploited

in prostitution or subjected to other sexual abuse"; and (3) the child whether male or female, is below 18 years of age.[43]

The unique circumstances of the children "exploited in prostitution or subjected to other sexual abuse" — for which the provisions of R.A. 7610 are intended — are highlighted in this exchange:

The Presiding Officer [Senator Mercado]. Senator Pimentel.

Senator Pimentel. Just this question, Mr. President, if the Gentleman will allow.

Will this amendment also affect the Revised Penal Code provisions on seduction?

Senator Lina. **No**, Mr. President. Article 336 of Act No. 3815 will remain unaffected by this amendment we are introducing here. **As a backgrounder, the difficulty in the prosecution of so-called "pedophiles" can be traced to this problem of having to catch the malefactor committing the sexual act on the victim**. And those in the law enforcement agencies and in the prosecution service of the Government have found it difficult to prosecute. Because if an old person, especially a foreigner, is seen with a child with whom he has no relation -- blood or otherwise — and they are just seen in a room and there is no way to enter the room and to see them in *flagrante delicto*, then it will be very difficult for the prosecution to charge or to hale to court these pedophiles.

So, we are introducing into this bill, Mr. President, an act that is considered already an attempt to commit child prostitution. **This, in no way, affects the Revised Penal Code provision on acts of lasciviousness or qualified seduction**.[44] (Emphasis and underscoring supplied)

Bearing these in mind, there is no disagreement as to the first and third elements of Section 5(b). The core of the discussion

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[43] *People v. Abello*, 601 Phil. 373, 392 (2009). Decided by the Second Division; penned by Associate Justice Arturo D. Brion, with Associate Justices Dante O. Tinga, Ma. Alicia Austria-Martinez, Renato C. Corona and Presbitero J. Velasco, Jr. concurring.

[44] RECORD OF THE SENATE, Vol. IV, No. 116, May 9, 1991, pp. 334-335.

relates to the meaning of the second element — that the act of sexual intercourse or lascivious conduct is performed with a "child exploited in prostitution or subjected to other sexual abuse."

To my mind, a person can only be convicted of violation of Article 336 in relation to Section 5(b), upon allegation and proof **of the unique circumstances of the child — that he or she is "exploited in prostitution or subject to other sexual abuse."** In this light, I quote in agreement Justice Carpio's dissenting opinion in *Olivarez v. Court of Appeals*:[45]

> Section 5 of RA 7610 deals with a situation where the acts of lasciviousness are committed on a child already either exploited in prostitution or subjected to **"other sexual abuse."** Clearly, the acts of lasciviousness committed on the child are separate and distinct from the **other** circumstance — that the child is either exploited in prostitution or subjected to **"other sexual abuse."**
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> x x x x x x x x x
>
> Section 5 of RA 7610 penalizes those "who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse." The act of sexual intercourse or lascivious conduct may be committed on a child already **exploited in prostitution, whether the child engages in prostitution for profit or someone coerces her into prostitution against her will. *The element of profit or coercion refers to the practice of prostitution, not to the sexual intercourse or lascivious conduct committed by the accused.*** A person may commit acts of lasciviousness even on a prostitute, as when a person mashes the private parts of a prostitute against her will.
>
> The sexual intercourse or act of lasciviousness may be committed on a child **already subjected to other sexual abuse**. The child may be subjected to such **other** sexual abuse for profit or through coercion, as when the child is employed or coerced into pornography. A complete stranger, through force or intimidation, may commit acts of lasciviousness on such child in violation of Section 5 of RA 7610.
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> The phrase **"other sexual abuse"** plainly means that the child is already subjected to sexual abuse **other** than the crime for which the accused is charged under Section 5 of RA 7610. The **"other sexual**

[45] 503 Phil. 421 (2005).

abuse" is an element separate and distinct from the acts of lasciviousness that the accused performs on the child. The majority opinion admits this when it enumerates the second element of the crime under Section 5 of RA 7610 — that the lascivious "act is performed with a child x x x subjected to other sexual abuse."[46] (Emphasis and underscoring supplied)

Otherwise stated, in order to impose the higher penalty provided in Section 5(b) as compared to Article 336, it must be **alleged** and **proved** that the child — (1) for money, profit, or any other consideration or (2) due to the coercion or influence of any adult, syndicate or group — indulges in sexual intercourse or lascivious conduct.

In *People v. Abello*[47] (*Abello*), one of the reasons the accused was convicted of rape by sexual assault and acts of lasciviousness, **as penalized under the RPC and not under Section 5(b)**, was because there was no showing of coercion or influence required by the second element. The Court ratiocinated:

In *Olivarez v. Court of Appeals*, we 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.

In the present case, **the prosecution failed to present any evidence showing that force or coercion attended Abello's sexual abuse on AAA; the evidence reveals that she was asleep** at the time these crimes happened and only awoke when she felt her breasts being fondled. Hence, she could have not resisted Abello's advances as she was unconscious at the time it happened. In the same manner, there was also no evidence showing that Abello compelled her, or cowed her into silence to bear his sexual assault, after being roused from sleep. Neither is there evidence that she had the time to manifest conscious lack of consent or resistance to Abello's assault.[48] (Emphasis and underscoring supplied)

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[46] *Id*. at 445-447.

[47] *Supra* note 43.

[48] *Id*. at 393.

The point of the foregoing is simply this: Articles 266-A and 336 of the RPC remain as operative provisions, and the crime of rape and acts of lasciviousness continue to be crimes separate and distinct from a violation under Section 5(b), R.A. 7610.

The legislative intent to have the provisions of R.A. 7610 to operate ***side by side*** with the provisions of the RPC — and a recognition that the latter remain effective — can be gleaned from Section 10 of the law, which again I quote:

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

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

This is confirmed by Senator Lina in his sponsorship speech of R.A. 7610, thus:

Senator Lina. x x x

x x x x x x x x x

Senate Bill No. 1209, Mr. President, is intended to provide stiffer penalties for abuse of children and to facilitate prosecution of perpetrators of abuse. **It is intended to complement provisions of the Revised Penal Code where the crimes committed are those which lead children to prostitution and sexual abuse, trafficking in children and use of the young in pornographic activities.**

These are the three areas of concern which are specifically included in the United Nations Convention o[n] the Rights of the Child. As a signatory to this Convention, to which the Senate concurred in 1990, our country is required to pass measures which protect the child against these forms of abuse.

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Mr. President, this bill on providing higher penalties for abusers and exploiters, setting up legal presumptions to facilitate prosecution of perpetrators of abuse, and **complementing the existing penal**

provisions of crimes which involve children below 18 years of age is a part of a national program for protection of children.

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Mr. President, subject to perfecting amendments, I am hopeful that the Senate will approve this bill and thereby add to the growing program for special protection of children and youth. We need this measure to deter abuse. We need a law to prevent exploitation. We need a framework for the effective and swift administration of justice for the violation of the rights of children.[49] (Emphasis and underscoring supplied)

It is thus erroneous to rule that R.A. 7610 applies in each and every case where the victim is a minor although he or she was not proved, much less alleged, to be a child "exploited in prostitution or subjected to other sexual abuse." I invite the members of the Court to go back to the mindset and ruling adopted in *Abello* where it was held that **"since R.A. No. 7610 is a special law referring to a particular class in society, the prosecution must show that the victim truly belongs to this particular class to warrant the application of the statute's provisions. *Any doubt in this regard we must resolve in favor of the accused.*"**[50]

There is no question that, in a desire to bring justice to child victims of sexual abuse, the Court has, in continually applying the principles laid down in *Dimakuta, Quimvel*, and *Caoili*, sought the application of a law that imposes a harsher penalty on its violators. However, as noble as this intent is, it is fundamentally unsound to let the penalty determine the crime. To borrow a phrase, this situation is letting the tail wag the dog.

To be sure, it is the acts committed by the accused, and the crime as defined by the legislature — not the concomitant penalty — which determines the applicable law in a particular set of facts. As the former Second Division of the Court in *People v. Ejercito*,[51]

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[49] RECORD OF THE SENATE, Vol. IV, No. 111, April 29, 1991, pp. 191-193.

[50] *Supra* note 43, at 394. Emphasis, italics and underscoring supplied.

[51] G.R. No. 229861, July 2, 2018.

a case penned by Justice Perlas-Bernabe and concurred in by the *ponente*, correctly held:

> Neither should the conflict between the application of Section 5(b) of RA 7610 and RA 8353 be resolved based on which law provides a higher penalty against the accused. **The superseding scope of RA 8353 should be the sole reason of its prevalence over Section 5(b) of RA 7610.** The higher penalty provided under RA 8353 should not be the moving consideration, given that penalties are merely accessory to the act being punished by a particular law. The term "'[p]enalty' is defined as '[p]unishment imposed on a wrongdoer usually in the form of imprisonment or fine'; '[p]unishment imposed by lawful authority upon a person who commits a deliberate or negligent act.'" Given its accessory nature, once the proper application of a penal law is determined over another, then the imposition of the penalty attached to that act punished in the prevailing penal law only follows as a matter of course. ***In the final analysis, it is the determination of the act being punished together with its attending circumstances — and not the gravity of the penalty ancillary to that punished act — which is the key consideration in resolving the conflicting applications of two penal laws.***
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> x x x **Likewise, it is apt to clarify that if there appears to be any rational dissonance or perceived unfairness in the imposable penalties between two applicable laws** (say for instance, that a person who commits rape by sexual assault under Article 266-A in relation to Article 266-B of the RPC, as amended by RA 8353 is punished less than a person who commits lascivious conduct against a minor under Section 5 (b) of RA 7610), **then the solution is through remedial legislation and not through judicial interpretation. It is well-settled that the determination of penalties is a policy matter that belongs to the legislative branch of government. Thus, however compelling the dictates of reason might be, our constitutional order proscribes the Judiciary from adjusting the gradations of the penalties which are fixed by Congress through its legislative function.** As Associate Justice Diosdado M. Peralta had instructively observed in his opinion in *Cao[i]li*:
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> > Curiously, despite the clear intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty **[*reclusion temporal* medium**] when the victim is under 12 years old is lower compared to the penalty **[*reclusion***

> ***temporal* medium to *reclusion perpetua***] when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31, Article XII of R.A. 7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum, whereas as [sic] the minimum term in the case of the older victims shall be taken from *prision mayor* medium to *reclusion temporal* minimum. **It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints, but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law. To my mind, a corrective legislation is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child.**[52] (Additional emphasis and underscoring supplied)

Therefore, while I identify with the Court in its desire to impose a heavier penalty for sex offenders who victimize children — the said crimes being undoubtedly detestable — the Court cannot arrogate unto itself a power it does not have. Again, the Court's continuous application of R.A. 7610 in **all** cases of sexual abuse committed against minors is, with due respect, an exercise of judicial legislation which it simply cannot do.

At this point, it is important to point out that, as a result of this recurrent practice of relating the crime committed to R.A. 7610 in order to increase the penalty, the accused's constitutionally protected right to due process of law is being violated.

An essential component of the right to due process in criminal proceedings is the right of the accused to be sufficiently informed

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[52] *Id.* at 15-17.

of the cause of the accusation against him. This is implemented through Rule 110, Section 9 of the Rules of Court, which states:

> SEC. 9. *Cause of the accusation*. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

It is fundamental that every element of which the offense is composed must be alleged in the Information. No Information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.[53] The law essentially requires this to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.[54] From this legal backdrop, it may then be said that convicting an accused and relating the offenses to R.A. 7610 to increase the penalty **when the Information does not state that the victim was a child "engaged in prostitution or subjected to sexual abuse" constitutes a violation of an accused's right to due process**.

The *ponencia* counters that "[c]ontrary to the view of Justice Caguioa, **there is likewise no such thing as a recurrent practice of relating the crime committed to R.A. No. 7610 in order to increase the penalty**, which violates the accused's constitutionally protected right to due process of law."[55]

Yet, no matter the attempts to deny the existence of such practice, the inconsistencies in the *ponencia* itself demonstrate that its conclusions are driven by the desire to apply whichever law imposes the heavier penalty in a particular scenario. For instance, when discussing the applicable law when the act done by the accused constitutes "sexual intercourse", the *ponencia*

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[53] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 719 (2003).

[54] *Id*. at 719.

[55] *Ponencia*, p. 42.

has this discussion on the difference between the elements of "force or intimidation" in Rape under the RPC, on one hand, and "coercion or influence" under Section 5(b) of R.A. 7610, on the other:

> In *Quimvel*, it was held that the term "coercion or influence" is broad enough to cover or even synonymous with the term "force or intimidation." Nonetheless, it should be emphasized that "coercion or influence" is used in Section 5 of R.A. No. 7610 to qualify or refer to the means through which "any adult, syndicate or group" compels a child to indulge in sexual intercourse. On the other hand, the use of "money, profit or any other consideration" is the other mode by which a child indulges in sexual intercourse, without the participation of "any adult, syndicate or group." **In other words, "coercion or influence" of a child to indulge in sexual intercourse is clearly exerted NOT by the offender whose liability is based on Section 5(b) of R.A. No. 7610 for committing sexual act with a child exploited in prostitution or other sexual abuse. Rather, the "coercion or influence" is exerted upon the child by "any adult, syndicate, or group" whose liability is found under Section 5(a) for engaging in, promoting, facilitating, or inducing child prostitution, whereby sexual intercourse is the necessary consequence of the prostitution.**
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> As can be gleaned above, "force, threat or intimidation" is the element of rape under the RPC, while "due to coercion or influence of any adult, syndicate or group" is the operative phrase for a child to be deemed "exploited in prostitution or other sexual abuse," which is the element of sexual abuse under Section 5(b) of R.A. No. 7610. **The "coercion or influence" is not the reason why the child submitted herself to sexual intercourse, but it was utilized in order for the child to become a prostitute.** x x x
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> **Therefore, there could be no instance that an Information may charge the same accused with the crime of rape where "force, threat or intimidation" is the element of the crime under the RPC, and at the same time violation of Section 5(b) of R.A. No. 7610** where the victim indulged in sexual intercourse because she is exploited in prostitution either "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate

or group" — the phrase which qualifies a child to be deemed "exploited in prostitution or other sexual abuse" as an element of violation of Section 5(b) of R.A. No. 7610.[56] (Emphasis and underscoring supplied; emphasis in the original omitted)

The *ponencia*, however, refuses to apply the above analysis when the act constitutes "sexual assault" or "lascivious conduct." It merely reiterates the *Dimakuta* ruling, and again anchors its conclusion on the policy of the State to provide special protection to children. The *ponencia* explains:

Third, if the charge against the accused where the victim is 12 years old or below is sexual assault under paragraph 2, Article 266-A of the RPC, then it may happen that the elements thereof are the same as that of lascivious conduct under Section 5(b) of R.A. No. 7610, because the term "lascivious conduct" includes introduction of any object into the genitalia, anus or mouth of any person. In this regard, We held in *Dimakuta* that in instances where a lascivious conduct committed against a child is covered by R.A. No. 7610 and the act is likewise covered by sexual assault under paragraph 2, Article 266-A of the RPC [punishable by *prision mayor*], the offender should be held liable for violation of Section 5(b) of R.A. No. 7610 [punishable by *reclusion temporal* medium], consistent with the declared policy of the State to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination, and other conditions prejudicial to their development. x x x[57]

In another part of the *ponencia*, it partly concedes yet insists on its point, again by invoking the legislative intent behind the law. Thus:

Justice Caguioa is partly correct. Section 5(b) of R.A. No. 7610 is separate and distinct from common and ordinary acts of lasciviousness under Article 336 of the RPC. However, when the victim of such acts of lasciviousness is a child, as defined by law, We hold that the penalty is that provided for under Section 5(b) of R.A. No. 7610 — *i.e.*, *reclusion temporal medium* in case the victim is under 12 years old, and *reclusion temporal medium* to *reclusion*

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[56] *Ponencia*, pp. 25-27.

[57] *Ponencia*, pp. 27-28.

perpetua when the victim is between 12 years old or under 18 years old or above 18 under special circumstances — and not merely *prison* (sic) *correccional* under Article 336 of the RPC. Our view is consistent with the legislative intent to provide stronger deterrence against all forms of child abuse, and the evil sought to be avoided by the enactment of R.A. No. 7610, which was exhaustively discussed during the committee deliberations of the House of Representatives[.][58]

Clear from the foregoing is that the *ponencia* is willing to apply the inherent differences between the provisions of the RPC and R.A. 7610 when it comes to rape by sexual intercourse, and it is because the RPC imposes the heavier penalty of *reclusion perpetua* compared with the *reclusion temporal medium* to *reclusion perpetua* of Section 5(b), R.A. 7610. It is unwilling, however, to extend the same understanding of the differences between the provisions of the RPC and R.A. 7610 — and in the process contradicts itself — when the act constitutes "sexual assault", "acts of lasciviousness" or "lascivious conduct" for the reason that the RPC punishes the said acts with only *prision correccional*[59] or *prision mayor*.[60]

Another instance in the *ponencia* that reveals that the penalty imposed is the primordial consideration in the choice of applicable law is the discussion on whether R.A. 8353 has superseded R.A. 7610. In the earlier part of the *ponencia*, it says:

> **Records** of committee and plenary deliberations of the House of Representative (sic) and of the deliberations of the Senate, as well as the records of bicameral conference committee meetings, further **reveal no legislative intent for R.A. No. 8353 to supersede Section 5(b) of R.A. No. 7610**. x x x **While R.A. No. 8353 contains a generic repealing and amendatory clause, the records of the deliberation of the legislature are silent with respect to sexual intercourse or lascivious conduct against children under R.A. No. 7610**, particularly those who are 12 years old or below 18, or above 18 but

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[58] *Id*. at 48.

[59] In cases of Acts of Lasciviousness under Art. 336, RPC.

[60] In cases of Sexual Assault under Article 266-A(2), RPC.

are unable to fully take care or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.[61] (Emphasis and underscoring supplied)

Despite the clear pronouncement of the *ponencia* quoted above **that R.A. 8353 did *not* supersede R.A. 7610**, it would later on say:

x x x Indeed, while R.A. No. 7610 is a special law specifically enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development, **We hold that it is contrary to the legislative intent of the same law if the lesser penalty** (*reclusion temporal medium* to *reclusion perpetua*) under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18.

Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, is not only the **more recent law**, but also deals more particularly with all rape cases, hence, its short title "*The Anti-Rape Law of 1997*." R.A. No. 8353 upholds the policies and principles of R.A. No. 7610, and provides a "stronger deterrence and special protection against child abuse," as it imposes a more severe penalty of *reclusion perpetua* under Article 266-B of the RPC, or even the death penalty if the victim is (1) under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or common-law spouses of the parent of the victim; or (2) when the victim is a child below 7 years old.

It is basic in statutory construction that in case of irreconcilable conflict between two laws, the later enactment must prevail, being the more recent expression of legislative will. Indeed, statutes must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence, and if several laws cannot be harmonized, the earlier statute must yield to the later enactment, because the later law is the latest expression of the legislative will. **Hence, Article 266-B of the RPC must prevail over Section 5(b) of R.A. No. 7610**.[62] (Emphasis and underscoring supplied)

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[61] *Ponencia*, pp. 11-12.

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

It is again plainly evident from the above that the conclusion is heavily influenced by the corresponding penalties contained in the respective laws.

It is apparent, therefore, that the *ponencia*'s choice of applicable law is primarily driven by the penalty imposed, all in the name of the State's policy to provide special protection to children. **However, this would be in clear disregard of the right of the accused to be punished only to the extent that the law imposes a specific punishment on him**.

This practice, without doubt, violates the rights of the accused in these cases. In *Dimakuta*, for example, one of the three oft-cited cases of the *ponencia* in reaching its conclusions, the crime was related to R.A. 7610 to increase the penalty ***even if the Information in the said case did not even mention the said law nor was there any allegation that the victim was EPSOSA***. The Information in Dimakuta states:

> That on or about the 24th day of September 2005, in the City of Las Piñas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously commit a lascivious conduct upon the person of one AAA, who was then a sixteen (16) year old minor, by then and there embracing her, touching her breast and private part against her will and without her consent and the act complained of is prejudicial to the physical and psychological development of the complainant.[63]

The Information filed in this case likewise did not specify that the victim was "exploited in prostitution or subjected to other sexual abuse," and in fact indicated "force and intimidation" as the mode of committing the crime — which, by the own *ponencia*'s arguments above, triggers the application of the RPC, not Section 5(b) of R.A. 7610. The Information reads:

> That sometime in the month of September 2011, at x x x, and within the jurisdiction of this Honorable Court, the above-named accused, by means of **force, intimidation** and with abuse of superior

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[63] *Supra* note 3, at 652.

strength forcibly laid complainant AAA, a 9-year old minor in a cemented pavement, and did then and there willfully, unlawfully and feloniously inserted his finger into the vagina of the said AAA, against her will and consent.[64] (Emphasis and underscoring supplied)

Again, by the *ponencia*' s pronouncements — that: (1) "there could be no instance that an Information may charge the same accused with the crime of rape where 'force, threat or intimidation' is the element of the crime under the RPC, and at the same time violation of Section 5(b) of R.A. No. 7610;"[65] and (2) that "'coercion or influence' of a child to indulge in sexual intercourse is clearly exerted NOT by the offender whose liability is based on Section 5(b) of R.A. No. 7610 for committing sexual act with a child exploited in prostitution or other sexual abuse. Rather, the 'coercion or influence' is exerted upon the child by 'any adult, syndicate, or group' whose liability is found under Section 5(a),"[66] — then the accused-appellant in this case should be convicted only of Sexual Assault under Article 266-A(2) of the RPC, punishable by *prision mayor*, instead of Sexual Assault, in relation to Section 5(b), R.A. 7610, punishable by *reclusion temporal medium*, as the *ponencia* did.

It is true that because of *Dimakuta* and other similar cases, many prosecutors have opted to put the phrase "in relation to Republic Act No. 7610" in Informations they file with the courts, just like in this case, concerning rape or sexual abuse. This practice, however, does not mean that the violation of due process has stopped. In *Canceran v. People*,[67] the Court stressed:

The Court is not unmindful of the rule that "the real nature of the criminal charge is determined, **not from** the caption or preamble of the information nor from **the specification of the law alleged to have been violated — these being conclusions of law** — but by the actual recital of facts in the complaint or information." In the case of *Domingo v. Rayala*, it was written:

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[64] *Ponencia,* p. 2.

[65] *Id*. at 27.

[66] *Id*. at 26.

[67] 762 Phil. 558 (2015).

> **What is controlling is not** the title of the complaint, **nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being *mere conclusions of law* made by the prosecutor, but the description of the crime charged and the particular facts therein recited.** The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense.[68] (Additional emphasis and underscoring supplied)

To recall, the test for sufficiency of an Information is that it must state the facts constituting the offense in a manner that would enable a person of common understanding to know what offense was intended to be charged.[69] Hence, the phrase "in relation to Republic Act No. 7610" in criminal Informations, much like in the one filed in this case, does not cure the defect in the said Informations. Again, it is my view that criminal Informations, to be considered under the purview of Section 5(b), R.A. 7610, must state the child-victim is "exploited in prostitution or subjected to other sexual abuse" **and allege the particulars**.

In addition, even if it was alleged in the Information that the act is contrary to, or in violation of, R.A. 7610, if, during the trial, it was not proved that the victim was a child engaged in prostitution or subjected to other sexual abuse, it would be error to convict the said accused under Section 5(b), R.A. 7610. This

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[68] *Id*. at 568-569.

[69] See *People v. Delector* , G.R. No. 200026, October 4, 2017, 841 SCRA 647, 659.

is because it is well-established that the following are the elements of the crime:

(1) The accused commits the act of sexual intercourse or lascivious conduct;

(2) The said act is performed with a **child exploited in prostitution or subjected to other sexual abuse**; and

(3) The child, whether male or female, is below 18 years of age.[70] (Emphasis and underscoring supplied; emphasis in the original omitted)

It cannot really be gainsaid that the second element of the crime defined in R.A. 7610 requires that the child-victim be one that is exploited in prostitution or subjected to other sexual abuse — and not just simply any child. In the present case, for instance, the information states that the act committed by the accused was "[c]ontrary to Article 266-A, par. 2 of the Revised Penal Code in relation to R.A. 7610"[71] **and yet, it was not proved, much less alleged, that the victim was engaged in prostitution or was subjected to other sexual abuse**. According to the *ponencia*, the victim AAA was merely peeling corn with her cousin when the accused, who lived adjacent to her grandmother's house, approached her and opened her legs, and inserted his finger into her private part.[72] There is nothing in the *ponencia* from which it could be reasonably inferred that AAA was engaged in prostitution or subjected to other sexual abuse — and yet, the accused Salvador Tulagan is being adjudged guilty of "Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code, **in relation to Section 5(b) of Republic Act No. 7610**."[73]

When the statute speaks unequivocally, there is nothing for the courts to do but to apply it. **The accused in this case is**

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[70] *People v. Caoili*, *supra* note 5, at 145.

[71] *Ponencia*, p. 2.

[72] *Id*. at 3.

[73] *Id*. at 66.

clearly guilty only of Sexual Assault, defined and penalized under Article 266-A, par. 2 of the RPC, as amended by R.A. 8353 — and *not* in relation to R.A. 7610.

To reiterate, R.A. 7610 and the RPC, as amended by R.A. 8353, have ***different spheres of application;*** they exist **to complement each other** such that there would be no gaps in our criminal laws. They were not meant to operate simultaneously in each and every case of sexual abuse committed against minors. In this connection, I agree with the *ponencia* as it lays down the following guidelines in determining which law should apply when the victim is a minor and the sexual act done constitutes **rape by sexual intercourse**:

> Even if the girl who is below twelve (12) years old or is demented consents to the sexual intercourse, it is always a crime of statutory rape under the RPC, and the offender should no longer be held liable under R.A. No. 7610. x x x
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> x x x x x x x x x
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> If the victim who is 12 years old or less than 18 and is deemed to be a child "exploited in prostitution and other sexual abuse" because she agreed to indulge in sexual intercourse "for money, profit or any other consideration or due to coercion or influence of any adult, syndicate or group," then the crime could not be rape under the RPC, because this no longer falls under the concept of statutory rape, and there was consent. That is why the offender will now be penalized under Section 5(b), R.A. No. 7610, and not under Article 335 of the RPC [now Article 266-A]. But if the said victim does not give her consent to sexual intercourse in the sense that the sexual intercourse was committed through force, threat or intimidation, the crime is rape under paragraph 1, Article 266-A of the RPC. However, if the same victim gave her consent to the sexual intercourse, and no money, profit, consideration, coercion or influence is involved, then there is no crime committed, except in those cases where "force, threat or intimidation" as an element of rape is substituted by "moral ascendancy or moral authority," like in the cases of incestuous rape, and unless it is punished under the RPC as qualified seduction under Article 337 or simple seduction under Article 338."[74]

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[74] *Id*. at 20-22.

Verily, in the above guidelines of the *ponencia*, the Court has already taken the right steps forward in streamlining which law is applicable in a particular set of facts. It is thus my view to extend the same set of guidelines not just in cases where the act done constitutes rape by sexual intercourse, but also in cases where the act done constitutes rape by sexual assault or acts of lasciviousness.

Respectfully, the objective of the *ponencia* to finally reconcile the seemingly conflicting laws and the resulting confusing state of jurisprudence would better be achieved if the Court adopts the foregoing understanding. To illustrate, if the Court decides to adopt the foregoing, the proposed table by the *ponencia* would look like this:

Acts done by the accused consist of:	Crime committed if the victim is under 12 years old or demented	Crime committed if the victim is 12 years old or older but below 18, or is 18 years old but under special circumstances[75]	Crime committed if victim is 18 years old and above
Acts of Lasciviousness	**Acts of Lasciviousness** under Article 336 of the RPC Penalty: ***Prision Correccional*** If committed against a child exploited in	**Acts of Lasciviousness** under Article 336 of the RPC Penalty: ***Prision Correccional*** If committed against a child	**Acts of Lasciviousness** under Article 336 of the RPC Penalty: ***Prision correccional***

[75] Or is 18 years or older but under special circumstances (as defined in R.A. 7610) and engaged in prostitution or subjected to other sexual abuse.

	prostitution or subjected to other sexual abuse, the crime committed would still be **Acts of Lasciviousness** but the penalty would be ***reclusion temporal* in its medium period** in accordance with Section 5(b) of R.A. 7610.	exploited in prostitution or subjected to other sexual abuse, the crime committed would be **Lascivious conduct under Section 5(b) of R.A. 7610** and the penalty would be ***reclusion temporal* in its medium period to *reclusion perpetua***	
Sexual Assault	Sexual Assault under Article 266-A(2) of the RPC. **Penalty: *prision mayor*** If committed against a child exploited in prostitution or subjected to other sexual abuse, it would still be **Sexual Assault** but the penalty would	Sexual Assault under Article 266-A(2) of the RPC. **Penalty: *prision mayor*** If committed against a child exploited in prostitution or subjected to other sexual abuse, the crime would be **Lascivious conduct**	Sexual Assault under Article 266-A(2) of the RPC. **Penalty: *prision mayor***

	be ***reclusion temporal*** **in its medium period** in accordance with Section 5(b) of R.A. 7610	**under Section 5(b) of R.A. 7610** and the penalty would be ***reclusion temporal*** **in its medium period to** ***reclusion perpetua***	
Carnal knowledge/ Rape by Sexual Intercourse	Rape under Article 266-A(1) of the RPC Penalty: ***reclusion perpetua,*** except when the victim is below 7 years old in which case death penalty shall be imposed	Rape under Article 266-A(1) of the RPC Penalty: ***reclusion perpetua*** If committed against a child exploited in prostitution or subjected to other sexual abuse, the crime would be **Sexual Abuse under Section 5(b) of R.A. 7610** and the penalty would be ***reclusion temporal*** **in its medium period to** ***reclusion perpetua***	Rape under Article 266-A(1) of the RPC Penalty: ***reclusion perpetua***

On the supposed repeal of Article 336 of the Revised Penal Code

I would also like to take this opportunity to offer my point-of-view on the points raised by Justice Marvic M.V.F. Leonen in his separate opinion.

Justice Leonen argues that the enactment of R.A. 8353 rendered ineffective the provision on acts of lasciviousness in the RPC. According to him, Article 336 of the RPC punishes "[a]ny person who shall commit any act of lasciviousness upon other persons of either sex, **under any of the circumstances mentioned in the preceding article**" and since the preceding article referred to was the old provision on rape supposedly "repealed"[76] by R.A. 8353, he then concludes that Article 336 of the RPC is no longer operative.

I respectfully disagree with my esteemed colleague.

It is well-settled that repeals by implication are not favored. A law will only be declared impliedly repealed when it is manifest that the legislative authority so intended,[77] or unless it is convincingly and unambiguously demonstrated that the subject laws or orders are clearly repugnant and patently inconsistent that they cannot co-exist.[78] In the absence of such showing, every effort must be used to make all acts stand, and the later act will not operate as a repeal of the earlier one, if by any reasonable construction, they can be reconciled.[79] As the Court said in *Mecano v. COA*:[80]

Repeal by implication proceeds on the premise that where a statute of later date clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject, that intention must be given

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[76] *J* . Leonen, Separate Concurring Opinion, p. 11.

[77] See *United Harbor Pilots' Association of the Philippines, Inc. v. Association of International Shipping Lines, Inc*., 440 Phil. 188, 199 (2002).

[78] *Id*. at 199.

[79] *Smith, Bell & Co. v. Estate of Maronilla*, 41 Phil. 557, 562 (1916).

[80] 290-A Phil. 272 (1992).

effect. **Hence, before there can be a repeal, there must be a clear showing on the part of the lawmaker that the intent in enacting the new law was to abrogate the old one. The intention to repeal must be clear and manifest;** otherwise, at least, as a general rule, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue so far as the two acts are the same from the time of the first enactment.[81] (Emphasis and underscoring supplied)

In the present case, I do not discern any clear intent on the part of the legislature to repeal the crime of acts of lasciviousness in enacting R.A. 8353.

Justice Leonen's argument is based on the premise that Article 335 was "repealed" by R.A. 8353. I submit that the premise is misplaced because, in fact, the provision penalizing the act of rape was only ***renumbered*** to reflect the paradigm shift introduced by R.A. 8353 in treating rape as a crime against persons instead of merely a crime against chastity, and ***amended*** to reflect the policy changes with regard to how it is committed and the circumstances which may aggravate the same.

I find nothing in R.A. 8353 to reasonably infer that it meant to affect the crime of acts of lasciviousness **apart from the renumbering of Article 335 to Articles 266-A to 266-D.** To me, this is not the clear and manifest intention to repeal required by jurisprudence; thus, every effort must be exerted to reconcile the provisions and make all acts stand. Thus, it is my view that Article 336 is not rendered incomplete and ineffective since its elements can still be completed by simply construing the phrase "preceding article" to mean Article 266-A, since the same act remains to be punished. To emphasize, **the intention to punish the crime of acts of lasciviousness remains**, and a minor modification in article numbers does not operate to revoke the said intention.

In further arguing for the "ineffectivity" of Article 336, Justice Leonen reasons that:

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[81] *Id*. at 280.

In any case, the ineffectivity of Article 336 does not preclude acts of lasciviousness from being punishable under different laws such as Republic Act No. 7610 [or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act] or Republic Act No. 9262 [or the Anti-Violence Against Women and Their Children Act of 2004]. These laws, likewise, carry more severe penalties than Article 336, providing better protection for victims of lascivious acts not constituting rape.[82]

Again, I differ with my learned colleague. With due respect, I cannot subscribe to the foregoing ratiocination because — to reiterate — R.A. 7610 was enacted only to address a specific set of victims, as it only covers children exploited under prostitution or subjected to other sexual abuse. But even if we accept, for the sake of argument, that R.A. 7610 covers all types of sexual abuse committed against *any* child, without qualification, I am still unconvinced by the argument **for such construction would create a huge gap in our criminal laws that would protect women-victims of acts of lasciviousness who are either (1) no longer minors or (2) were not abused by a person with whom they have or had a sexual or dating relationship.** To illustrate, if the Court decides to adopt Justice Leonen's proposed construction, there would be no crime committed in case a random stranger touches a 19-year-old woman's private parts without her consent.

On the distinction between rape by penile penetration and other forms of sexual abuse

Justice Leonen reiterates his view as expressed in *Caoili* that "[t]he persistence of an archaic understanding of rape relates to our failure to disabuse ourselves of the notion that carnal knowledge or sexual intercourse is merely a reproductive activity."[83] In driving home his point, he quotes his decision in *People v. Quintos*,[84] which states:

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[82] *J.* Leonen, Separate Concurring Opinion, p. 11.

[83] *Id.* at 12.

[84] 746 Phil. 809 (2014).

The classifications of rape in Article 266-A of the Revised Penal Code are relevant only insofar as these define the manners of commission of rape. However, it does not mean that one manner is less heinous or wrong than the other. Whether rape is committed by nonconsensual carnal knowledge of a woman or by insertion of the penis into the mouth of another person, the damage to the victim's dignity is incalculable. Child sexual abuse in general has been associated with negative psychological impacts such as trauma, sustained fearfulness, anxiety, self-destructive behavior, emotional pain, impaired sense of self, and interpersonal difficulties. Hence, one experience of sexual abuse should not be trivialized just because it was committed in a relatively unusual manner.

"The prime purpose of [a] criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order." Crimes are punished as retribution so that society would understand that the act punished was wrong.

Imposing different penalties for different manners of committing rape creates a message that one experience of rape is relatively trivial or less serious than another. It attaches different levels of wrongfulness to equally degrading acts. Rape, in whatever manner, is a desecration of a person's will and body. In terms of penalties, treating one manner of committing rape as greater or less in heinousness than another may be of doubtful constitutionality.[85]

While I fully understand the underlying considerations of Justice Leonen's viewpoint, I respectfully disagree with his proposed approach.

I agree with Justice Leonen that "[a] woman who was raped through insertion of a finger does not suffer less than a woman who was raped by penile penetration."[86] I likewise concur with the following statements of Justice Leonen:

Sexual intercourse is more than a means for procreation. It is a powerful expression of intimacy between human beings. It "requires the shedding of all inhibitions and defenses to allow humans to explore

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[85] *Id*. at 832-833.

[86] *J.* Leonen, Separate Concurring Opinion, p. 12.

each other in their most basic nakedness." Sexual intercourse may involve penile penetration, or a whole other spectrum of sexual acts that do not require penetration at all. Ultimately, it is the human being's choice whom to be intimate with and what that intimacy may involve.

Rape is the violation of this choice. It is not punished simply because a penis forcefully penetrated a vagina. The crime is vile and heinous because it takes away a victim's fundamental autonomy to choose with whom she would share intimacy. It violates a victim's autonomy over her own body.[87] (Underscoring supplied)

However, despite the truth in the foregoing statements, I cannot agree to Justice Leonen's suggestion that the Court should treat them *equally*, such that the Court would apply the penalty prescribed by law for rape by sexual intercourse (*i.e., reclusion perpetua*) to acts of rape by sexual assault. To do so would be an act of **judicial legislation** which, as I have stressed in this Opinion many times, the Court cannot do.

Indeed, the country has gone far in terms of enacting legislations to provide special protection to women. Due to the enactment of R.A. 8353, the crime of rape has been reclassified from a crime against chastity to a crime against persons, thereby making the said crime a public crime. A new species of crimes called "rape by sexual assault" was also created by R.A. 8353 to expressly acknowledge that rape is nevertheless committed when the sexual acts were done without the victim's consent, even when the acts performed do not involve vaginal penetration by the penis. The acts constituting "rape by sexual assault" — either by (a) inserting the penis into another person's mouth or anal orifice or (b) inserting any instrument or object into the genital or anal orifice of another person, through force, threat or intimidation[88] — were

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[87] *Id*. at 14-15.

[88] Because rape may be committed through different means. Article 266-A of the Revised Penal Code, as amended by R.A. 8353, provides:

Article 266-A. *Rape; When And How Committed*. — Rape is committed —
1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

previously denominated as mere acts of lasciviousness and were thus "upgraded" to rape by the enactment of R.A. 8353. Another important development introduced by R.A. 8353 is the concept of marital rape, thus highlighting the significant paradigm shift in our rape laws to give premium to women's consent to sexual activities and thereby further upholding the autonomy of women.

In recognition also of the fact that women are, more often than not, the victims of domestic violence, the legislature enacted R.A. 9262 to provide protection against women and their children from various forms of abuses committed against them by persons with whom they have or had a sexual or dating relationship. Deviating from the traditional definition of violence which was limited to physical and sexual violence, R.A. 9262 expanded the definition to include other forms of violence, namely psychological and economic abuse.

These legislations, to name a few, reflect an evolving understanding of consent, autonomy of women, and the role of laws in curbing patriarchal structures that perpetuate violence against women. In a similar way, it also reflects a progressive thrust towards protection of women.

In this connection, I take exception to Justice Leonen's statement that "[w]e cannot continue to convict rapists on the basis that women need to be kept chaste and virginal."[89] As shown above, the legislature had already taken steps in enacting legislation based on society's improving understanding of consent and female sexuality. Moreover, the Court itself, in its numerous decisions, has taken strides in reversing outdated notions about these concepts. Examples of these include the following, where the Court held that:

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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.

[89] *J.* Leonen, Separate Concurring Opinion, p. 13.

(1) "[A] love affair does not justify rape, for the beloved cannot be sexually violated against her will. Love is not a license for lust";[90]

(2) "Husbands do not have property rights over their wives' bodies. Sexual intercourse, albeit within the realm of marriage, if not consensual is rape";[91]

(3) "A victim should never be faulted for her lack of resistance to any forms of crime particularly as grievous as rape. Failure to shout or offer tenacious resistance does not make voluntary the victim's submission to the perpetrator's lust";[92] and

(4) "Even a complainant who was a woman of loose morals could still be the victim of rape. Even a prostitute may be a victim of rape."[93]

Respectfully, it would be inaccurate to claim that the legal framework on rape and sexual abuse — as crafted by the legislature and interpreted by the Court — remains to be based on ancient mindsets and outdated notions. As illustrated by the foregoing, the different branches of government have been active, **within the respective scopes of power granted to them by the Constitution**, in reversing oppressive structures that perpetrate and perpetuate violence against women, particularly in the area of sexual violence.

Apropos thereto, the legislature, in the exercise of its wisdom, enacted R.A. 8353 with a distinction between rape by penile penetration of the vagina as against acts considered as rape by sexual assault. To my mind, the distinction created **by the legislature** should be upheld in the absence of a **clear** and **unmistakable** showing that it is unconstitutional. It bears to stress that the power to declare something as a criminal act,

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[90] *People v. Bisora*, G.R. No. 218942, June 5, 2017, 826 SCRA 38, 44-45. Italics in the original omitted.

[91] *People v. Jumawan*, 733 Phil. 102, 110 (2014).

[92] *People v. Barberan*, 788 Phil. 103, 111-112 (2016).

[93] *People v. Court of Appeals*, 755 Phil. 80, 112 (2015).

and to prescribe the corresponding penalty therefor, is a power vested solely by the Constitution on the legislature — **not on this Court.**

Moreover, it is my considered opinion that the distinction is valid because rape by penile penetration of the vagina ***may result*** in an unwanted pregnancy which may subject the woman to a lifelong responsibility of rearing a child as a result of the dastardly act. The same cannot be said, however, for other acts of rape that are not committed through penile penetration of the vagina. In other words, the severity of punishment imposed on the crime of rape by sexual intercourse does not spring from the archaic notion that sexual intercourse is merely a reproductive activity. On the contrary, the distinction is based on the possibility that the victim might incur a ***perpetual responsibility*** — one that is not present in acts constituting rape by sexual assault. Thus, while the trauma faced by victims of either forms of abuse are concededly equal, victims of rape by sexual intercourse are subjected to another "residual" and "permanent" form of victimization (*i.e.*, pregnancy) to which victims of other forms of sexual abuse are not subjected.

I thus disagree with Justice Leonen's statements that "[t]he idea that one (1) kind of rape is punished more severely than the other because of 'unwanted procreation' only serves to undermine the law's reconceptualization of rape as a crime against persons"[94] and that "providing a lesser punishment for the forceful insertion of a finger into the vagina, solely because it will not result in an unwanted pregnancy, is a step backwards."[95]

To my mind, the difference in treatment is not based on an archaic notion about a woman's virtue, but has more to do with the possibility that, as a result of the act, the victim would be forced to introduce another life in this world — one that the woman-victim would have responsibility over for the rest of her life. To reiterate, it may be true that all types of sexual abuse inflict the same amount of suffering or trauma, but only

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[94] *J.* Leonen, Separate Concurring Opinion, p. 13.

[95] *Id.* at 14.

rape by penile penetration of the vagina could possibly impregnate the victim. This possibility is, to my mind, at the heart of the difference in terms of penalties to be imposed, not the perceived intensity of suffering caused on the victim. Stated differently, the difference in the penalties imposed was not meant to belittle the suffering of victims of rape by sexual assault; rather, it is meant to recognize that victims of rape by penile penetration of the vagina ***face risks*** that none of the other victims are subjected to.

Therefore, I disagree with the assertion that "[t]his Court's continued refusal to recognize the forceful insertion of a finger into a woman's vagina as rape by sexual intercourse only shows that rape, at least in the eyes of this Court, has remained a crime against chastity,"[96] as not only suffering from a lack of factual basis, **but also failing to recognize that this policy decision to treat the two crimes differently is within the province of the legislature to decide.**

It bears to stress that the power granted to the Court by the Constitution is ***judicial power*** or the power to interpret what the law means in a specific set of facts — it is not the power to determine what the law should be. It is immaterial whether we, as individual justices, agree with the wisdom of the law, for our solemn power and duty to apply the same remains so long as the said law is constitutional.

In the matter at hand, R.A. 8353 treats rape by penile penetration of the vagina differently from rape by sexual assault. While I join Justice Leonen on his call to not measure a woman's dignity on the sole basis of her virtue,[97] and to recognize that all victims of forced sexual acts suffer the same indignity,[98] it is equally important for the Court to recognize its place in our Constitutional government: **that it is but one of only three co-equal branches of the government and it is not its task**

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[96] *Id*. at 15.

[97] *Id*. at 13.

[98] *Id*. at 15.

to set the corresponding penalties to be imposed on certain criminal acts.

This is not to say that there is no merit in his point that our evolving understanding of human sexuality should lead us to treat both types of rape — by sexual intercourse and by sexual assault — equally. Sexual intercourse, indeed, is more than a means for procreation, and I also agree that rape, at its core, is essentially a violation of a person's choice on when and with whom to be physically intimate. **The policy decision, however, lies not with the Court but with Congress.**

A final note

At this juncture, I would like to again laud the *ponencia*'s efforts to determine the intent of the legislature — including revisiting the Senate's deliberations — in enacting R.A. 7610. However, as our respective study of the deliberations yielded different results, I once again make the point that the language of a penal statute cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted. Only those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. **The fact alone that there are different interpretations as to the applicability of Section 5(b) should impel the Court to construe the law strictly; *with any reasonable doubt resolved in favor of the person charged.***[99] As the Court reminds in one case:

> The statute, then, being penal, must be construed with such strictness as to carefully safeguard the rights of the defendant and at the same time preserve the obvious intention of the legislature. If the language be plain, it will be construed as it reads, and the words of the statute given their full meaning; if ambiguous, the court will lean more strongly in favor of the defendant than it would if the statute were remedial. In both cases it will endeavor to effect substantial justice. x x x[100]

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[99] See *People v. Atop*, 349 Phil. 825 (1998).

[100] *U.S. v. Go Chico*, 14 Phil. 128, 140-141 (1909), citing *Bolles v. Outing Co*., 175 U.S. 262, 265; *U.S. v. Wiltberger*, 5 Wheat. 76, 95; *U.S. v. Reese*, 92 U.S. 214.

Lest it be misconstrued, I am not stubbornly arguing for my position in this case in order that a guilty person may go scot-free. As the Court in *People v. Purisima*[101] held: "[t]he purpose is not to enable a guilty person to escape punishment through a technicality but to *provide a precise definition of forbidden acts*."

In the end, this Opinion is only meant to pursue one thing: that is, so that justice can be properly dispensed not just to the minors victimized by sexual predators, **but also to the latter who, even though they have violated the law, nevertheless have the right to be punished only to the extent of the specific punishment imposed on them by the law.**

Based on these premises, I vote to **DENY** the instant appeal and **AFFIRM with MODIFICATION** the Decision of the Court of Appeals dated August 17, 2015, as follows:

"The Court finds accused-appellant Salvador Tulagan:

1. Guilty beyond reasonable doubt of **Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code**, in Criminal Case No. SCC-6210, and is sentenced to suffer the indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. He is further **ORDERED to PAY** AAA the amounts of ₱50,000.00, as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.
2. Guilty beyond reasonable doubt of **Statutory Rape under Article 266-A(1)(d) and penalized in Article 266-B of the Revised Penal Code**, in Criminal Case No. SCC-6211, and is sentenced to suffer the penalty of *reclusion perpetua* with modification as to the award of damages. Appellant 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.

Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

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[101] 176 Phil. 186, 208 (1978).

FIRST DIVISION

[A.C. No. 9269, March 13, 2019]

AZUCENA C. TABAO, *petitioner, vs.* **ATTY. ALEXANDER R. LACABA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; RULES ON NOTARIAL PRACTICE; A NOTARY PUBLIC IS NOT ALLOWED TO NOTARIZE A DOCUMENT UNLESS THE PERSONS WHO SIGNED THE SAME ARE THE VERY SAME PERSONS WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND TRUTH OF WHAT ARE STATED THEREIN.— There is no dispute that Atty. Lacaba violated the Rules on Notarial Practice. Both in his Compliance and Position Paper, he never disputed the fact that he notarized the Counter-Affidavit without the personal appearance of all the affiants. x x x A notary public is not allowed to notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed. Thus, it is undeniable that Rosalina and Felicitas could not validly sign for and in behalf of Marlin and Marie for the simple reason that they do not have personal knowledge of the allegations in the Counter-Affidavit, and therefore, could not attest to the truthfulness thereof.

2. ID.; ID.; NOTARIZATION; INVESTED WITH SUBSTANTIVE PUBLIC INTEREST BECAUSE IT CONVERTS A PRIVATE DOCUMENT INTO A PUBLIC DOCUMENT, MAKING IT ADMISSIBLE IN EVIDENCE WITHOUT FURTHER PROOF OF ITS AUTHENTICITY.— It cannot be overemphasized that "notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without

further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined."

D E C I S I O N

JARDELEZA, *J.*:

This administrative case stemmed from a letter[1] filed by Azucena C. Tabao (complainant) before the Court, charging Atty. Alexander R. Lacaba of violating the 2004 Rules on Notarial Practice (Rules on Notarial Practice).[2]

The Facts

Complainant, with her siblings, charged Jester Q. Repulda, Edmund C. Elcarte, Noel Vincent P. Cinco (Noel), Paul Michael P. Cinco (Paul), Marlin B. Cinco (Marlin), and Marie Janice P. Cinco (Marie) of perjury. According to complainant, Atty. Alexander R. Lacaba (Atty. Lacaba) notarized the two-page Counter-Affidavit[3] executed by Noel, Paul, Marlin, and Marie without the personal appearance of Marlin and Marie. A perusal of this Counter-Affidavit, which was filed during the preliminary investigation before the Office of the Provincial Prosecutor of Tacloban City, Leyte, readily shows that somebody else signed for Marlin and Marie. The signatures above their names read Rosalina Aloha B. Cinco (Rosalina) and Felicita P. Cinco (Felicita), respectively. More, it is impossible for Marlin and Marie to have personally appeared before Atty. Lacaba since during the execution of the Counter-Affidavit, Marlin was in Dubai working, while Marie was in Cebu City. Aside from non-compliance with the requirements of personal appearance and

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[1] *Rollo*, pp. 2-3.

[2] A.M. No. 02-8-13-SC, July 6, 2004.

[3] *Rollo*, pp. 4-5.

attestation of the affiants, Atty. Lacaba also failed to indicate the document number, page number, book number, and corresponding series year of his notarial register in the Counter-Affidavit, as required by notarial laws.[4]

In his compliance,[5] Atty. Lacaba did not deny complainant's charges. As defense, however, he claimed that the Investigating Prosecutor in the perjury case was informed before the filing of the Counter-Affidavit that two of the affiants were "physically absent" but could be contacted through telephone and video call via internet. According to him, the Investigating Prosecutor offered no objection to the same. He notarized the Counter-Affidavit by contacting Marlin and Marie by video call using the laptop of Felicitas, the mother of Marie, Noel, and Paul, in his office in Sta. Fe, Leyte. He narrated that he contacted Marie first and that during the video call, he "could see her in the monitor of the laptop and after reading to her the contents of the subject counter-affidavit and asked her if she understood the contents read to her, the latter affirmed, and voluntarily and knowingly AUTHORIZED her mother [Felicitas] to sign for and in her behalf."[6] He then made the video call with Marlin, and in the same manner, Marlin authorized her mother, Rosalina, to sign for and in her behalf. Citing the Rules on Electronic Evidence, he alleged that the video call conversation can be considered a "substitute of personal presence of a person while physically absent from the place of the other party." Further, the circumstances of Marlin and Marie fall under the "physical inability" contemplated under Section 1(c),[7] Rule IV of the Rules

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[4] *Id.* at 2-3.

[5] *Id.* at 28-32.

[6] *Id.* at 29.

[7] Sec. 1. *Powers* — x x x

c. A notary public is authorized to sign on behalf of a person who is physically unable to sign or make a mark on an instrument or document if:

(1) the notary public is directed by the person unable to sign or make a mark to sign on his behalf;

on Notarial Practice. He, nonetheless, admits that not all elements required by the said provision were present in this case. Atty. Lacaba maintained that he was in good faith.[8]

On July 29, 2013, the Court referred the matter to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.[9]

Both parties filed their respective position papers and reiterated their claims.[10] Atty. Lacaba added that during the preliminary investigation, complainant never questioned the representation of Rosalina and Felicitas even though she was furnished with a copy of the Counter-Affidavit. The law on agency in the Civil Code does not prohibit a party from appointing an agent to execute a counter-affidavit for purposes of preliminary investigation. The submission of a counter-affidavit is not even compulsory under the Rules on Criminal Procedure, hence a respondent may delegate its execution to an agent who must appear in person before the notary public who will administer the oath.[11]

Report and Recommendation of the IBP

In his Report and Recommendation[12] dated June 15, 2015, Investigating Commissioner Rodolfo R. Zabella, Jr. (Investigating Commissioner Zabella) found Atty. Lacaba guilty of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility

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(2) the signature of the notary public is affixed in the presence of two disinterested and unaffected witnesses to the instrument or document;
(3) both witnesses sign their own names;
(4) the notary public writes below his signature: "Signature affixed by notary in presence of (names and addresses of person and two [2] witnesses);" and
(5) the notary public notarizes his signature by acknowledgment or jurat.

[8] *Rollo*, pp. 30-31.

[9] *Id.* at 45.

[10] *Id.* at 110-118, 121-128.

[11] *Id.* at 124-125.

[12] *Id.* at 144-148.

and Rules IV and VI of the Rules on Notarial Practice on the following grounds: 1) Atty. Lacaba never denied having notarized the Counter-Affidavit despite the absence of two of the affiants; 2) Rosalina and Felicitas were not appointed representatives of Marlin and Marie, respectively, in accordance with the provisions of Title X of the Civil Code, thus, they cannot sign for and in behalf of the latter; and 3) the Rules on Electronic Evidence finds no application in the circumstances surrounding the case. He recommended that Atty. Lacaba be suspended for a period of three months, that his notarial commission, if any, be revoked, and that he be prohibited from being commissioned as a notary public for a period of two years.[13]

On April 29, 2016, the IBP Board of Governors, in Resolution No. XXII-2016-292,[14] resolved to adopt the findings of fact and recommendation of Investigating Commissioner Zabella but increased the period of suspension from the practice of law to six months. It, thus, directed the Director of the Commission on Bar Discipline to prepare an extended resolution explaining the Board's action.

In an Extended Resolution, the IBP Board of Governors, through Commission on Bar Discipline Director Ramon S. Esguerra, explained the increase of the period of suspension from three to six months. Citing several cases, it expounded on the importance of notarization[15] and the rule that notaries public should not notarize a document without the personal appearance of the person who executed the same.[16] Atty. Lacaba

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[13] *Id.* at 146-148, citing *Dizon v. Cabucana, Jr.*, A.C. No. 10185, March 12, 2014, 718 SCRA 460.

[14] *Id.* at 142.

[15] *Id.* at 154, citing *Santiago v. Rafanan*, A.C. No. 6252, October 5, 2004, 440 SCRA 91; *Dela Cruz- Sillano v. Pangan*, A.C. No. 5851, November 25, 2008, 571 SCRA 479; *Legaspi v. Landrito*, A.C. No. 7091, October 15, 2008, 569 SCRA 1; *Dela Cruz v. Dimaano, Jr.*, A.C. No. 7781, September 12, 2008, 565 SCRA 1; and *Lustestica v. Bernabe*, A.C. No. 6258, August 24, 2010, 628 SCRA 613.

[16] *Id.*, citing *Agbulos v. Viray*, A.C. No. 7350, February 18, 2013, 691 SCRA 1.

never denied the charges against him; he merely posited that the requirement of personal appearance was satisfied through the video call with Marlin and Marie and the physical presence of their representatives, Rosalina and Felicitas, who signed the Counter-Affidavit. According to the IBP Board of Governors, Atty. Lacaba's contentions cannot be given credit because in the similar case of *Bon v. Ziga*,[17] the Court rejected the defense of substantial compliance to the requirement of personal appearance of the affiant, *i.e.*, speaking with the affiants over the telephone to secure their affirmation that their signatures were genuine.[18] In addition, there is no legal basis to support his argument that the Rules on Criminal Procedure do not prohibit the execution of a counter-affidavit by a representative. On his failure to indicate in the Counter-Affidavit the document number, page number, book number, and the corresponding series year of his notarial register, such is a clear violation of Section 2(e), Rule VI of the Rules on Notarial Practice as these formalities are mandatory and cannot be simply neglected considering the degree of importance and evidentiary weight attached to notarized documents.[19] Clearly, Atty. Lacaba cannot escape liability for violating notarial laws. It applied the penalty meted by the Court in *Bon*, considering the analogous circumstances in the cases. Thus, the IBP Board of Governor recommended the suspension of Atty. Lacaba from the practice of law for six months, his disqualification from being commissioned as notary public for two years, and the revocation of his notarial commission, if there be any.[20]

The Ruling of the Court

The Court upholds the findings of the IBP Board of Governors.

There is no dispute that Atty. Lacaba violated the Rules on Notarial Practice. Both in his Compliance and Position Paper,

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[17] A.C. No. 5436, May 27, 2004, 429 SCRA 177, 184.

[18] *Rollo*, p. 155.

[19] *Rollo*, pp. 157-158, citing *Santiago v. Rafanan*, A.C. No. 6252, October 5, 2004, 440 SCRA 91, 99.

[20] *Id.* at 158.

he never disputed the fact that he notarized the Counter-Affidavit without the personal appearance of all the affiants. He also did not address his failure to indicate in the Counter-Affidavit the document number, page number, book number, and the corresponding series year of his notarial register. He merely offered good faith and substantial compliance as defenses. Section 2(b), Rule IV and Section 2(e), Rule VI of the Rules on Notarial Practice are clear:

Rule IV

x x x x x x x x x

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.

x x x x x x x x x

Rule VI

x x x x x x x x x

Sec. 2. *Entries in the Notarial Register*. — x x x

x x x x x x x x x

e. The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and **shall also state on the instrument or document the page/s of his register on which the same is recorded**. No blank line shall be left between entries. (Emphasis supplied.)

A notary public is not allowed to notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose

of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[21] Thus, it is undeniable that Rosalina and Felicitas could not validly sign for and in behalf of Marlin and Marie for the simple reason that they do not have personal knowledge of the allegations in the Counter-Affidavit, and therefore, could not attest to the truthfulness thereof.

It cannot be overemphasized that "notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined."[22] Atty. Lacaba cannot, therefore, frivolously bend the rules to his benefit.

The Court likewise adopts the recommended penalty of the IBP Board of Governors. The penalty of suspension from the practice of law for the period of six months, disqualification from being commissioned as a notary public for a period of two years, and revocation of his notarial commission, if any, is commensurate and in accord with existing jurisprudence.[23]

WHEREFORE, respondent Atty. Alexander R. Lacaba is ordered **SUSPENDED** from the practice of law for six months effective from the date of finality of this Decision. His notarial commission, if existing, is hereby **REVOKED**, and he is

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[21] *Triol v. Agcaoili, Jr.*, A.C. No. 12011, June 26, 2018. Citation omitted.

[22] *Id.* Citation omitted.

[23] See *Uy v. Apuhin*, A.C. No. 11826, September 5, 2018; *Heirs of Herminigildo A. Unite v. Guzman*, A.C. No. 12062, July 2, 2018; *Triol v. Agcaoili, Jr., supra*; *Malvar v. Baleros*, A.C. No. 11346, March 8, 2017; *Yumul-Espina v. Tabaquero*, A.C. No. 11238, September 21, 2016, 803 SCRA 571; *Bon v. Ziga, supra* note 17.

DISQUALIFIED from being commissioned as a notary public for two years. He is also sternly warned that a repetition of the same or similar acts shall be dealt with more severely. Atty. Lacaba is directed to inform the Court of the date of his receipt of this Decision.

Let a copy of this Decision be 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 the courts.

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 11131. March 13, 2019]

DENNIS M. MAGUSARA, *petitioner, vs.* **ATTY. LOUIE A. RASTICA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; COMMITTED WHEN TWO OR MORE ACTIONS INVOLVING THE SAME PARTIES FOR THE SAME CAUSE OF ACTION ARE FILED, EITHER SIMULTANEOUSLY OR SUCCESSIVELY, ON THE SUPPOSITION THAT ONE OR THE OTHER COURT WOULD MAKE A FAVORABLE DISPOSITION; CASE AT BAR.— There is forum shopping when two or more actions or proceedings involving the same parties for the same cause of action [are filed], either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition. To include this additional ground in the present

complaint would constitute forum shopping as the same is similar to complainant's cause of action in the 2008 disbarment complaint he filed against respondent. Therefore, we find that the IBP Board of Governors erred when it took into consideration the additional ground, which, to repeat, is identical to the charge in an earlier disbarment complaint. In essence, we find that respondent was able to refute complainant's claim that he violated Section 20(d), Rule 138 of the Rules of Court. The additional charge of violating notarial rules, on the other hand, is already subject of an earlier disbarment proceeding. Consequently, there is no basis to impose disciplinary action against respondent at this time. The proceedings in the 2008 disbarment complaint filed before the IBP Negros Oriental Chapter against respondent should be allowed to run its course to determine the latter's culpability as to the charge that he notarized documents without authority. This will also prevent the situation of two or more courts or agencies rendering conflicting resolutions or decisions upon the same issue and ensure that the proceedings for the disbarment and discipline of attorneys are followed.

2. LEGAL ETHICS; ATTORNEYS; DISCIPLINE OF LAWYERS; THE SUPREME COURT WILL EXERCISE ITS DISCIPLINARY POWER ONLY AFTER OBSERVING DUE PROCESS AND UPON SHOWING OF LAWYER'S ADMINISTRATIVE GUILT BY CLEAR, CONVINCING, AND SATISFACTORY EVIDENCE.— The Court will exercise its disciplinary power only after observing due process and upon showing of lawyer's administrative guilt by clear, convincing, and satisfactory evidence. This norm is aimed at preserving the integrity and reputation of the Law Profession, and at shielding lawyers, in general, due to their being officers themselves of the Court. Further, filing multiple petitions or complaints constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts. The public must be reminded that lawyers are professionals bound to observe and follow the strictest ethical canons. Subjecting them to frivolous, unfounded, and vexatious charges of misconduct and misbehavior will cause not only disservice to the ideals of justice, but a disregard of the Constitution and the laws to which all lawyers vow their enduring fealty.

APPEARANCES OF COUNSEL

Cedo & Lomeda Law Offices for complainant.

D E C I S I O N

JARDELEZA, *J.*:

This is a disbarment complaint[1] filed by Dennis M. Magusara (complainant) on March 1, 2011 before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP-CBD) charging Atty. Louie A. Rastica (respondent) of violating Section 20(d), Rule 138 of the Rules of Court.[2]

The Facts

On November 14, 2007, Yap-Siton Law Office filed a formal complaint before the Commission on Elections (COMELEC) on behalf of its client Ramie P. Fabillar (Ramie), charging complainant of committing an election offense punishable under Section 261, paragraph (e) of the Omnibus Election Code.[3] Attached to the formal complaint are Ramie's Complaint-Affidavit,[4] his medical certificate,[5] a police blotter,[6] and Wilson Fabillar's (Wilson) affidavit.[7] Ramie's complaint-affidavit and Wilson's affidavit were subscribed and sworn to before respondent. On February 10, 2008, Ramie filed an Affidavit of Desistance[8] before the COMELEC, claiming that he was surprised to find that there was a complaint for election offense against

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[1] *Rollo*, pp. 3-6.

[2] This disbarment complaint shall be hereinafter referred to as the present complaint.

[3] *Rollo*, p. 48.

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

[5] *Id.* at 52.

[6] *Id.* at 51.

[7] *Id.* at 53-54.

[8] *Id.* at 7.

complainant supposedly filed by him. He narrated that he thought that what he signed was a complaint for grave coercion against complainant. Since the contents of the complaint-affidavit prepared by respondent were not translated to him in the local dialect, he did not understand its meaning when he signed the same. According to complainant, this alleged act of respondent violated Section 20(d),[9] Rule 138 of the Rules of Court.

To support the present complaint, complainant attached several documents which appear to be pleadings and supporting documents he submitted before the IBP Negros Oriental Chapter in relation to a 2008 disbarment complaint he filed against respondent. Among these documents are: (1) two affidavits[10] executed by Wilson dated December 7, 2007 and August 5, 2008, respectively, showing different signatures appearing above his name; (2) a manifestation[11] dated February 21, 2011 where complainant reiterated his allegations in the 2008 disbarment complaint and accused IBP Negros Oriental Chapter of causing delay in the proceedings for releasing the resolution only after two years and six months from the filing of the complaint; and (3) two documents[12] allegedly notarized by respondent despite the expiration of his notarial commission.

In his answer,[13] respondent maintains that the allegations are baseless and the present complaint should be dismissed

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[9] Sec. 20. *Duties of attorneys*. — It is the duty of an attorney:

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(d) To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth and honor, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law[.]

[10] *Rollo*, pp. 12-13, 14-15.

[11] *Id.* at 24-26.

[12] The first document is a compromise agreement between the Municipal Treasurer of Bindoy, Negros Oriental and Felix Villanueva, Jr. (*Id.* at 16-17). The second document is a verification executed by Kristie Marie E. Fernandez (*Id.* at 18).

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

outright for lack of a certification of non-forum shopping. He claims that the present complaint was instituted by complainant as revenge for having been defeated by respondent's mother in the election for barangay chairperson. Respondent pointed out that the facts stated in the complaint-affidavit are similar to those which are declared in the police and barangay blotters attached therein, and to the complaint-affidavit[14] filed before the Provincial Prosecutor's Office charging complainant of grave coercion. Aside from these, the facts and circumstances attested to by Ramie in his complaint-affidavit for the election offense were corroborated by Wilson's affidavit, which was subscribed and sworn to before Prosecutor Violeta Baldado. Moreover, Ramie graduated from high school and worked in Metro Manila. His education and work experience show that he is capable of managing his affairs; thus, he cannot disavow knowledge and understanding of the contents of his complaint-affidavit in the election offense. Lastly, the divergence in the affidavits of desistance Ramie executed shows the influence and deceitful intentions of complainant. In the affidavit of desistance dated February 4, 2008 Ramie filed in the grave coercion case, he said that he was "doubtful of [his] actuations that [he was] also a paredelicto and that being neighbor and friend, [he] absolutely withdraw the case."[15] On the other hand, in the affidavit of desistance dated February 10, 2008 Ramie filed before the COMELEC, the reason he gave for desisting was "I was only made to sign the Complaint-Affidavit and the same was not translated to me, and the person who prepared the [same] is the son of Brgy. Chairman Lorna Rastica, Atty. Louie Rastica and the same was not translated x x x in local dialect so as I can understand."[16] As clarification, he presented an affidavit executed by Ramie on August 5, 2008 where the latter stated that he fully understood the contents of the complaint-affidavit for the election offense.[17]

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

[15] Sic. *Id.* at 73.

[16] Sic. *Id.* at 7.

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

On June 22, 2011, complainant filed his preliminary conference brief, where aside from violation of Section 20(d), Rule 138 of the Rules of Court, he included as issue the alleged notarization of respondent without authority.[18]

On September 9, 2011, complainant filed before the IBP-CBD a verified complaint "in compliance" with the order of the Investigation Commissioner during the August 19, 2011 hearing. In this verified complaint, complainant accused respondent of violating notarial laws and rules. Notably, the description of the two documents allegedly notarized without authority is similar to the two documents presented in the 2008 disbarment complaint filed before the IBP Negros Oriental Chapter.[19]

During the scheduled clarificatory hearing, only respondent appeared.[20] Both parties failed to submit position papers.

In his Report and Recommendation dated November 14, 2012, Investigating Commissioner Oliver A. Cachapero (Commissioner Cachapero) recommended the dismissal of the complaint against respondent for lack of merit. He noted that Ramie graduated from high school, where the English language is the medium of instruction. As such, he "must have been equipped with the basic learning of the said language and must have fair understanding of the same whether written or spoken."[21] It is, thus, incredible that he was aware of the contents of the complaint-affidavit in the grave coercion case he executed and filed which is written in the English language, yet not have any knowledge of the contents of a similar complaint for election offense he filed against complainant. Further, Ramie in his affidavit[22] dated August 5, 2008 has already clarified that he understood the contents of the complaint-affidavit for election

[18] *Id.* at 82.

[19] *Id.* at 96.

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

[21] *Id.* at 112.

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

offense. There is, thus, no sufficient evidence showing respondent's supposed breach of his ethical duties.[23] No discussion was made regarding the alleged notarization of documents without authority.

The IBP Board of Governors adopted and approved the recommendation to dismiss the complaint in Resolution No. XX-2013-250.[24] Complainant, however, filed a motion for reconsideration, alleging that the IBP Board of Governors erred in not taking into consideration the fact that respondent engaged in notarial practice without authority.[25]

On May 3, 2014, the IBP Board of Governors issued Resolution No. XXI-2014-245[26] where it resolved to grant complainant's motion for reconsideration. The Board of Governors found that respondent notarized two documents prior to the approval of his notarial commission. Accordingly, it disqualified respondent from being commissioned as a notary public for a period of two years and ordered the revocation of his notarial commission, if existing.

Respondent filed a motion for reconsideration.[27] He claims that he was not given the chance to be heard and defend himself because: (1) the issue on the notarization of documents without authority was not part of the original complaint; and (2) no investigation was ever held to give him an opportunity to verify the authenticity of the alleged documents notarized without authority.[28]

The Court's Ruling

We do not agree with the IBP Board of Governors.

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

[24] *Id.* at 108.

[25] *Id.* at 114-115.

[26] *Id.* at 131-132.

[27] *Id.* at 150-153.

[28] *Id.*

At the outset, we note, through complainant's own submissions, that he filed two complaints against respondent. The first is the 2008 disbarment complaint for violation of the rules on notarial practice filed before the IBP Negros Oriental Chapter. The second is the present complaint for violation of Section 20(d), Rule 138 of the Rules of Court filed before the IBP-CBD.

We agree with Commissioner Cachapero's finding that there was no substantial evidence to prove that respondent violated Section 20(d), Rule 138 of the Rules of Court. Respondent's narration of facts and the documentary evidence he presented, especially the affidavit of Ramie clarifying that he understood the contents of the subject complaint-affidavit, substantiated his claim of innocence.

We also agree with the Commissioner Cachapero in exluding the allegation that respondent engaged in notarial practice despite the expiration of his notarial commission in his resolution of the complaint. A review of complainant's pleadings shows that this issue, along with the documents submitted to support the charge (specifically the compromise agreement between the Municipal Treasurer of Bindoy, Negros Oriental and Felix Villanueva, Jr. and the verification executed by Kristie Marie E. Fernandez),[29] were already subject of an earlier investigation by the IBP Negros Oriental Chapter. The records also show that the IBP-CBD did not order the consolidation of these two complaints. From these, it is apparent that the inclusion of the additional issue (*i.e.*, notarizing documents without authority) in resolving this complaint would result in a situation where two separate complaints are filed against respondent by the same complainant concerning the same offense based on the same set of facts.

There is forum shopping when two or more actions or proceedings involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition.[30]

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[29] See footnotes 12 and 19.

[30] *De la Cruz v. Joaquin*, G.R. No. 162788, July 28, 2005, 464 SCRA 576, 587.

To include this additional ground in the present complaint would constitute forum shopping as the same is similar to complainant's cause of action in the 2008 disbarment complaint he filed against respondent. Therefore, we find that the IBP Board of Governors erred when it took into consideration the additional ground, which, to repeat, is identical to the charge in an earlier disbarment complaint.

In essence, we find that respondent was able to refute complainant's claim that he violated Section 20(d), Rule 138 of the Rules of Court. The additional charge of violating notarial rules, on the other hand, is already subject of an earlier disbarment proceeding. Consequently, there is no basis to impose disciplinary action against respondent at this time. The proceedings in the 2008 disbarment complaint filed before the IBP Negros Oriental Chapter against respondent should be allowed to run its course to determine the latter's culpability as to the charge that he notarized documents without authority. This will also prevent the situation of two or more courts or agencies rendering conflicting resolutions or decisions upon the same issue[31] and ensure that the proceedings for the disbarment and discipline of attorneys are followed. The procedures outlined by Rule 139-B of the Rules of Court are meant to ensure that the innocents are spared from wrongful condemnation and that only the guilty are meted their just due. Obviously, these requirements cannot be taken lightly.[32]

The Court will exercise its disciplinary power only after observing due process and upon showing of lawyer's administrative guilt by clear, convincing, and satisfactory evidence. This norm is aimed at preserving the integrity and reputation of the Law Profession, and at shielding lawyers, in general, due to their being officers themselves of the Court.[33] Further, filing multiple petitions or complaints constitutes abuse of court processes, which tends to degrade the administration

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[31] *Pena v. Aparicio*, A.C. No. 7298, June 25, 2007, 525 SCRA 444, 454.

[32] *Cottam v. Laysa*, A.C. No. 4834, February 29, 2000, 326 SCRA 614, 619.

[33] *Domingo v. Rubio*, A.C. No. 7927, October 19, 2016, 806 SCRA 411, 422.

of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.[34]

The public must be reminded that lawyers are professionals bound to observe and follow the strictest ethical canons. Subjecting them to frivolous, unfounded, and vexatious charges of misconduct and misbehavior will cause not only disservice to the ideals of justice, but a disregard of the Constitution and the laws to which all lawyers vow their enduring fealty.[35]

WHEREFORE, Resolution No. XXI-2014-245 dated May 3, 2014 of the Integrated Bar of the Philippines Board of Governors is **SET ASIDE**. The complaint filed against Atty. Louie A. Rastica is hereby **DISMISSED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 200182. March 13, 2019]

ANACLETO ALDEN MENESES,[*] *petitioner, vs.* **JUNG SOON LINDA LEE-MENESES,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; VOID MARRIAGES; DECLARATION OF NULLITY OF MARRIAGE;

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[34] *Pena v. Aparicio*, A.C. No. 7298, June 25, 2007, 525 SCRA 444, 454.

[35] *Domingo v. Rubio, supra.*

[*] Also referred to as "Anacleto Alden Meneses, Jr." in some parts of the *rollo*.

PSYCHOLOGICAL INCAPACITY; MUST BE CHARACTERIZED BY GRAVITY, JURIDICAL ANTECEDENCE, AND INCURABILITY.— In a long line of cases, the Court has ruled that psychological incapacity under Article 36 must be characterized by gravity, juridical antecedence, and incurability. To warrant a declaration of nullity on the basis of Article 36, the incapacity "must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage although the overt manifestations may emerge only after the marriage; and it must be incurable or even if it were otherwise, the cure would be beyond the means of the party involved."

2. **ID.; ID.; ID.; ID.; IN ACTIONS FOR DECLARATION OF NULLITY OF MARRIAGE, THE COURT IS BOUND TO DISPENSE JUSTICE NOT ON THE BASIS OF ITS OWN DETERMINATION ON THE EXISTENCE OF LOVE OR LACK THEREOF, BUT ON THE BASIS OF LAW AND EVIDENCE ON RECORD.—** Anacleto insists that Linda's psychological incapacity warrants the nullification of their marriage. His assertions remain hinged on the findings of Dr. Lopez who found Linda to be afflicted with "Narcissistic Personality Disorder with Borderline Personality Disorder Features," characterized by a "pervasive pattern of grandiosity and lack of empathy[,] x x x instability of interpersonal relationship[s] x x x and marked impulsivity." He also stresses that according to Dr. Lopez, Linda's disorder can be traced back to her "psychologically unhealthy childhood." x x x Anacleto's arguments stem from the findings of Dr. Lopez which, in turn, are based on interviews he conducted with Anacleto, his secretary Marife and the parties' family driver, Ronilo. In turn, Dr. Lopez based his findings on the factors which purportedly confronted Linda during her childhood. x x x While Dr. Lopez attributes the gravity of Linda's disorder to her alleged unhealthy childhood, none of the informants whom he interviewed claims to have known Linda since childhood. Moreover, neither Marife nor Ronilo appear to have known Linda prior to the marriage in question. This significantly impairs the weight of Dr. Lopez's findings, insofar as they are based on the informants' narration of Linda's childhood events and circumstances which they appear to have no personal knowledge of. x x x The Court commiserates with Anacleto's plight. The

denial of the present Petition may be viewed as a sentence to a lifetime trapped in a "loveless" marriage characterized by failed expectations and lost hopes. Unfortunately, however, marriage recognized in this jurisdiction stands beyond love and personal emotions; it is a matter of law. Thus, in actions for declaration of nullity of marriage, the Court is bound to dispense justice not on the basis of its own determination on the existence of love or lack thereof, but on the basis of law and the evidence on record. While the Court recognizes that there may very well be grounds to nullify the marriage of Anacleto and Linda, the existence of these grounds has not been sufficiently shown by the evidence presented in this case.

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE UNIFORM FINDINGS OF THE LOWER COURTS SHOULD BE ACCORDED GREAT WEIGHT IN CASES WHERE THEY ARE SUPPORTED BY EVIDENCE ON RECORD.—** [T]he Court is not a trier of facts. It is well established that the uniform findings of the lower courts should be accorded great weight in cases where, as here, they are supported by the evidence on record. x x x [N]one of the x x x exceptions that warrant a review of factual findings is present in this case.

APPEARANCES OF COUNSEL

Jimeno Cope and David Law Offices for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

Is a spouse who considers money and material needs as the essence of marriage psychologically incapacitated to perform the essential marital obligations to warrant a declaration of nullity of marriage under Article 36 of the Family Code?

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing

[1] *Rollo*, pp. 3-28.

the Decision[2] dated July 19, 2011 (Assailed Decision) and Resolution[3] dated January 12, 2012 (Assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CV No. 95614.

The Assailed Decision and Resolution affirmed the Decision[4] dated October 20, 2009 issued by the Regional Trial Court of Quezon City, Branch 107 (RTC) in Civil Case No. Q-05-58783 dismissing the Petition for Declaration of Nullity of Marriage filed by petitioner Anacleto Alden Meneses (Anacleto).

The Facts

The facts, as narrated by the CA, are as follows:

> [Anacleto] and [respondent Jung Soon Linda Lee-Meneses (Linda)] met during their college years in the United States of America (USA). They became involved romantically after fifteen (15) months of courtship. A year after, they decided to get married.
>
> On August 9, 1981, [Anacleto] and [Linda] were married at Sanctuario de San Jose, Greenhills, Mandaluyong City. On June 3, 1983, Linda Monique L. Meneses, their only child[,] was born.
>
> During the first few years of married life, they lived with [Anacleto's] family in Houston[,] Texas, USA. [Linda] [would] always complain of not having enough money as she wanted to live on their own, away from her parents-in-law. She would always nag [Anacleto] to look for a higher paying job so that she could get ahead in life. [Linda] wanted a luxurious life and she only appreciate [d] her husband when he [bought] her expensive gifts and [took] her out to fancy expensive restaurants.
>
> After ten (10) years of living in Houston[,] Texas, USA, they decided to relocate their business to Korea. For a couple of years, they lived with [Linda's] parents. When their business failed, they decided to return to the Philippines.
>
> During their marriage, they always fought about not having enough money. The constant fighting and nagging caused [Anacleto]

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[2] *Id*. at 29-37. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino concurring.

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

[4] *Id*. at 40-48. Penned by Presiding Judge Jose L. Bautista, Jr.

humiliation[;] [h]e lost self-esteem and suffered an erectile disorder. [Linda] even ridiculed [Anacleto's] inability to have an erection. She even accused him of having an extra-marital relationship.

In May 2005, after living together for almost [21] years, [Linda] left [Anacleto] to live in Korea. Later on, she lived in the USA with their daughter x x x. [Linda] informed [Anacleto] that she [would] x x x come back [only] if he [could] give her a better life financially.[5]

On September 8, 2006, Anacleto filed a Petition for Declaration of Nullity of Marriage (RTC Petition) before the RTC.[6]

Linda failed to file her responsive pleading despite service of summons through publication. Thus, the RTC referred the case to the Office of the City Prosecutor to determine whether there was collusion between the parties.[7] Finding that no such collusion exists, the Assistant City Prosecutor issued a Report recommending that the case proceed to trial.[8]

Trial on the merits ensued.[9]

Anacleto presented the testimony of Dr. Arnulfo V. Lopez (Dr. Lopez), a clinical psychiatrist. Based on interviews conducted with Anacleto, his office secretary Marife Davi (Marife) and the parties' family driver Ronilo Reol (Ronilo), Dr. Lopez concluded that Linda suffers from narcissistic personality disorder with borderline personality disorder features that render her incapable of fulfilling the essential marital obligations.[10]

The RTC summarized Dr. Lopez's findings as follows:

Dr. Lopez testified that the root cause of [Linda's] personality disorder can be traced back to her dysfunctional familial pattern

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

[6] *Id*. at 30.

[7] *Id*. at 40.

[8] *Id*.

[9] See *id*.

[10] *Id*. at 43-44.

and psychological development. She was [7] years old when her parents separated and she was raised by her mother who was controlling, strict and disciplined. When [Linda] misbehaved, her mother abused her verbally and spanked her using her hand, a belt, or a golf iron rod. In fact, because of her meddling in the private lives of her daughters, [Linda's] sister also separated from her husband. Dr. Lopez alleges that [Linda's] stepfather also [abused] her physically. There were instances [when] [Linda's] stepfather dank her head in the water because she was naughty. Because of the way [Linda] was treated by her parents, she became a rebel teenager and developed hatred towards her stepfather. In order to succeed in life, [Linda's] parents sacrifice[d] a lot[;] they [saw] money as the key to have a successful life. With this mindset, [Linda] grew up whose (sic) main concern in life [was] to have all the material things she wanted. She became demanding and domineering towards the opposite sex and used the resentment and hatred she had towards her stepfather as her revenge towards him.

Dr. Lopez concluded that [Linda's] psychological incapacity is an integral part of her personality, which has its juridical antecedence having existed even prior to the marriage. It is grave, permanent and incurable and which incapacitated her from performing her essential marital obligations.[11] (Emphasis supplied)

On the other hand, Dr. Lopez found that while Anacleto was emotionally affected and disturbed by the nature of his marital life with Linda, he showed no indication that he too suffers from psychological incapacity to comply with his essential marital obligations.[12]

RTC Ruling

On October 20, 2009, the RTC issued a Decision the dispositive portion of which reads:

In sum, the totality of the evidence presented does not show psychological incapacity on the part of [Linda]. As discussed in [*Republic v. Court of Appeals and Molina*[13]] x x x "the burden of

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[11] *Id*.

[12] *Id*. at 44.

[13] 335 Phil. 664, 676 (1997).

proof to show the nullity of the marriage belongs to [Anacleto]. Any doubt should be resolved in favor of the existence and confirmation of the marriage and against its dissolution and nullity."

With the above findings, the Court does not find sufficient ground to declare the marriage null and void.

WHEREFORE the [RTC Petition] is denied. The above entitled case is DISMISSED.

SO ORDERED.[14] (Emphasis supplied)

The RTC found the evidence on record insufficient for purposes of establishing the gravity and juridical antecedence of Linda's personality disorder.[15]

Anacleto filed a motion for reconsideration, which the RTC denied for lack of merit in its Resolution[16] dated July 6, 2010.

Aggrieved, Anacleto filed an appeal under Rule 41 of the Rules, assigning this lone error:

THE [RTC] ERRED IN TOTALLY DISREGARDING THE PSYCHOLOGICAL FINDINGS OF [DR. LOPEZ], [ANACLETO'S] EXPERT WITNESS, IN CONNECTION WITH THE PSYCHOLOGICAL INCAPACITY OF [LINDA] IN FULFILLING HER MARITAL OBLIGATIONS.[17]

CA Ruling

The CA denied Anacleto's appeal through the Assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The [RTC Decision] in Civil Case No. Q-05-58783 for Declaration of Nullity of Marriage is **AFFIRMED**.

SO ORDERED.[18]

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[14] *Rollo*, p. 48.

[15] *Id*. at 47.

[16] *Id*. at 49.

[17] *Id*. at 32.

[18] *Id*. at 36.

The CA accorded weight and respect to the findings of fact of the RTC. The CA conceded that while the standards set forth in *Republic v. Court of Appeals and Molina*[19] may be considered strict, they remain in line with the principle that any doubt should be resolved in favor of the validity of marriage and the indissolubility of marital ties.[20]

Anacleto filed a motion for reconsideration, which was also denied by the CA in the Assailed Resolution.[21]

Anacleto received a copy of the Assailed Resolution on January 19, 2012. Subsequently, he filed the present Rule 45 Petition on February 3, 2012.[22]

On April 16, 2012, the Court issued a Minute Resolution[23] denying the Petition. It reads in part:

> x x x Considering the allegations, issues and arguments adduced in the [Petition] of the [Assailed Decision and Resolution] of the [CA] in CA G.R. CV No. 95614, the Court resolves to ***DENY*** the petition for failure of [Anacleto] to sufficiently show that the [CA] committed any reversible error in the [Assailed Decision and Resolution] as to warrant the exercise of this Court's discretionary appellate jurisdiction.[24]

Thereafter, Anacleto filed a motion for reconsideration insisting on the weight and credibility of Dr. Lopez's findings.[25]

In the Resolution[26] dated August 13, 2012, the Court resolved to grant Anacleto's motion for reconsideration and reinstate

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[19] *Supra* note 13.

[20] *Rollo*, p. 36.

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

[22] *Id*. at 3, 5.

[23] *Id*. at 50.

[24] *Id*.

[25] See *id*. at 59, citing *Azcueta v. Republic*, 606 Phil. 177 (2009).

[26] *Rollo*, p. 74.

the Petition. Accordingly, the Court required Linda to file her comment thereto within ten (10) days from notice.[27] Since the Resolution was returned unserved, the Court directed Anacleto to disclose Linda's address within ten (10) days from notice. In his Manifestation[28] dated March 19, 2013, Anacleto averred that he had lost communication with Linda when she left their conjugal home in May 2005, and that he no longer knows where she resides.

Upon the Court's directive, Anacleto later manifested his willingness to submit the Petition for resolution through his Compliance and Manifestation[29] dated November 5, 2013.

The Issue

The Petition calls on the Court to determine whether the lower courts erred in dismissing Anacleto's petition for declaration of nullity on the ground of insufficient evidence.

The Court's Ruling

The Petition lacks merit.

Article 36 of the Family Code states:

> A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

In a long line of cases, the Court has ruled that psychological incapacity under Article 36 must be characterized by gravity, juridical antecedence, and incurability.[30]

To warrant a declaration of nullity on the basis of Article 36, the incapacity "must be grave or serious such that the party

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[27] *Id*.

[28] *Id*. at 79-81.

[29] *Id*. at 84-86.

[30] See *Republic v. Tecag*, G.R. No. 229272, November 19, 2018, p. 5, citing *Lontoc-Cruz v. Cruz*, G.R. No. 201988, October 11, 2017, 842 SCRA 401, 417.

would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage although the overt manifestations may emerge only after the marriage; and it must be incurable or even if it were otherwise, the cure would be beyond the means of the party involved."[31]

Anacleto insists that Linda's psychological incapacity warrants the nullification of their marriage. His assertions remain hinged on the findings of Dr. Lopez who found Linda to be afflicted with "Narcissistic Personality Disorder with Borderline Personality Disorder Features," characterized by a "pervasive pattern of grandiosity and lack of empathy[,] x x x instability of interpersonal relationship[s] x x x and marked impulsivity."[32] He also stresses that according to Dr. Lopez, Linda's disorder can be traced back to her "psychologically unhealthy childhood."[33]

Hence, contrary to the lower courts' findings, Anacleto argues that Dr. Lopez's findings sufficiently show that Linda's incapacity is grave, permanent, incurable and has juridical antecedence.[34]

The Court disagrees.

As stated, Anacleto's arguments stem from the findings of Dr. Lopez which, in turn, are based on interviews he conducted with Anacleto, his secretary Marife and the parties' family driver, Ronilo.[35]

In turn, Dr. Lopez based his findings on the factors which purportedly confronted Linda during her childhood. As narrated in Dr. Lopez's Judicial Affidavit:

> 20. [Question]: You said that [Linda] is suffering from personality disorders. What were the root causes of these?

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[31] *Matudan v. Republic*, 799 Phil. 449, 457 (2016).

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

[33] *Id*. at 8.

[34] *Id*.

[35] *Id*. at 43.

[Answer]: The root cause of such could be traced back to her psychologically unhealthy childhood due to her pathogenic family.

21. [Question]: What made you say that [Linda] has an unhealthy childhood due to her pathogenic family?

[Answer]: At the age of seven [7] years old, her parents separated. Her mother raised her and her sibling. It is known that her mother was loving, however, strict and had disciplined her inappropriately. For instance, when Linda has misbehaved or has committed a sin, her mother subjected her to verbal abuse [and] spanked her using her hand, a belt or a golf iron rod. Linda also suffered the same from her stepfather when he punished her. As a matter of fact, many times, her stepfather dunked her head in the water when she would misbehave. This has made Linda rebel against her parents when she became a teenager. She also developed hatred towards her stepfather because she felt that he was only a second father to her and did not have the right to punish her in that manner.

Moreover, Linda's parents struggled through life and made a lot of sacrifices to [attain] financial success. They saw money as the key to success in life and the answer to satisfy one's needs. This has made Linda prioritize the satisfaction she would derive from material things and would do anything to get what [she] wants. On the other hand, Linda's resentment and lack of love and attention from her father has resulted to her demanding and domineering ways towards the opposite sex x x x. All these has (*sic*) made her display narcissistic and borderline behaviors.

x x x x x x x x x

24. [Question]: Based on your expert opinion, when did [Linda's] psychological disorders start to develop?

[Answer]: It x x x started to develop during her growing up years x x x and before her marriage.[36] (Emphasis omitted)

While Dr. Lopez attributes the gravity of Linda's disorder to her alleged unhealthy childhood, none of the informants whom he interviewed claims to have known Linda since childhood. Moreover, neither Marife nor Ronilo appear to have known Linda prior to the marriage in question. This significantly impairs the

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

weight of Dr. Lopez's findings, insofar as they are based on the informants' narration of Linda's childhood events and circumstances which they appear to have no personal knowledge of.

In any case, the Court is not a trier of facts. It is well established that the uniform findings of the lower courts should be accorded great weight in cases where, as here, they are supported by the evidence on record.[37]

The Court's ruling in *Perez-Ferraris v. Ferraris*[38] is on point:

> The issue of whether or not psychological incapacity exists in a given case calling for annulment of marriage depends crucially, more than in any field of the law, on the facts of the case. Such factual issue, however, is beyond the province of this Court to review. It is not the function of the Court to analyze or weigh all over again the evidence or premises supportive of such factual determination. It is a well-established principle that factual findings of the trial court, when affirmed by the Court of Appeals, are binding on this Court, save for the most compelling and cogent reasons, like when the findings of the appellate court go beyond the issues of the case, run contrary to the admissions of the parties to the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; or when there is a misappreciation of facts x x x.[39]

Verily, none of the foregoing exceptions that warrant a review of factual findings is present in this case.

The Court commiserates with Anacleto's plight. The denial of the present Petition may be viewed as a sentence to a lifetime trapped in a "loveless" marriage characterized by failed expectations and lost hopes. Unfortunately, however, marriage recognized in this jurisdiction stands beyond love and personal emotions; it is a matter of law. Thus, in actions for declaration of nullity of marriage, the Court is bound to dispense justice not on the basis of its own determination on the existence of love or lack thereof, but on the basis of law and the evidence

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[37] See *Spouses Binua v. Ong*, 736 Phil. 698, 705 (2014).

[38] 527 Phil. 722 (2006).

[39] *Id*. at 727.

on record. While the Court recognizes that there may very well be grounds to nullify the marriage of Anacleto and Linda, the existence of these grounds has not been sufficiently shown by the evidence presented in this case.

WHEREFORE, the Petition is hereby **DENIED**. The Decision dated July 19, 2011 and Resolution dated January 12, 2012 of the Court of Appeals in CA-G.R. CV No. 95614 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 203865. March 13, 2019]

UNITRANS INTERNATIONAL FORWARDERS, INC., *petitioner, vs.* **INSURANCE COMPANY OF NORTH AMERICA, UNKNOWN CHARTERER OF THE VESSEL M/S "DORIS WULLF", and TMS SHIP AGENCIES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL *VIA CERTIORARI*; QUESTIONS OF FACT CANNOT BE RAISED THEREIN.— A question of [fact] exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation. That is precisely

what Unitrans is asking the Court to do – to reassess, reexamine, and recalibrate the evidence on record. A *catena* of cases has consistently held that questions of fact cannot be raised in an appeal *via certiorari* before the Court and are not proper for its consideration. The Court is not a trier of facts. It is not the Court's function to examine and weigh all over again the evidence presented in the proceedings below.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; LEASE; COMMON CARRIERS; A COMMON CARRIER IS PRESUMED TO HAVE BEEN NEGLIGENT IF IT FAILED TO PROVE THAT IT EXERCISED EXTRAORDINARY VIGILANCE OVER THE GOODS IT TRANSPORTED AND TO OVERCOME THE PRESUMPTION, IT MUST ESTABLISH BY ADEQUATE PROOF THAT IT EXERCISED EXTRAORDINARY DILIGENCE OVER THE GOODS.— Having been placed with the obligation to deliver the subject shipment from the port of Manila to San Miguel's premises in good condition, during the pre-trial conference conducted on June 20, 2007, it was admitted by Unitrans that "[t]he subject shipment was delivered by [petitioner] Unitrans." Yet, it is not disputed by any party that the subject shipment, *i.e.*, musical instruments, were severely damaged beyond use and did not arrive in good condition at the premises of the consignee, San Miguel. It is indubitably clear that Unitrans failed to fulfill its obligation to deliver the subject shipment in good condition. Emphasis must be placed on the fact that Unitrans itself admitted, through its own witness and general manager, Del Rosario, that in handling the subject shipment and making sure that it was delivered to the consignee's premises in good condition as the delivery/forwarding agent, Unitrans was acting as a freight forwarding entity and an accredited non-vessel operating **common carrier**. x x x Hence, jurisprudence holds that a common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported. When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable. **To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods. It must do more than merely show**

that some other party could be responsible for the damage. In the instant case, considering that it is undisputed that the subject goods were severely damaged, the presumption of negligence on the part of the common carrier, *i.e.*, Unitrans, arose. Hence, it had to discharge the burden, by way of adequate proof, that it exercised extraordinary diligence over the goods; it is not enough to show that some other party might have been responsible for the damage. **Unitrans failed to discharge this burden.** Hence, it cannot escape liability.

APPEARANCES OF COUNSEL

Villareal Rosacia Diño & Patag for petitioner.

Astorga & Repol Law Offices for respondent Insurance Company of North America.

Del Rosario & Del Rosario for respondents Unknown Charterer of the Vessel M/S "Doris Wullf" and TMS Ship Agencies.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Unitrans International Forwarders, Inc. (Unitrans) against respondents Insurance Company of North America (ICNA), the unknown charterer of the vessel M/S "Doris Wullf" (unknown charterer of M/S Doris Wullf), and TMS Ship Agencies (TSA).

The instant Petition assails the Decision[2] dated October 27, 2011 (assailed Decision) and Resolution[3] dated October 12, 2012 (assailed Resolution) rendered by the Court of Appeals[4] (CA) in CA-G.R. CV No. 95367.

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[1] *Rollo*, pp. 8-33.

[2] *Id*. at 35-46. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Mario L. Guariña III and Manuel M. Barrios, concurring.

[3] *Id*. at 48-50. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Ricardo R. Rosario and Manuel M. Barrios, concurring.

[4] Seventh Division and Special Former Seventh Division, respectively.

The Facts and Antecedent Proceedings

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

On July 28, 2003, ICNA filed an Amended Complaint[5] for collection of sum of money (Complaint) arising from marine insurance coverage on two (2) musical instruments imported from Melbourne Australia on April 22, 2002.

The Complaint, which was filed before the Regional Trial Court of Makati City, Branch 139 (RTC), was instituted against South East Asia Container Line (SEACOL) and the unknown owner/charterer of the vessel M/S Buxcrown, both doing business in the Philippines through its local ship agent Unitrans, and against the unknown charterer of M/S Doris Wullf, doing business in the Philippines through its local ship agent TSA, for the collection of the principal amount of Twenty-Two Thousand, Six Hundred Fifty-Seven Dollars and Eighty Three Cents (US$22,657.83) with interests thereon and attorney's fees. The case was docketed as Civil Case No. 03-505.

ICNA alleged in its Complaint that:

1. On or about 22 April 2002, in Melbourne, Australia, SEACOL [, a foreign company,] solicited and received shipment of pieces of STC musical instruments from the shipper Dominant Musical Instrument for transportation to and delivery at the port of Manila, complete and in good condition, as evidenced by Bill of Lading No. 502645. SEACOL then loaded the insured shipment on board M/S Buxcrown for transportation from Melbourne Australia to Singapore. In Singapore, the shipment was transferred from M/S Buxcrown to M/S Doris Wullf for final transportation to the port of Manila.
2. The aforesaid shipment was insured with ICNA against all risk under its Policy No. MOPA-06310 in favor of the consignee, San Miguel Foundation for the Performing Arts (San Miguel).
3. On 12 May 2002, M/S Doris Wullf arrived and docked at the Manila International Container Port, North Harbor, Manila.

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[5] *Rollo*, pp. 65-69.

The container van was discharged from the vessel [, was received by Unitrans,] and upon stripping the contents thereof, it was found that two of the cartons containing the musical instruments were in bad order condition, per Turn Over Survey Report[6] dated 14 May 2002. Unitrans then delivered the subject shipment to the consignee. After further inspection, it was found out that two units of musical instruments were damaged and could no longer be used for their intended purpose, hence were declared a total loss;

4. Obviously, the damages sustained by the insured cargo were caused by the fault and negligence of the [therein] defendants;
5. Formal claims were filed against [the therein] defendants but they refused and failed to pay the same without valid and legal grounds;
6. As cargo-insurer of the subject shipment and by virtue of the insurance claim filed by the consignee, ICNA paid the sum of $22,657.83.
7. By reason of the said payment, ICNA was subrogated to consignee's rights of recovery against [the] defendants [therein];
8. Due to the unjustified refusal of the defendants [therein] to pay its claims, ICNA was constrained to engage the services of counsel.[7]

In its Answer with Counterclaim[8] dated July 8, 2004, Unitrans denied being a ship agent of SEACOL and the vessel M/S Buxcrown's unknown owner or charter. According to Unitrans, BTI Logistics PTY LTD. (BTI Logistics), a foreign freight forwarder, engaged its services as delivery or receiving agent in connection to the subject shipment. As such agent, Unitrans' obligations were limited to receiving and handling the bill of lading sent to it by BTI Logistics, prepare an inward cargo manifest, notify the party indicated of the arrival of the subject shipment, and release the bill of lading upon order of the consignee or its representative so that the subject shipment could be withdrawn from the pier/customs. It further alleged that the

[6] *Id.* at 72.

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

[8] *Id*. at 84-90.

consignee, San Miguel, also engaged its services as customs broker for the subject shipment. As such, Unitrans' obligation was limited to paying on behalf of San Miguel the necessary duties and kindred fees, file with the Bureau of Customs (BOC) the Import Entry Internal Revenue Declaration together with other pertinent documents, **as well as to pick up the shipment and then transport and deliver the said shipment to the consignee's premises in good condition**.

On its part, TSA and the unknown charterer of M/S Doris Wullf alleged in their Amended Answer with Compulsory Counterclaim[9] dated July 11, 2004 that while TSA is indeed the commercial agent of M/S Doris Wullf, both parties are not parties whatsoever to the bill of lading and have no connection in any way with SEACOL, the unknown owner and/or charterer of the vessel M/S Buxcrown and Unitrans. It was further alleged that the subject shipment was discharged from the vessel M/S Doris Wullf complete and in the same condition as when it was loaded therein, which is a fact stated in the Turn-Over Survey Report.

The Ruling of the RTC

In its Decision[10] dated March 29, 2010, the RTC granted the Complaint and held Unitrans liable to ICNA for the sum of US$22,657.83 or its equivalent in Philippine Peso, *i.e.*, One Million, Forty-Two Thousand, Two Hundred Sixty Pesos and Eighteen Centavos (₱1,042,260.18) with interest. The dispositive portion of the RTC's Decision reads:

> **WHEREFORE**, in view of the foregoing considerations, the Court hereby GRANTS in favor of the plaintiff against defendant Unitrans, hence Unitrans is hereby ordered to pay plaintiff the sum of ₱1,042,260.18 (US$22,657.83X₱46.00), with interest at six percent (6%) per annum from date hereof until finality, and twelve percent (12%) per annum from finality until fully paid plus cost of suit.
>
> The complaint against TMS is hereby DISMISSED for insufficiency of evidence including the counterclaim of TMS.

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[9] *Id*. at 98-109.

[10] *Id*. at 51-62. Penned by Presiding Judge Cesar O. Untalan.

SO ORDERED.[11]

The RTC found that the witness of Unitrans itself admitted in open court that "Unitrans is a non-vessel operating common carrier (NVOCC). Moreover, this witness admitted that Unitrans is the delivery and collecting agent of BTI, who is duty bound to [deliver] the subject shipment in good order and condition to San Miguel. Thus, Unitrans is a common carrier. Under Article 1742 of the New Civil Code, it states: 'Even if the loss, destruction, or deterioration of the goods should be caused by the character of the goods, or [the] faulty nature of the packing or of the containers, the common carrier must exercise due diligence to forestall or lessen the loss.' It appears that Unitrans, as common carrier, did not observe this requirement of the law."[12]

Feeling aggrieved, Unitrans appealed the RTC's Decision before the CA.[13]

The Ruling of the CA

In its assailed Decision, the CA denied Unitrans' appeal for lack of merit. The dispositive portion of the assailed Decision reads:

WHEREFORE, the appeal is **DENIED** and the Decision appealed from is **AFFIRMED**.

IT IS SO ORDERED.[14]

In sum, the CA denied Unitrans' argument that the failure of the Court to issue summons and acquire jurisdiction with respect to SEACOL and the unknown charterer/owner of M/S Buxcrown, which are based abroad, is tantamount to a failure to include indispensable parties because Unitrans failed to show that the aforesaid entities are indispensable parties. As observed

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

[12] *Id*. at 61.

[13] The recital of facts and records of the case do not reveal if Unitrans filed a Motion for Reconsideration of the RTC's Decision.

[14] *Rollo*, p. 45.

by the CA, "Unitrans merely concluded that the said parties were indispensable because they were repeatedly impleaded by ICNA as defendants in its original complaint x x x."[15]

Further, "[t]he contention of Unitrans, that the trial court x x x had no factual and legal basis in holding it liable as a common carrier and agent of BTI Logistics is sorely bereft of merit."[16]

Unitrans filed its Motion for Clarification and Reconsideration[17] of the assailed Decision on November 17, 2011, which was denied by the CA in its assailed Resolution.

Hence, the instant Petition.

TSA and the unknown charterer of M/S Doris Wullf filed their Comment (To Petitioner's Petition for Review on Certiorari)[18] on April 23, 2013. ICNA filed its Comment[19] on April 30, 2013. Unitrans filed its Consolidated Reply Brief[20] on February 12, 2014.

On October 7, 2016, TSA and the unknown charterer of M/S Doris Wullf filed their Memorandum.[21] ICNA filed its Memorandum[22] on October 18, 2016. Unitrans filed its Memorandum[23] on October 27, 2016.

Issue

The central question to be resolved by the Court is whether the CA was correct in rendering the assailed Decision, which affirmed the RTC's Decision holding Unitrans liable to ICNA.

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[15] *Id*. at 43.

[16] *Id*.

[17] *Id*. at 163-175.

[18] *Id*. at 213-225.

[19] *Id*. at 233-241.

[20] *Id*. at 249-253.

[21] *Id*. at 278-301.

[22] *Id*. at 302-317.

[23] *Id*. at 318-342.

The Court's Ruling

The instant Petition is centered on how "the RTC Decision only singled out herein petitioner [Unitrans] x x x [and] is completely silent on how the rest of the defendants came to be absolved from any liability and/or exonerated from being held solidarity liable with herein petitioner, notwithstanding a prayer therefor in the Complaint."[24]

In the main, Unitrans posits the view that the RTC's finding of liability on the part of Unitrans, as affirmed by the CA, supposedly amounts to a misapprehension of the evidence and the facts.[25]

Unitrans even goes further by arguing that the RTC Decision is non-compliant with Section 14, Article VIII of the 1987 Constitution, which states that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctively the facts and the law on which it is based."[26] Unitrans opines that the RTC's Decision transgressed the aforementioned constitutional provision because it was supposedly "totally left in the dark on how and why its co-defendants, except for [TSA], had been absolved."[27]

The instant Petition is bereft of merit.

First and foremost, Unitrans' issue on how the RTC and CA allegedly misapprehended the facts of the instant case and failed to fully appreciate evidence on record is undoubtedly a question of fact, asking the Court to recalibrate, reassess, and reexamine evidentiary matters.

A question of facts exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of

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

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

[26] *Id*. at 24.

[27] *Id*. at 25.

specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[28] That is precisely what Unitrans is asking the Court to do — to reassess, reexamine, and recalibrate the evidence on record.

A *catena* of cases has consistently held that questions of fact cannot be raised in an appeal *via certiorari* before the Court and are not proper for its consideration.[29] The Court is not a trier of facts. It is not the Court's function to examine and weigh all over again the evidence presented in the proceedings below.[30]

Upon careful review of the records of the instant case, the Court finds no cogent reason to reverse the RTC's and CA's factual findings and their appreciation of the evidence on record. The Court finds that the RTC's and CA's factual and legal conclusion that Unitrans is liable to ICNA with respect to the damaged musical instruments is amply supported by the evidence on record.

As found by the RTC in its Decision, and as affirmed by the CA in its assailed Decision, Unitrans' own witness, Mr. Gerardo Estanislao Del Rosario (Del Rosario) himself testified in open court that Unitrans, as a **freight forwarding entity and an accredited non-vessel operating common carrier**, was the one engaged by BTI Logistics as its delivery agent in Manila. Del Rosario attested that BTI Logistics was the forwarding agent in Australia who received the cargo shipment from the consignor for shipment to Manila. Del Rosario further testified that Unitrans acted as the delivery/forwarding agent of BTI Logistics with respect to the subject shipment. Del Rosario unequivocally testified that under its agreement with BTI Logistics, **Unitrans engaged itself "to handle the cargo and to make sure that it was delivered to the consignee from the port of Manila to the consignee**."[31] As noted by the CA, "Del Rosario also admitted

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[28] *Republic of the Phils. v. Sandiganbayan*, 426 Phil. 104, 110 (2002).

[29] *Bautista v. Puyat Vinyl Products, Inc.*, 416 Phil. 305, 309 (2001).

[30] *Republic of the Phils. v. Sandiganbayan*, *supra* note 28.

[31] *Rollo*, p. 41; emphasis supplied.

that in so far as the subject shipment is concerned, Unitrans acted as a local agent of BTI Logistics, which was duty bound to deliver the same to the right party."[32]

Moreover, to reiterate, in its Answer with Counterclaim, Unitrans had already expressly admitted that San Miguel also engaged its services as customs broker for the subject shipment; one of its obligations was to pick up the shipment and then transport and deliver the same to the consignee's premises in **good condition**.

Having been placed with the obligation to deliver the subject shipment from the port of Manila to San Miguel's premises in good condition, during the pre-trial conference conducted on June 20, 2007, it was admitted by Unitrans that "[t]he subject shipment was delivered by [petitioner] Unitrans."[33] Yet, it is not disputed by any party that the subject shipment, *i.e.*, musical instruments, were severely damaged beyond use and did not arrive in good condition at the premises of the consignee, San Miguel. It is indubitably clear that Unitrans failed to fulfill its obligation to deliver the subject shipment in good condition.

Emphasis must be placed on the fact that Unitrans itself admitted, through its own witness and general manager, Del Rosario, that in handling the subject shipment and making sure that it was delivered to the consignee's premises in good condition as the delivery/forwarding agent, Unitrans was acting as a freight forwarding entity and an accredited non-vessel operating **common carrier**.

Article 1735 of the Civil Code states that if the goods are lost, destroyed or deteriorated, **common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in Article 1733**.

In turn, Article 1733 states that common carriers, from the nature of their business and for reasons of public policy, are

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[32] *Id*. at 44.

[33] *Id*. at 55.

bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

Hence, jurisprudence holds that a common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported. When the goods shipped are either lost or arrived in damaged condition, a presumption arises against the carrier of its failure to observe that diligence, and there need not be an express finding of negligence to hold it liable. **To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods. It must do more than merely show that some other party could be responsible for the damage.**[34]

In the instant case, considering that it is undisputed that the subject goods were severely damaged, the presumption of negligence on the part of the common carrier, *i.e.*, Unitrans, arose. Hence, it had to discharge the burden, by way of adequate proof, that it exercised extraordinary diligence over the goods; it is not enough to show that some other party might have been responsible for the damage. **Unitrans failed to discharge this burden.** Hence, it cannot escape liability.

With respect to Unitrans' argument that it was unfair for it to be subjected to sole liability, as aptly explained by the RTC in its Decision, Unitrans itself, through its own witness, Del Rosario, "declared [that TSA] never had an occasion to handle this subject cargo."[35] Hence, the RTC noted that "[t]he witness for [petitioner] Unitrans has practically exempted [respondent TSA] when he stated that the subject cargo [was] never in possession of [TSA]. Thus, [respondent TSA] could not be made liable for [this] obvious reason."[36]

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[34] *Regional Container Lines (RCL) of Singapore v. The Netherlands Insurance Co. (Phils.), Inc.*, 614 Phil. 485, 493 (2009).

[35] *Rollo*, p. 59.

[36] *Id.* at 61.

Hence, for the reasons explained above, the Court is not convinced of Unitrans' argument that the RTC's Decision violated Section 14, Article VIII of the 1987 Constitution. To the contrary, the Court finds that the RTC's Decision clearly and distinctively narrated the facts and the applicable law; the RTC's Decision clearly explained the reason why Unitrans is the entity imposed with the liability.

WHEREFORE, premised considered, the instant Petition is hereby **DENIED**. The Decision dated October 27, 2011 and Resolution dated October 12, 2012 rendered by the Court of Appeals in CA-G.R. CV No. 95367 are **AFFIRMED with MODIFICATION**. The total of the amount adjudged against petitioner and the 6% interest thereon computed by the RTC from its Decision until finality shall earn interest at 6% per annum from finality of this Decision until fully paid plus cost of suit.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Reyes, J. Jr., and *Lazaro-Javier*, *JJ.*, concur.

THIRD DIVISION

[G.R. No. 206354. March 13, 2019]

POLICE SUPERINTENDENT HANSEL M. MARANTAN, *petitioner, vs.* **DEPARTMENT OF JUSTICE, DEPARTMENT OF JUSTICE SECRETARY LEILA M. DE LIMA, NATIONAL PROSECUTION SERVICE (represented by PROSECUTOR GENERAL CLARO A. ARELLANO), and MEMBERS OF THE PANEL OF PROSECUTORS (SENIOR DEPUTY STATE PROSECUTOR THEODORE VILLANUEVA, CITY PROSECUTOR VIMAR BARCELLANO, ASSISTANT STATE PROSECUTOR HAZEL DECENA-VALDEZ,**

ASSISTANT STATE PROSECUTOR NIVEN CANLAPAN, and PROSECUTION ATTORNEY CESAR ANGELO CHAVEZ III), *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULE ON JUDICIAL HIERARCHY; DIRECT INVOCATION OF THE COURT'S ORIGINAL JURISDICTION TO ISSUE A WRIT OF CERTIORARI IS ALLOWED ONLY FOR SPECIAL AND IMPORTANT REASONS. –– Direct invocation of this Court's original jurisdiction to issue a writ of certiorari is allowed only for special and important reasons that must be clearly and specifically set out in the Petition. x x x Petitioner insists that this case in an exception to the rule on judicial hierarchy because it is this Court's duty to decide whether the other branches of government have committed grave abuse of discretion. He asserts that respondent Department of Justice Secretary De Lima's statements, bias, prejudice, and prejudgment of the case led to a premature pronouncement of petitioner's guilt, tainting the preliminary investigation. Respondent Department of Justice, he claims, lacked objectivity and would commit grave abuse of discretion should it conduct the preliminary investigation. x x x Grave abuse of discretion amounting to lack or excess of jurisdiction is precisely the scope of a petition for certiorari. This case is no such exception that it would merit a direct resort to this Court. This Court fails to see how public welfare, public policy, or the broader interest of justice demands the exercise of our jurisdiction here. In the same vein, this Court does not see why petitioner's prayer could not have been granted by the Court of Appeals, which has concurrent original jurisdiction over petitions for certiorari under Rule 65 of the Rules of Court. Thus, this case is dismissible due to petitioner's failure to adhere to the rule on judicial hierarchy. Similarly, petitioner failed to file a motion for reconsideration before filing his petition for certiorari. This case is dismissible for petitioner's failure to exhaust all administrative remedies.

2. ID.; ID.; ID.; WITHOUT LEGAL BASIS FOR ITS INHIBITION FROM THE PRELIMINARY INVESTIGATION, THE DOJ'S REFUSAL TO INHIBIT WAS NOT GRAVE ABUSE OF DISCRETION. — Without legal basis for its inhibition

from the preliminary investigation, respondent Department of Justice's refusal to inhibit was not grave abuse of discretion. x x x Moreover, the National Bureau of Investigation and respondent Department of Justice do not, by virtue of having conducted an earlier investigation, become interested parties so as to preclude the latter from conducting an ensuing preliminary investigation.

3. ID.; ID.; ID.; RELEVANT ISSUES IN DETERMINING WHETHER GRAVE ABUSE OF DISCRETION ATTENDED THE FINDING OF PROBABLE CAUSE IN A PRELIMINARY INVESTIGATION. — Petitioner has failed to show that respondent Department of Justice committed grave abuse of discretion in finding probable cause against him. x x x The relevant issues in determining whether grave abuse of discretion attended the preliminary investigation are: (1) whether petitioner had been so fundamentally deprived of an opportunity to be heard in relation to the purposes of preliminary investigation; (2) whether the infirmities were so fatal that they effectively deprived petitioner of any opportunity to be heard during the judicial examination, pre-trial, and trial; and (3) whether there would be a public policy interest in suspending the criminal action. The process of preliminary investigation is essentially one (1)-sided, as it serves only to assist the prosecution to summarily decide whether there was sufficient basis to: (1) charge a person with an offense; and (2) prevent a harassment suit that both prejudices a respondent and wastes government resources. During the preliminary investigation, the prosecution only needs to determine whether it has *prima facie* evidence to sustain the filing of the information. Here, petitioner failed to show any basis to find that the Omnibus Resolution, which found probable cause to charge him with murder, as erroneous. He broadly claims that the Panel was not an impartial tribunal and, because their superior had already prejudged petitioner to be guilty, they had no choice but to arrive at the same conclusion and tailor their resolution fit to find probable cause against petitioner. However, aside from failing to establish respondent Department of Justice Secretary De Lima's bias against him, petitioner also failed to show that the Panel's

conclusion was wrong, much less tainted with grave abuse of discretion.

4. ID.; CIVIL PROCEDURE; MOOT CASES; A PETITION QUESTIONING THE PRELIMINARY INVESTIGATION OF AN ACCUSED BECOMES MOOT ONCE AN INFORMATION BASED ON PRELIMINARY INVESTIGATION IS FILED BEFORE A TRIAL COURT. — A case is rendered moot when, because of supervening events, this Court is left with no justiciable controversy to resolve, and a declaration on it would be of no practical use or value. In *Secretary De Lima v. Reyes*, this Court reiterated its ruling in *Crespo v. Mogul* that once an information is filed before a court, that court acquires jurisdiction over the case. Notably, a petition questioning the preliminary investigation of an accused becomes moot once an information based on the preliminary investigation is filed before a trial court, which, in turn, would complete its own determination of probable cause. After this judicial determination, the question of an accused's guilt or innocence would rest with the trial court's own sound discretion. Here, an information against petitioner has already been filed before the Regional Trial Court. Consequently, whether the case should be dismissed, or whether petitioner should be acquitted or convicted, is for the trial court to determine. Resolving whether public respondent Department of Justice should have inhibited from conducting the preliminary investigation and forwarded the case records to the Office of the Ombudsman would be of no practical use and value here.

APPEARANCES OF COUNSEL

Faustino S. Tugade, Jr. for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

A petition for certiorari, pertaining to the regularity of a preliminary investigation, becomes moot after an information

is filed and a trial court issues an arrest warrant upon finding probable cause against the accused.[1]

This resolves a Petition for Certiorari and Prohibition[2] praying that the Department of Justice be prohibited from proceeding with the preliminary investigation in NPS Docket No. XVI-INV-13C-00092 due to its lack of impartiality and independence, in violation of Police Superintendent Hansel M. Marantan (Marantan)'s right to due process and equal protection of the laws.

News outlets reported that on January 6, 2013, a shootout occurred in Atimonan, Quezon between the combined forces of the Philippine National Police PRO-4A (police personnel) and the Armed Forces of the Philippines' First Special Forces Battalion (armed forces personnel) on one (1) side, and 13 fully armed men riding a convoy of vehicles on the other.[3]

Then President Benigno Simeon C. Aquino III (President Aquino) ordered the National Bureau of Investigation to investigate what was called the Atimonan Encounter.[4] While the investigation was ongoing, and before all the involved police and armed forces personnel filed their affidavits recounting the incident, then Department of Justice Secretary Leila De Lima (Department of Justice Secretary De Lima) made public pronouncements on the Atimonan Encounter, reportedly mentioning Marantan's name.[5]

Alarmed by Department of Justice Secretary De Lima's statements, Marantan, together with a number of soldiers represented by their respective counsel, wrote the head of the National Bureau of Investigation on January 18, 2013. They requested that, upon the investigation's conclusion, any action

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[1] *Secretary De Lima v. Reyes*, 776 Phil. 623 (2016) [Per *J*. Leonen, Second Division].

[2] *Rollo*, pp. 3-62. Filed under Rule 65 of the Rules of Court.

[3] *Id*. at 306, Memorandum of Petitioner.

[4] *Id*.

[5] *Id*. at 306-307.

against those allegedly responsible for the shooting incident be referred to the Office of the Ombudsman instead of the Department of Justice.[6]

On March 6, 2013, Department of Justice Secretary De Lima submitted to then President Aquino a report stating that the National Bureau of Investigation would file criminal charges against the involved police and armed forces personnel.[7]

On March 11, 2013, the Department of Justice, through Prosecutor General Claro A. Arellano (Prosecutor General Arellano) of the National Prosecution Service, issued Department of Justice Office Order No. 208, convening a Panel of Prosecutors (the Panel) to conduct the preliminary investigation in NPS Docket No. XVI-INV-13C-00092.[8]

On March 12, 2013, Marantan filed a Letter-Motion with Department of Justice Secretary De Lima, through Prosecutor General Arellano, and copy furnished Senior Deputy State Prosecutor Theodore M. Villanueva (Senior Deputy State Prosecutor Villanueva), praying that the Department of Justice inhibit from conducting the preliminary investigation, and instead forward its records to the Office of the Ombudsman for appropriate action.[9]

On March 19, 2013, Marantan and his co-respondents in NPS Docket No. XVI-INV-13C-00092 were directed through a Subpoena to appear before the Panel on April 8, 2013 for a preliminary investigation hearing.[10]

As alleged by Marantan, on March 26, 2013, a copy of the Subpoena, along with its attachments, was delivered to the Philippine National Police Holding and Accountability Unit,

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[6] *Id.* at 320. The cited page erroneously indicated "2016."

[7] *Id*. at 325.

[8] *Id*.

[9] *Id.*

[10] *Id*. at 326.

the method by which the Subpoena was served upon him and his co-respondents.[11]

On April 4, 2013, the counsel of Marantan and Special Police Officer 1 Arturo C. Sarmiento received a letter from Senior Deputy State Prosecutor Villanueva, on behalf of Department of Justice Secretary De Lima, denying the Letter-Motion.[12]

Thus, on April 8, 2013, Marantan filed this Petition.[13] Two (2) days later, he filed an Urgent Manifestation[14] stating that on April 8, 2013, after he had filed the Petition, the Panel had conducted the preliminary investigation in NPS Docket No. XVI-INV-13C-00092. He alleged that during the preliminary investigation, the Panel furnished him, through counsel, copies of the attachments to the Subpoena earlier served upon them. Petitioner asked that the Petition be raffled immediately so that his prayer for injunctive relief could be resolved.[15]

On November 8, 2013, respondents filed their Comment,[16] attaching, among others, an August 30, 2013 Omnibus Resolution[17] issued by the Panel in NPS Docket No. XVI-INV-13C-00092.

In its Omnibus Resolution, the Panel found probable cause to charge petitioner, along with his co-respondent police officers, with the crime of multiple murder. It found evidence that they had killed the victims in conspiracy, enumerating the reasons and factual basis for such conclusion.[18] It found that the checkpoint itself was highly suspicious and irregular.[19] Moreover,

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[11] *Id*.

[12] *Id*.

[13] *Id*. at 3.

[14] *Id*. at 113-116.

[15] *Id*. at 114.

[16] *Id*. at 179-245.

[17] *Id.* at 195-239.

[18] *Id*. at 230.

[19] *Id*. at 226.

the physical evidence did not support the claim that there was a Shootout—it belied the possibility that the victims fired at the officers from within their vehicles, or that there was a legitimate firefight.[20]

Further, the Panel explained its bases for finding that the killing was attended by evident premeditation, taking advantage of superior strength, treachery, and with the aid of armed men. The Panel found that: (1) the police personnel had put up a suspicious three (3)-layered checkpoint, which ensured that the subjects would not be missed, and that no outsiders would witness the incident; (2) petitioner had been monitoring the movements of the convoy the day before the incident; (3) the police personnel, ensured the presence of the armed forces personnel at the checkpoint operation and capitalized on their capabilities and resources; and (4) the sheer number of bullets fired at the victims indicated that the police personnel had taken advantage of superior strength of firearms and manpower.[21]

The Panel noted the accounts of the armed forces personnel who were involved in the Atimonan Encounter, particularly those of Lieutenant Colonel Monico Abang (Lieutenant Colonel Abang) and Lieutenant Rico Tagure (Lieutenant Tagure), in relation to the actions of their co-respondent, Police Senior Inspector Carracedo (Carracedo):

> Sensing that there were no more gunfire coming from where two SUVs were located, respondent Abang shouted "CEASEFIRE!", which the troops obeyed. Respondent Carracedo then approached respondent Tagure and the latter heard the former utter, "*I-clear natin, i-clear natin*". Respondent Tagure presumed that respondent Carracedo meant that they have to ensure that the threat has stopped. They then approached the SUVs and when respondent Carracedo failed to open the doors of the first Montero, he asked respondent Tagure to break the glass, which he did.
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> Thinking that there could still be alive occupants inside the SUV, respondent Tagure broke the glass window of the right second row

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[20] *Id*. at 227-228.

[21] *Id.* at 231.

of the first Montero. He, however, noticed that all the occupants were already dead. He then proceeded to the second Montero and also broke its window when he heard someone moaning. Respondent Tagure then uttered, "*May buhay pa, sir. Sir dalhin natin sa ospital*", and thereafter instructed respondents Docdoc and Lumalang to bring the wounded passengers to the hospital. Afterwards, respondents Abang, Macalinao and Tagure heard one of the members of the PNP saying "*Clear, Clear*."

Respondent Abang then heard successive gunshots fired in the air at the vicinity of the two (2) Monteros, and when he glanced at the said direction, he saw respondent Carracedo firing the victims' guns in the air and thereafter returning them to the place where, or the person from whom, he found them. In opposition to what he saw, he repeatedly shouted "*Walang gagalaw sa mga gamit at mga ebidensya!*"[22] (Emphasis in the original)

The Panel found no probable cause to charge the armed forces personnel observing that even they were surprised by what the police personnel had done. It held that though they could have kept the irregularity to themselves, the armed forces personnel still revealed during the investigation what Carracedo had done at the crime scene.[23]

Respondents also attached to their Comment the Information filed before the trial court against petitioner for, among others, multiple murder. The Information read:

The undersigned prosecutors of the Department of Justice accuse the above-named persons of the crime of MULTIPLE MURDER as defined and penalized under Article 248 of the Revised Penal Code of the Philippines, as amended, committed as follows:

> "That on or about January 6, 2013, in the Municipality of Atimonan, Province of Quezon, and within the jurisdiction of this Honorable Court, the above-named accused, conniving, confederating, conspiring and mutually helping one another, each performing acts to achieve a common intent, design and purpose, did then and there, willfully, maliciously, unlawfully,

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[22] *Id*. at 220.

[23] *Id*. at 229-230.

> feloniously, with intent to kill, and by means of treachery, with evident premeditation, abuse of superior strength in number of men and firearms, and while armed with firearms of different make, type and caliber, without any justifiable reason, simultaneously and in concert shoot and fire upon PSupt. Alfredo P. Consemino, SPO1 Gruet Alinea Mantuano, PO1 Jeffrey Tarinay Valdez, 1Lt. Jimbeam Justiniani y Dyico, SSgt. Armando Aranda Lescano, Victorino Siman Atienza, Jr., Conrado Redreska Decillo, Tirso Pada Lontok, Jr., Leonardo Catapang Marasigan, Maximo Manalastas Pelayo, Paul Arcedillo Quiohilag, Gerry Ancero Siman, and Victor Rimas Siman, who were all seated inside two separate vehicles, in defenseless and disadvantageous positions, inflicting upon them gunshot wounds that caused their deaths, to the damage and prejudice of their heirs.
>
> That the following circumstances aggravated the commission of the offense, to wit: that accused took advantage of their public position; and that the crime was committed by a band.
>
> CONTRARY TO LAW.[24]

Petitioner filed his Reply.[25] Then, the parties filed their respective memoranda.[26]

Petitioner insists that he has compelling reasons to justify the non-application of the principles of hierarchy of courts and exhaustion of administrative remedies[27] due to respondent Department of Justice Secretary De Lima's alleged prejudgment of the case. Moreover, he claims that it would have been futile to file a motion for reconsideration because his Letter-Motion for inhibition was denied by respondent Senior Deputy State Prosecutor Villanueva "acting for and [o]n behalf of respondent

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[24] *Id*. at 240-241. The Information was signed by Assistant State Prosecutors Hazel C. Decena-Valdez and Niven R. Canlapan, City Prosecutor Vimar M. Barcellano, Prosecution Attorney Cesar Angelo A. Chavez III, Senior Deputy State Prosecutor Theodore M. Villanueva, and approved by Prosecutor General Claro A. Arellano.

[25] *Id*. at 277-292.

[26] *Id*. at 303-361 and 363-378.

[27] *Id*. at 327-329.

Sec. De Lima[.]"[28] He maintains that respondent Department of Justice Secretary De Lima's public pronouncements showed prejudgment of the case. This, he claims, tainted his constitutional right to due process to stand before an impartial tribunal.[29]

Petitioner prays that this Court issue an injunctive relief to restrain the continuation of proceedings in NPS Docket No. XVI-INV-13C-00092, and to annul and set aside Office Order No. 208, its corresponding Subpoena, and the April 3, 2013 Letter-Denial. He also prays that respondent Department of Justice Secretary De Lima be prohibited from proceeding with the preliminary investigation, and be directed to forward the case records to the Office of the Ombudsman.[30]

However, the act sought to be enjoined had already been accomplished with the conclusion of the preliminary investigation in NPS Docket No. XVI-INV-13C-00092, the issuance of the August 30, 2013 Omnibus Resolution, and the filing of the Information against petitioner. Thus, petitioner prayed in his Memorandum that this Court annul and set aside the preliminary investigation and Omnibus Resolution, along with the Department of Justice Office Order No. 208, Subpoena, and Letter-Denial.[31]

Respondents argue that the Petition should be dismissed outright as petitioner disregarded the hierarchy of courts[32] and failed to exhaust all administrative remedies.[33] They point out that his claims of prejudgment are highly speculative[34] considering that there is no showing that the Panel had prejudged the case or that respondent Department of Justice Secretary De Lima had exerted any pressure on the Panel to rule a certain way.[35]

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[28] *Id*. at 329.

[29] *Id*. at 332-333.

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

[31] *Id*. at 357.

[32] *Id.* at 367-370.

[33] *Id*. at 370-371.

[34] *Id*. at 372.

[35] *Id*. at 372-373.

They maintain that jurisdiction over the preliminary investigation lies with respondent Department of Justice, not the Office of the Ombudsman.[36]

Lastly, as to petitioner's prayer for injunctive relief, respondents point out that a writ of preliminary injunction is not issued when the act sought to be enjoined has already been consummated; in this case, with the issuance of the Omnibus Resolution on August 30, 2013.[37]

The issues for this Court's resolution are:

First, whether or not this case constitutes an exception to the rule on judicial hierarchy;

Second, whether or not this case constitutes an exception to the principle of exhaustion of administrative remedies;

Third, whether or not respondent Department of Justice committed grave abuse of discretion in denying petitioner Hansel M. Marantan's letter-request for inhibition;

Fourth, whether or not the Panel of Prosecutors committed grave abuse of discretion during the preliminary investigation; and

Finally, whether or not the case became moot when an Information was filed before the trial court against petitioner.

This Court denies the Petition.

I

Direct invocation of this Court's original jurisdiction to issue a writ of certiorari is allowed only for special and important reasons that must be clearly and specifically set out in the Petition.

In *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*,[38] this Court provided

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[36] *Id.* at 373-375.

[37] *Id.* at 375.

[38] G.R. No. 202275, July 17, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/202275.pdf> [Per *J.* Leonen, *En Banc*].

circumstances of when it might take cognizance of a case, despite a failure to exhaust remedies before the lower courts:

> For this Court to take cognizance of original actions, parties must clearly and specifically allege in their petitions the special and important reasons for such direct invocation. One such special reason is that the case requires "the proper legal interpretation of constitutional and statutory provisions." Cases of national interest and of serious implications, and those of transcendental importance and of first impression have likewise been resolved by this Court on the first instance.
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> In exceptional cases, this Court has also overlooked the rule to decide cases that have been pending for a sufficient period of time. This Court has resolved original actions which could have been resolved by the lower courts in the interest of speedy justice and avoidance of delay.
>
> Generally, the rule on hierarchy of courts may be relaxed when "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy." For all other cases, the parties must have exhausted the remedies available before the lower courts. A petition filed in violation of the doctrine shall be dismissed.[39] (Citations omitted)

Petitioner insists that this case in an exception to the rule on judicial hierarchy because it is this Court's duty to decide whether the other branches of government have committed grave abuse of discretion. He asserts that respondent Department of Justice Secretary De Lima's statements, bias, prejudice, and prejudgment of the case led to a premature pronouncement of petitioner's guilt, tainting the preliminary investigation. Respondent Department of Justice, he claims, lacked objectivity and would commit grave abuse of discretion should it conduct the preliminary investigation.[40]

In other words, petitioner claims exemption from the rule on judicial hierarchy simply because this case involves respondents'

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

[40] *Rollo*, p. 328.

grave abuse of discretion amounting to lack or excess of jurisdiction.

This argument fails to convince. Grave abuse of discretion amounting to lack or excess of jurisdiction is precisely the scope of a petition for certiorari. This case is no such exception that it would merit a direct resort to this Court. This Court fails to see how public welfare, public policy, or the broader interest of justice demands the exercise of our jurisdiction here. In the same vein, this Court does not see why petitioner's prayer could not have been granted by the Court of Appeals, which has concurrent original jurisdiction over petitions for certiorari under Rule 65 of the Rules of Court. Thus, this case is dismissible due to petitioner's failure to adhere to the rule on judicial hierarchy.

Similarly, petitioner failed to file a motion for reconsideration before filing his petition for certiorari. This case is dismissible for petitioner's failure to exhaust all administrative remedies.[41]

Petitioner claims that this case constitutes an exception to the rule on exhaustion of administrative reliefs because: (1) the filing of a motion for reconsideration of the Letter-Denial would be useless; (2) he ran the risk of having the motion for reconsideration being treated as his counter-affidavit and the case being submitted for resolution; and (3) the prayer for relief as urgent because of the proximity of the date of the preliminary investigation.[42]

These circumstances do not constitute any of the recognized exceptions to the rule on exhaustion of administrative reliefs.

Petitioner's claim that filing a motion for reconsideration would be useless is highly speculative and fails to convince.

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[41] *Banco Filipino Savings and Mortgage Bank v. Bangko Sentral ng Pilipinas*, G.R. No. 200678, June 4, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/200678.pdf> [Per *J.* Leonen, Third Division] citing *Estate of Salvador Serra Serra v. Heirs of Hernaez*, 503 Phil. 736, 743 (2005) [Per *J.* Ynares-Santiago, Third Division].

[42] *Rollo*, pp. 330-331.

He names the risk of having the motion for reconsideration as being treated as a counter-affidavit. However, if he was truly concerned about this, he could have included his version of events and his reasons for seeking respondents' inhibition from the preliminary investigation in his motion for reconsideration. Nothing had prevented him from doing so.

Likewise, the proximity of the date of preliminary conference does not excuse him from filing a motion for reconsideration. Preliminary investigation is not a penalty to be suffered and, as will be discussed later, is only intended to assist the prosecution in determining if there is sufficient basis to: (1) charge a person with an offense; and (2) prevent a harassment suit that both prejudices a respondent and wastes government resources.

Consequently, petitioner has no basis to invoke an exception to the rule on exhaustion of administrative reliefs.

II

Without legal basis for its inhibition from the preliminary investigation, respondent Department of Justice's refusal to inhibit was not grave abuse of discretion.

Petitioner's reliance[43] on *Cojuangco, Jr. v. Presidential Commission on Good Government*[44] is misplaced. It is true that in *Cojuangco, Jr.*, the impartiality of a person who presides over a preliminary investigation is a requisite of due process. However, this Court held that the Presidential Commission on Good Government (the Commission) could not be deemed impartial in its preliminary investigation because, prior to the preliminary investigation, it had already sequestered petitioner Eduardo Cojuangco, Jr.'s (Cojuangco) properties. It had earlier determined *prima facie* that the properties constituted ill-gotten wealth, and/or were acquired per an allegedly anomalous disposition or misuse of coconut levy funds. Subsequently, the Commission filed a Civil Complaint against petitioner Cojuangco

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[43] *Id*. at 336.

[44] 268 Phil. 235 (1990) [Per *J*. Gancayco, *En Banc*].

for ill-gotten wealth and unjust enrichment at the expense of the Filipino people, through misuse, misappropriation, and dissipation of the coconut levy funds.

The Civil Complaint pertained to the transactions subject of the criminal complaints filed by the Solicitor General, upon the preliminary investigation to be conducted by the Commission in *Cojuangco, Jr.* This Court found that, under those unique circumstances, the Commission could not be considered an impartial judge, and thus, could not be allowed to conduct the preliminary investigation of its own complaint.

In *Cojuangco, Jr.*, because the Commission was an interested party in the civil case it filed, it could not be an impartial judge in the preliminary investigation. Moreover, although the majority did not consider the purpose of the Commission's creation, the separate concurring opinion of then Associate Justice Hugo Gutierrez, Jr. noted that the very purpose for its creation was to recover the ill-gotten wealth of former President Ferdinand Marcos, his relatives, and cronies. Thus, it could not be an impartial judge.

Respondent Department of Justice and the National Bureau of Investigation were not created with any interests against petitioner. Accordingly, *Cojuangco, Jr.* is not squarely applicable here.

Moreover, the National Bureau of Investigation and respondent Department of Justice do not, by virtue of having conducted an earlier investigation, become interested parties so as to preclude the latter from conducting an ensuing preliminary investigation. In *Santos-Concio v. Department of Justice*,[45] this Court held that this would be a ridiculous proposition:

It was the NBI, a constituent unit of the DOJ, which conducted the criminal investigation. It is thus foolhardy to inhibit the entire DOJ from conducting a preliminary investigation on the sheer ground that the DOJ's constituent unit conducted the criminal investigation.

Moreover, the improbability of the DOJ contradicting its prior finding is hardly appreciable. It bears recalling that the Evaluating

[45] 567 Phil. 70 (2008) [Per *J.* Carpio Morales, Second Division].

Panel found no sufficient basis to proceed with the conduct of a preliminary investigation. Since the Evaluating Panel's report was not adverse to petitioners, prejudgment may not be attributed "vicariously," so to speak, to the rest of the state prosecutors. Partiality, if any obtains in this case, in fact weighs heavily in favor of petitioners.

. . . . . .

Continuing, petitioners point out that long before the conclusion of any investigation, Gonzalez already ruled out the possibility that some other cause or causes led to the tragedy or that someone else or perhaps none should be made criminally liable; and that Gonzalez had left the preliminary investigation to a mere determination of who within ABS-CBN are the program's organizers who should be criminally prosecuted.

Petitioners even cite President Arroyo's declaration in a radio interview on February 14, 2006 that "[*y*]*ang stampede na iyan, Jo, ay isang trahedya na pinapakita yung kakulangan at pagkapabaya . . . nagpabaya ang organisasyon na nag-organize nito*."

To petitioners, the declarations admittedly made by Gonzalez tainted the entire DOJ, including the Evaluating and Investigating Panels, since the Department is subject to the direct control and supervision of Gonzalez in his capacity as DOJ Secretary who, in turn, is an alter ego of the President.

Petitioners thus fault the appellate court in not finding grave abuse of discretion on the part of the Investigating Panel members who "refused to inhibit themselves from conducting the preliminary investigation despite the undeniable bias and partiality publicly displayed by their superiors."

Pursuing, petitioners posit that the bias of the DOJ Secretary is the bias of the entire DOJ. They thus conclude that the DOJ, as an institution, publicly adjudged their guilt based on a pre-determined notion of supposed facts, and urge that the Investigating Panel and the entire DOJ for that matter should inhibit from presiding and deciding over such preliminary investigation because they, as quasi-judicial officers, do not possess the "cold neutrality of an impartial judge."

. . . . . .

To follow petitioner's theory of institutional bias would logically mean that even the NBI had prejudged the case in conducting a criminal

investigation since it is a constituent agency of the DOJ. And if the theory is extended to the President's declaration, there would be no more arm of the government credible enough to conduct a criminal investigation and a preliminary investigation.[46] (Emphasis supplied, citations omitted)

The National Bureau of Investigation, which is under the Department of Justice, was specifically empowered to investigate crimes and offenses as public interest may require.[47] Accordingly, a checkpoint operation jointly conducted by the police and armed forces personnel, which results in as many deaths as the Atimonan Encounter, is a matter of public interest proper for investigation by the National Bureau of Investigation.

Moreover, respondent Department of Justice Secretary De Lima's assailed statements, as submitted by petitioner, do not appear to show her bias against petitioner, or that she conducted the investigation aiming to persecute him. Rather, they reflect an evolving opinion based on the National Bureau of Investigation's investigation.

In a January 10, 2013 article, she said:

[T]he National Bureau of Investigation said that it will look into the alleged link of "jueteng" in Southern Tagalog to the incident in Quezon.

This was bared by Justice Secretary Leila de Lima when she met with NBI officials to officially kick off the investigation.

"It will be inevitable to pursue that lead if it comes out in the investigation," De Lima said.

De Lima added that it was essential for probers to find out where the 13 slain men that included a ranking police official and two police officers came and were headed to.

De Lima said there were "nagging questions" about the incident. "Were they gun-for-hires involved in illegal numbers game? [Were] they about to deliver money and what was it for?" she said.

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[46] *Id*. at 81-90.

[47] Republic Act No. 157 (1947), Sec. 1.

Justice Secretary noted that there were issues surrounding the check point by the joint police-military team, which included injured Police Superintendent Hansel Marantan, that also need to be addressed.

"What is the basis of involving Army personnel in that kind of operation? Was it a legitimate operation? Did they just want to check on the presence of loose firearms? The group of Marantan — who coordinated with them and what exactly was their mission?" she asked.

De Lima said the initial findings of police investigators about the reported violation of standing rules and regulations and rules of engagement in manning checkpoints were "very telling."

She said that the lack of a signage, and the non-wearing of uniforms were indications that there were violations.

"But our focus will be to determine if it was a shootout or rubout," she added.

She added that the NBI would also look into the reported involvement of Marantan in previous shootout incidents.[48]

Another January 10, 2013 article attached to the Petition partly read:

Justice Secretary Leila de Lima said suspicion about the involvement of the parties in jueteng is something that should not be ignored.

"Hindi siguro maiiwasan kung yun ang lumabas, kasi kailangang sagutin ang katanungan: Ano ba talaga ang operasyon na 'yun? Bakit nila kailangang abangan ang grupo na 'yun? What is exactly the tip na natanggap allegedly ng group ni Marantan? So gun for hire sila, involved sa illegal numbers (game)? Saan sila pupunta, meron ba silang idi-deliver na pera, at para sa ano yun? Dahil nga may involved na uniformed men na in active service na may licensed firearms, di maiiwasan na titingnan yan. At ang pinaka-motibo din, at bakit si Marantan ang parang nagpasimuno ng team?" she said.[49]

A January 16, 2013 article quoted respondent Department of Justice Secretary De Lima as having recognized that she did not have the entire picture yet:

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[48] *Rollo*, p. 83. The article was published in Manila Standard Today.

[49] *Id*. at 88. The article was published on the Malaya Business website.

NBI breakthrough

Justice Secretary Leila de Lima said she thought the NBI agents had scored a breakthrough in their investigation.

"We know more or less what happened. It may not be the real picture yet, but the NBI has enough information and enough evidence to come up with a conclusion," De Lima said in an interview at the NBI headquarters Tuesday.

De Lima declined to comment on the Inquirer report of the initial findings of the NBI that what happened during the Jan. 6 incident constituted "unjustified killings."

"Since it's initial and partial it's not wise for me to be disclosing it," De Lima said. She added that the NBI would assess and compare its own investigation from that of the PNP's. She said the NBI report would not be ready until Friday because of the delay in the turnover of PNP evidence.[50] (Emphasis in the original)

A January 18, 2013 article recounted respondent Department of Justice Secretary De Lima's comments after the National Bureau of Investigation re-enacted the Atimonan Encounter:

De Lima joined the re-enactment yesterday morning of the killing of 13 persons last Jan. 6 at the boundary of Atimonan and Plaridel towns in Quezon.

Security forces said the 13, in a two-vehicle convoy, refused to stop at a checkpoint set up on Maharlika Highway and opened fire first, prompting the security team to return fire.

As two eyewitnesses recounted, however, there was initially no checkpoint sign.

Instead a military truck blocked the highway, forcing three vehicles to slow down. A policeman in civilian clothes approached the lead vehicle, a Mitsubishi Montero sport utility vehicle, and ordered all the passengers to get out. No one did.

A third vehicle made a U-turn and managed to flee. And just in time. As recounted by the witnesses, a man in civilian clothes shouted, "Fire! Fire!"

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[50] *Id*. at 91. The article was published on Inquirer.net.

For about 20 seconds, the joint police-military contingent sprayed the lead SUV with bullets. A shot rang out from inside the vehicle, and the security forces resumed firing.

Two men got out from the second Montero SUV. Believed to be environmentalist Tirso Lontok Jr. and Air Force 1Lt. Jim Beam Justiniani, the two raised their hands in surrender. They were shot at close range by a man in uniform with a rifle and another in civilian clothes with a handgun.

A man then ordered the security team to resume firing, this time to include the second vehicle. This third shooting phase lasted about 10 seconds.

When the shooting was over, the lead vehicle had 186 bullet holes; the second had 50.

All 13 men were killed, although the security team claimed two died on the way to a hospital.

. . . . . .

"Based on eyewitness accounts and other circumstances, it would not be erroneous to say that they were killed in cold blood," De Lima told The STAR yesterday.

Earlier after the re-enactment, she also told reporters, "Definitely, no shootout."

The witnesses told probers of the National Bureau of Investigation (NBI) that the checkpoint sign was placed along the highway in Barangay Lumutan only when the shooting started.

At least three eyewitnesses and their families have been placed on the governmen[t]'s Witness Protection Program.

De Lima, whose department has jurisdiction over the NBI, said the witnesses had initially refused to surface, fearing for their safety.

"What we can say at this point is that our witnesses are credible," she said. "These are eyewitnesses and we see no reason to doubt them. Earlier at the site, they were very certain in their narration of the incident."

The witnesses were reportedly on a slow-moving truck that was overtaken by the slain men's convoy.

With the eyewitnesses' story, De Lima said it was inevitable that the NBI would look into the possibility that the security forces tampered

with the crime scene and planted guns on the slain men to make it appear that they opened fire first.

She expressed hope that the security forces involved — about 50 soldiers and policemen reportedly led by Superintendent Hansel Marantan — would cooperate with the NBI.

Marantan was the only member of the security team who was wounded. He has refused to turn over his gun to probers or subject himself to questioning and physical examination.

A police fact-finding team had earlier complained that the Calabarzon police command, which has jurisdiction over the provinces of Cavite, Laguna, Batangas, Rizal and Quezon, had refused to cooperate with the investigation.[51]

From this article, it appears that respondent Department of Justice Secretary De Lima's opinion that there had been no shootout was not based on an ulterior motive against petitioner, but rather, based strictly on the National Bureau of Investigation's re-enactment, which was apparently done without petitioner's cooperation.

In a January 19, 2013 article, respondent Department of Justice Secretary De Lima addressed the claims that she had prejudged the case:

"That is not an issue anymore," De Lima said. "I don't think that should be an issue."

She said her critics, Supt. Hansel Marantan, leader of the police team at the checkpoint who has been suspended, and the lawyer of the Army soldiers who had backed up the policemen, should just answer questions about the killings.

"If I were them, instead of raising various issues, they should just answer the main issue at hand, the one about the incident," De Lima said.

"They should face it and answer it, not divert it by questioning the actuations of the secretary of justice. That style is an old tactic," she said.

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[51] *Id*. at 95. The article was published in The Philippine Star.

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De Lima said she was just answering questions from reporters who wanted to know after the reenactment what she thought happened at the checkpoint.

What do you call it?

"I was asked by the media what's on my mind. I said if you observed closely, you'll know what happened. It could be a rubout, ambush or massacre. We will look for a better term and we will put it in the NBI report," she said.

She said Marantan's side of the story was crucial because he was the team leader and was one of the three police officers who prepared the case operational plan (coplan). He was also the only one of the three who was at the checkpoint.

"Did he have any motive or is it just like that [as narrated]?" De Lima said.

She said the NBI had arrived at several theories and was just validating them.

De Lima said she had instructed the NBI to work double time and finish its report, as President Aquino expected it by the middle of next week at the latest.

To trace Siman's moves

De Lima said the investigators were "backtracking" to trace the movements of Victor "Vic" Siman, the target of the police operation, on Jan. 6. Establishing his whereabouts and his contacts before getting to Atimonan in the afternoon of that day is important to determining the motive for the attack on him, De Lima said.

"Since our findings, based on eyewitness accounts, was that there was really no shootout, then what was that mission all about? Was that operation specifically conducted to liquidate those elements?" she said.

"If [the people who were killed] had [criminal] records, assuming that they are part of a syndicate whether engaged in illegal numbers game or guns for hire, there was a process for it," she said.

"If there's a basis for the accusations, they should get a warrant and arrest them. Now if the situation calls for it, they can effect warrantless arrest, but by all means conduct it not like that. We are

a government governed by laws, a civilized society, not the Wild, Wild West where they can just neutralize anybody they want to," she said.

De Lima said just because the other side was the first to open fire did not mean that the law enforcers could fire back indiscriminately.[52] (Emphasis in the original)

From these statements, this Court cannot conclude that respondent Department of Justice Secretary De Lima's public reaction to an ongoing investigation is tantamount to bias against petitioner.

Moreover, this Court notes that as stated in a January 16, 2013 article submitted by petitioner, he refused to participate in the investigation by the National Bureau of Investigation:

The PNP turned over a two-inch thick report to NBI Director Rojas, whose agency was tasked by President Aquino to look into the Jan. 6 incident to ensure an impartial investigation as dozens of policemen and military personnel were involved.

Exhaustive PNP report

"This report is clear, declarative, and exhaustive and the entire force of the PNP fact-finding team was utilized (here). There is one important component that was not included, not because of the shortcomings of the PNP but because of circumstances beyond our control which, is Superintendent Marantan," Roxas said.

He said that Marantan, who had been involved in three previous sensational gun battles that had left 27 people dead, had refused to undergo an investigation when the PNP team went to the hospital where he was being treated for wounds purportedly sustained in Atimonan.

"He did not agree to answer their questions. He did not allow them to inspect his wounds, even the slugs recovered from his body, he did not allow to be released (by the hospital) that's why I am advising Superintendent Marantan to undergo the process," Roxas said.[53] (Emphasis in the original)

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[52] *Id*. at 97. The article was published in the Philippine Daily Inquirer.

[53] *Id*. at 89. The article was published on Inquirer.net.

Unexplained refusal to cooperate with the Philippine National Police, along with not allowing even the inspection of the slugs recovered from his body, raises serious doubt as to petitioner's earnestness in seeking proper investigation.

In the absence of any legal basis to require respondent Department of Justice to inhibit from this case, this Court cannot deem its denial of petitioner's request as grave abuse of discretion.

III

Petitioner has failed to show that respondent Department of Justice committed grave abuse of discretion in finding probable cause against him.

This Court agrees that respondent Department of Justice Secretary De Lima's conduct before the Information was filed in court could have been better. However, petitioner failed to show that she had any ulterior motives or bias against him. Her statements did not appear to be based on a prejudice against petitioner, but were simply reactions to an ongoing investigation that had developed as the investigation proceeded.

Besides, respondent Department of Justice Secretary De Lima's conduct is relevant here only insofar as it affected the preliminary investigation. The relevant issues in determining whether grave abuse of discretion attended the preliminary investigation are: (1) whether petitioner had been so fundamentally deprived of an opportunity to be heard in relation to the purposes of preliminary investigation; (2) whether the infirmities were so fatal that they effectively deprived petitioner of any opportunity to be heard during the judicial examination, pre-trial, and trial; and (3) whether there would be a public policy interest in suspending the criminal action.[54]

The process of preliminary investigation is essentially one (1)-sided, as it serves only to assist the prosecution to summarily decide whether there was sufficient basis to: (1) charge a person

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[54] See *J.* Leonen, Separate Concurring Opinion in *Estrada v. Office of the Ombudsman*, 751 Phil. 821, 891 (2015) [Per *J.* Carpio, *En Banc*].

with an offense; and (2) prevent a harassment suit that both prejudices a respondent and wastes government resources. During the preliminary investigation, the prosecution only needs to determine whether it has *prima facie* evidence to sustain the filing of the information.[55]

Here, petitioner failed to show any basis to find that the Omnibus Resolution, which found probable cause to charge him with murder, as erroneous. He broadly claims that the Panel was not an impartial tribunal and, because their superior had already prejudged petitioner to be guilty, they had no choice but to arrive at the same conclusion and tailor their resolution fit to find probable cause against petitioner.[56] However, aside from failing to establish respondent Department of Justice Secretary De Lima's bias against him, petitioner also failed to show that the Panel's conclusion was wrong, much less tainted with grave abuse of discretion.

The Panel's conclusions appear to have been well-reasoned evidence-based. It listed the evidence and circumstances it relied on to conclude that the police personnel had, in conspiracy, killed the victims.[57] It arrived at this conclusion for the following reasons, among others:

(1) petitioner had been in charge of the checkpoint operation, monitoring the movements of the occupants of the two (2) Monteros and briefing the armed forces personnel that the occupants were armed, dangerous, and engaged in criminal activities;

(2) the plan to eliminate the victims became apparent when petitioner, together with his co-respondents in the preliminary investigation, put up the highly irregular three (3)-layered checkpoint;

(3) petitioner and a co-respondent in the investigation purposely sought the assistance of the armed forces

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[55] *Id*.

[56] *Rollo*, pp. 347-349.

[57] *Id*. at 226-228.

personnel due to petitioner's fear that they would be outnumbered. The Panel found this strange given that the checkpoint's purpose was regular, which was to check on passing motorists for possible violation of laws and regulations;

(4) the results of the forensic examinations and investigations support the conclusion that there was no legitimate firefight between the victims and the combined police and armed forces personnel at the checkpoint;

(5) the continuous actuations of the accused police personnel showed an intention to muddle the evidence and mislead or influence the investigation; and

(6) that a significant number of cartridges from the crime scene did not match the submitted firearms of the police and armed forces personnel, as well as those from the victims, showing that the respondents must have used other firearms aside from those officially-issued to mislead the outcome of the investigation.[58]

The Panel also found that the checkpoint itself was highly suspicious and irregular. The Panel explained:

We note that, (1) the first, second, and third layers of the checkpoint were placed at a distance of more or less three hundred (300) meters from each other, or at such a distance and location that they could barely, if totally not, see each other, and (2) the second layer was actually manned by uniformed military, instead of PNP, personnel. While respondent Gollod may have indeed worn a light blue PNP shirt, the same was however covered by the tactical vest which covered his official uniform. The policies regarding PNP checkpoints mandates the PNP officers manning a checkpoint to be highly visible in their complete police uniform.

It appears from the record that the setting of the three-layered checkpoint was deliberately sought by respondents-PNP officers to trap a specific subject — the Vic Siman group. True enough, when the convoy passed the first layer, the PNP personnel manning the same immediately informed, through radio, the second or middle

[58] *Id*. at 226-228.

layer such that by the time the convoy approached the latter, they were already on their toes.[59]

The Panel further provided several reasons on how the physical evidence did not support the claim that there was a shootout:

First, it should be noted that the results of forensic and chemical examinations of the Monteros show that there was no possibility that the occupants of the Monteros could have fired from within the vehicles due to the complete absence of burns, smudges, and soot in their interiors. Forensic analysis attests that had there been any shot fired by any of the passengers inside the Monteros, the same could have produced gun powder residues inside the vehicles cars (*sic*) due to the proximity of the passengers to any point of the cars' interiors.

Second, the marks of smudging, soot and tattooing on the first Montero where the NBI found four (4) secondary bullet entrances, show that the gunshots were made at a distance of eight (8) to thirty-six (36) inches from the muzzle of the gun. In the same vein, the two (2) secondary bullet entrances on the second Montero revealed no signs of smudging, soot and tattooing. Clearly then, these gunshots came from outside the said vehicles. Besides, all eight (8) exit points found on the first Montero tested negative for gun powder residue, which also means that the gunshots preceding these exit points did not come from inside the said vehicle.

Third, the NBI also submitted credible evidence proving that some of the victims were shot at close range, thereby negating the version of the police that there was a legitimate firefight.

. . . . . .

(8) The narration of PSupt. Jerry Valeroso that he heard victim Consemino say "Ano yun?" while they were conversing on the phone, which was followed by the ticking sound of metal hitting glass, shows that the victims were caught by surprise when they were fired upon at the checkpoint. These sounds that he heard only became significant after he learned about the Atimonan incident. He realized that the ticking sound[s] were the sound[s] of bullets hitting the glass windows of the vehicle that victim Consemino was riding.

(9) It appears from the narrations of the witnesses, as well as of the respondents, that the Monteros were parked parallel to the official

[59] *Id*. at 226.

vehicles used in the checkpoints. In fact, the respondents claimed that when the alleged shootout erupted, they took cover using their parked vehicles. Surprisingly, the vehicles of the police operatives where they sought cover were unharmed. There [were] no markings that the said vehicles were hit by any bullet or any indication that [they were] involved in a gunfire. It is axiomatic that if a shootout indeed took place, the vehicles of the police operatives should have at least sustained some damage.[60]

The Panel found that the killing was attended by evident premeditation, taking advantage of superior strength, treachery, and with the aid of armed men. This was because: (1) the police personnel put a suspicious three (3)-layered checkpoint, which ensured that the subjects would not be missed, and that no outsiders would witness the incident; (2) petitioner had been monitoring the movements of the convoy the day prior to the incident; (3) the police personnel ensured the presence of the armed forces personnel at the checkpoint operation and capitalized on the soldiers' capabilities and resources; and (4) the sheer number of bullets fired at the victims indicated that the police had taken advantage of superior strength of firearms and manpower.[61]

The Panel also noted the accounts of the armed forces personnel who were involved in the Atimonan Encounter, particularly those of Lieutenant Colonel Abang and Lieutenant Tagure on the actions of Carracedo:

Sensing that there were no more gunfire coming from where two SUVs were located, respondent Abang shouted "CEASEFIRE!", which the troops obeyed. Respondent Carracedo then approached respondent Tagure and the latter heard the former utter, "*I-clear natin, i-clear natin*". Respondent Tagure presumed that respondent Carracedo meant that they have to ensure that the threat has stopped. They then approached the SUVs and when respondent Carracedo failed to open the doors of the first Montero, he asked respondent Tagure to break the glass, which he did.

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[60] *Id*. at 227-228.

[61] *Id*. at 231.

Thinking that there could still be alive occupants inside the SUV, respondent Tagure broke the glass window of the right second row of the first Montero. He, however, noticed that all the occupants were already dead. He then proceeded to the second Montero and also broke its window when he heard someone moaning. Respondent Tagure then uttered, "*May buhay pa, sir. Sir dalhin natin sa ospital*", and thereafter instructed respondents Docdoc and Lumalang to bring the wounded passengers to the hospital. Afterwards, respondents Abang, Macalinao and Tagure heard one of the members of the PNP saying "*Clear, Clear*."

Respondent Abang then heard successive gunshots fired in the air at the vicinity of the two (2) Monteros, and when he glanced at the said direction, he saw respondent Carracedo firing the victims' guns in the air and thereafter returning them to the place where, or the person from whom, he found them. In opposition to what he saw, he repeatedly shouted "*Walang gagalaw sa mga gamit at mga ebidensya!*".[62] (Emphasis in the original)

The Panel found no probable cause to charge the armed forces personnel because they themselves were surprised by what the police personnel did. They even revealed Carracedo's irregular actions at the crime scene, although they could have kept those to themselves.[63]

Petitioner has not shown how any of these conclusions were erroneous. There was also no proof that respondent Department of Justice Secretary De Lima exerted any pressure on the Panel to align its findings with her public declarations or to adhere to any pre-determined result.

IV

A case is rendered moot when, because of supervening events, this Court is left with no justiciable controversy to resolve, and a declaration on it would be of no practical use or value.[64]

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[62] *Id*. at 220.

[63] *Id*. at 229-230.

[64] *Timbol v. Commission on Elections*, 754 Phil. 578, 584 (2015) [Per *J.* Leonen, *En Banc*].

In *Secretary De Lima v. Reyes*,[65] this Court reiterated its ruling in *Crespo v. Mogul*[66] that once an information is filed before a court, that court acquires jurisdiction over the case. Notably, a petition questioning the preliminary investigation of an accused becomes moot once an information based on the preliminary investigation is filed before a trial court, which, in turn, would complete its own determination of probable cause.[67] After this judicial determination, the question of an accused's guilt or innocence would rest with the trial court's own sound discretion.[68]

Here, an information against petitioner has already been filed before the Regional Trial Court. Consequently, whether the case should be dismissed, or whether petitioner should be acquitted or convicted, is for the trial court to determine.[69] Resolving whether public respondent Department of Justice should have inhibited from conducting the preliminary investigation and forwarded the case records to the Office of the Ombudsman would be of no practical use and value here.

WHEREFORE, the Petition for Certiorari and Prohibition is **DISMISSED** for being **MOOT AND ACADEMIC**, and for failure to show that respondents acted with grave abuse of discretion.

SO ORDERED.

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

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[65] 776 Phil. 623 (2016) [Per *J.* Leonen, Second Division].

[66] 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*].

[67] See *Secretary De Lima v. Reyes*, 776 Phil. 623 (2016) [Per *J.* Leonen, Second Division].

[68] *Napoles v. De Lima*, 790 Phil. 161 (2016) (Per *J.* Leonen, Second Division] citing *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*].

[69] *Id*.

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

SECOND DIVISION

[G.R. No. 212699. March 13, 2019]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; REFUND; A SUBMISSION OF THE QUARTERLY INCOME TAX RETURNS OF THE SUCCEEDING TAXABLE YEAR IS NOT REQUIRED IN A CLAIM FOR REFUND.— [T]his Court is not in disagreement with the CIR in recognizing that the burden of proof to establish entitlement to a refund is on the claimant. This is why in every case for such claims, the Court has always ruled that the claimant should positively show compliance with the statutory requirements provided under the NIRC and the relevant BIR rules and regulations. We, however, cannot subscribe to the CIR's contention that the presentation of the Quarterly ITRs is indispensable to the claimant's case. The CTA correctly ruled that there is nothing under the NIRC that requires the submission of the Quarterly ITRs of the succeeding taxable year in a claim for refund. Even the BIR's own regulations do not provide for such requirement.

2. ID.; ID.; ID.; REFUND OF EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES; REQUISITES; ONCE THE MINIMUM STATUTORY REQUIREMENTS HAVE BEEN COMPLIED WITH, THE CLAIMANT SHOULD BE CONSIDERED TO HAVE SUCCESSFULLY DISCHARGED ITS BURDEN TO PROVE ITS ENTITLEMENT TO THE REFUND.— [A]s implemented by the applicable rules and regulations, and as interpreted in a vast array of decisions, a taxpayer who seeks a refund of excess and unutilized CWT must: "1) File the claim with the CIR within the two-year period from the date of payment of the tax; 2) Show on the return that the income received was declared as part of the gross income; and 3) Establish the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of

tax withheld." Verily, as consistently held by this Court, once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged its burden to prove its entitlement to the refund. After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, *i.e.*, the BIR, to disprove such claim. To rule otherwise would be to unduly burden the claimant with additional requirements which has no statutory nor jurisprudential basis.

3. ID.; ID.; ID.; COMMISSIONER OF INTERNAL REVENUE; VESTED WITH THE POWER TO DECIDE MATTERS CONCERNING REFUNDS OF INTERNAL REVENUE TAXES.— [T]he power to decide matters concerning refunds of internal revenue taxes, among others, is vested in the CIR. It has the duty to ascertain the veracity of such claims and should not just wait and hope for the burden to fall on the claimant when the issue reaches the court. In *Commissioner of Internal Revenue v. PERF Realty Corporation*, the Court ruled that it is the duty of the CIR to verify whether or not the claimant had carried over its excess CWT. The CTA's jurisdiction is appellate, meaning it merely has the authority to review the CIR's decisions on such matters. In the exercise of its authority to review, the CTA cannot dictate what particular evidence the parties must present to prove their respective cases. The means of ascertainment of a fact is best left to the party that alleges the same. The court's power is limited only to the appreciation of that means pursuant to the prevailing rules of evidence. Thus, this Court finds no basis to rule for the indispensability presenting the Quarterly ITRs for a CWT refund or tax credit claim.

4. ID.; ID.; ID.; THE ANNUAL INCOME TAX RETURN OR FINAL ADJUSTMENT RETURN FOR THE TAXABLE YEAR SUBSEQUENT TO THE YEAR WHEN THE CREDITABLE WITHHOLDING TAXES (CWT) FORMS PART CAN SUFFICIENTLY REVEAL WHETHER A CARRY OVER TO THE SUCCEEDING QUARTERS WAS MADE EVEN IF THE CLAIMANT HAS PREVIOUSLY CHOSEN THE OPTION OF REFUND OF, OR TAX CREDIT FOR THE CLAIMED CWT.— In *Winebrenner* [*& Iñigo Insurance Brokers, Inc. v.* CIR], the Court explained that an Annual ITR contains the total taxable income earned for

the four quarters of the taxable year, as well as deductions and tax credits previously reported or carried over in the Quarterly ITRs for the subject period. The Annual ITR or Final Adjustment Return for the taxable year subsequent to the year when the CWT forms part, perforce, can sufficiently reveal whether a carry over to the succeeding quarters was made even if the claimant has previously chosen the option of refund of, or tax credit for the claimed CWT. x x x Thus, despite PNB's failure to present at the onset its Quarterly ITRs for 2006, its Annual ITR for 2006 is apt and sufficient to show that no CWT carry over was made in 2006.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; REVIEW UNDER RULE 45 OF THE RULES OF COURT; FACTUAL FINDINGS OF THE COURT OF TAX APPEALS WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE WILL NOT BE DISTURBED ON APPEAL, UNLESS THERE HAS BEEN AN ABUSE OF DISCRETION ON ITS PART.— Anent, the CIR's argument, questioning the authenticity and due execution of the Certificates of Creditable Taxes Withheld, the same should be given scant consideration. Foremost, said argument is belatedly raised before this Court. x x x Besides, resolving this issue would necessitate a re-examination of evidence on record, which is not within the purview of a review under Rule 45 of the Rules of Court. Further, it is well settled that factual findings of the CTA when supported by substantial evidence, will not be disturbed on appeal. Due to the nature of its functions, the tax court dedicates itself to the study and consideration of tax problems and necessarily develops expertise thereon. Unless there has been an abuse of discretion on its part, the Court accords the highest respect to the factual findings of the CTA.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Zambrano & Gruba Law Offices for respondent.

D E C I S I O N

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

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assails the Amended Decision[2] dated February 4, 2014 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 859, which ordered petitioner Commissioner of Internal Revenue (CIR) to refund respondent Philippine National Bank's (PNB's) excess and unutilized creditable withholding taxes (CWT) for the taxable year 2005, or to issue a tax credit certificate therefor in favor of PNB. The CTA's Resolution[3] dated May 27, 2014, which denied the CIR's motion for reconsideration is likewise impugned herein.

Factual Antecedents

On April 17, 2006, PNB electronically filed its Annual Income Tax Return (ITR) for taxable year 2005. The following day, it manually filed the same with the required attachments thereto.[4]

Through letters with attachments dated February 12, 2007, June 22, 2007, and March 10, 2008, which were received by the CIR on February 22, 2007, June 25, 2007, and March 13, 2008, respectively, PNB filed its claim for refund or issuance of tax credit certificate of its excess CWT in the amount of ₱74,598,430.47.[5]

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[1] *Rollo*, pp. 45-72.

[2] Penned by Court of Tax Appeals Associate Justice Caesar A. Casanova, with Presiding Justice Roman G. Del Rosario, and Associate Justices Juanito C. Castañeda, Jr., Esperanza R. Fabon-Victorino, and Ma. Belen M. Ringpis-Liban, concurring; and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, dissenting; *id*. at 13-33.

[3] Associate Justice Erlinda P. Uy, on leave; *id*. at 35-43.

[4] *Id*. at 48.

[5] *Id*.

Due to the CIR's inaction to the said claim, PNB filed a petition for review for its claim on April 11, 2008 before the CTA.[6]

On September 30, 2011, the CTA Third Division rendered a Decision,[7] finding PNB's evidence to be insufficient to support its claim for refund or the issuance of a tax credit certificate. Specifically, the CTA Third Division pointed out that the presentation of PNB's Annual ITR for 2006 is not enough to prove that it did not carry over the claimed excess or unutilized CWT to the subsequent quarters of 2006, ruling that the presentation of the succeeding Quarterly ITRs is vital to its claim for refund. It disposed, thus:

WHEREFORE, the Petition for Review is hereby **DENIED**.

SO ORDERED.[8]

PNB filed a motion for reconsideration but the same was denied in a Resolution[9] dated December 29, 2011.

PNB then appealed to the CTA *En Banc*, raising the sole issue of whether or not the presentation of the 2006 Quarterly ITRs is indispensable to PNB's claim for refund of its excess or unutilized CWT for 2005.

By a vote of 4-4-1 in its June 5, 2013 Decision,[10] the CTA denied the appeal, thus:

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[6] *Id*.

[7] Penned by Associate Justice Lovell R. Bautista, with Associate Justice Amelia R. Cotangco-Manalastas, concurring and Associate Justice Olga Palanca-Enriquez, dissenting.; *id*. at 114-140.

[8] *Id*. at 126.

[9] *Id*. at 171-174.

[10] Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Lovell R. Bautista, Erlinda P. Uy and Amelia R. Cotangco-Manalastas, concurring; Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Caesar A. Casanova and Esperanza R. Fabon-Victorino, dissenting; and Associate Justice Ma. Belen M. Ringpis-Liban, no part; *id*. at 248-275.

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED**. The Decision and Resolution of the former Third Division of this Court in CTA Case No. 7760 dated September 30, 2011 and December 29, 2011, respectively, are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.[11]

Undaunted, PNB filed a Motion for Reconsideration[12] dated June 28, 2013.

On February 4, 2014, the CTA *En Banc* rendered the assailed Amended Decision,[13] granting PNB's motion for reconsideration. The CTA *En Banc* ruled that there is nothing in our tax laws that requires the presentation of the Quarterly ITRs for succeeding years to establish entitlement to the refund of excess or unutilized CWT.[14]

Further, this time, the CTA *En Banc* recognized that the Supreme Court had, in several occasions, already passed upon this issue. It cited the cases of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,[15] *State Land Investment Corporation v. Commissioner of Internal Revenue*,[16] and *Commissioner of Internal Revenue v. PERF Realty Corporation*,[17] wherein this Court ruled that the presentation of ITRs for the succeeding taxable years is not an essential requisite in proving a claim for refund of excess or unutilized CWT.[18] The Court elucidated that the presentation or non-presentation of the said document is not fatal to the refund claim as it is the duty of the

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[11] *Id*. at 263.

[12] *Id*. at 276-286.

[13] *Supra* note 2.

[14] *Id*. at 16.

[15] 514 Phil. 147 (2005).

[16] 566 Phil. 113 (2008).

[17] 579 Phil. 442 (2008).

[18] *Rollo*, pp. 16-19.

CIR to verify whether or not the taxpayer carried over its excess CWT to the succeeding year.[19]

The CTA *En Banc* also found that PNB complied with all the requisites for the filing of such claim. *First*, there is no dispute that PNB filed its claim within the two-year prescriptive period. *Second*, that the income related to the ₱74,026,451.67 CWT formed part of PNB's taxable income for the years 1999 to 2006 were evidenced by the documents presented by PNB, which were evaluated by the Independent Certified Public Accountant (ICPA), to wit: original accounting tickets or input sheets; original deeds of absolute/conditional sale; general ledgers for the years 1999 to 2006; audited financial statements; and ITRs for the years 1999 to 2006. *Third*, PNB presented Certificates of Creditable Tax Withheld at Source duly issued to it by various withholding agents for the year 2005, which were examined by the Court-commissioned ICPA, SGV & Co., through its partner, Ms. Mary Ann C. Capuchino, to establish the fact of withholding. The ICPA noted, however, that out of the ₱74,598,430.47 CWT claimed for refund, only the amount of ₱74,026,451.67 was properly supported by original Certificates of Creditable Tax Withheld at Source issued in the name of PNB and dated within the calendar year 2005.[20]

In all, the CTA held that PNB was able to sufficiently prove its claim for refund, albeit for the reduced amount of ₱74,026,451.67, disposing as follows:

> **WHEREFORE**, premises considered, [PNB's] Motion for Reconsideration (of the 05 June 2013 Decision) is hereby **GRANTED**. Accordingly, the Assailed Decision dated June 5, 2013 is hereby **REVERSED** and **SET ASIDE**. [The CIR] is **ORDERED TO REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of [PNB] in the amount of **Seventy-Four Million Twenty-Six Thousand Four Hundred Fifty-One Pesos and 67/100 (₱74,026,451.67)**, representing excess and unutilized creditable withholding taxes for the taxable year 2005.

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[19] *Id*. at 18.

[20] *Id*. at 19-26.

SO ORDERED.[21]

Insisting that the presentation of the Quarterly ITRs for the succeeding taxable year is incumbent upon claimants of CWT refund to prove its entitlement thereto, the CIR filed a motion for reconsideration, which was denied by the CTA *En Banc* in its May 27, 2014 assailed Resolution:[22]

WHEREFORE, there being no new matters or issues advanced by [the CIR] in [its] Motion which may compel this Court to reverse, modify or amend the Amended Decision, the instant Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[23]

Hence, this petition.

In the main, the CIR maintains that the presentation of the Quarterly ITRs for 2006 is indispensable to PNB's refund claim to prove its entitlement thereto. The CIR argues in this wise: under Section 76 of the National Internal Revenue Code (NIRC), the taxpayer has the option to either carry over the excess CWT to the succeeding taxable quarters or to claim for a refund of, or tax credit for such excess amount paid; once the taxpayer opted for the carry over, the same shall be irrevocable and it will not be entitled to a refund anymore; the Quarterly ITRs would establish whether or not such carry over happened; hence, such Quarterly ITRs are indispensable for the refund claim.[24]

The CIR further argues that, assuming the presentation of the Quarterly ITRs is not necessary, PNB's claim for refund must still be denied because the Certificates of Creditable Taxes Withheld presented were not properly identified. Specifically, the CIR avers that the authenticity of such document should have been proved by identification of a person who saw the

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[21] *Id*. at 27.

[22] *Supra* note 3.

[23] *Rollo*, p. 42.

[24] *Id*. at 59-62.

same executed or by evidence of the genuineness of the signature or handwriting of the maker.[25]

In fine, the CIR asserts that the PNB failed to discharge its burden to prove entitlement to the claimed refund.

The Issue

Ultimately, the issue here is whether or not the PNB proved its entitlement to the refund. Of crucial importance for the resolution thereof, however, is whether the presentation of the Quarterly ITRs of the succeeding quarters of a taxable year is indispensable for such claim.

The Court's Ruling

The instant petition presents no novel issue. In the more recent case of *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*,[26] consistent with the settled jurisprudence on the matter, the Court specifically ruled that the presentation of the claimant's quarterly returns is not a requirement to prove entitlement to the refund. Notably, said case applies squarely to the instant petition and we find no good reason to deviate from its tenets as it remains to be a good law.

To be sure, this Court is not in disagreement with the CIR in recognizing that the burden of proof to establish entitlement to a refund is on the claimant. This is why in every case for such claims, the Court has always ruled that the claimant should positively show compliance with the statutory requirements provided under the NIRC and the relevant BIR rules and regulations.[27] We, however, cannot subscribe to the CIR's contention that the presentation of the Quarterly ITRs is indispensable to the claimant's case.

The CTA correctly ruled that there is nothing under the NIRC that requires the submission of the Quarterly ITRs of the succeeding taxable year in a claim for refund. Even the BIR's

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[25] *Id*. at 67.

[26] 752 Phil. 375 (2015).

[27] *Team Sual Corporation (Formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue*, G.R. Nos. 201225-26, April 18, 2018.

own regulations do not provide for such requirement. Section 76 of the NIRC provides:

> SEC. 76. *Final Adjustment Return*. — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year.
>
> If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
>
> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years.
>
> Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

Relatively, as implemented by the applicable rules and regulations, and as interpreted in a vast array of decisions, a taxpayer who seeks a refund of excess and unutilized CWT must:

1) File the claim with the CIR within the two-year period from the date of payment of the tax;

2) Show on the return that the income received was declared as part of the gross income; and

3) Establish the fact of withholding by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld.[28]

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[28] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, *supra* note 26, at 388.

Verily, as consistently held by this Court, once the minimum statutory requirements have been complied with, the claimant should be considered to have successfully discharged its burden to prove its entitlement to the refund.[29] After the claimant has successfully established a *prima facie* right to the refund by complying with the requirements laid down by law, the burden is shifted to the opposing party, *i.e*., the BIR, to disprove such claim.[30] To rule otherwise would be to unduly burden the claimant with additional requirements which has no statutory nor jurisprudential basis.

Thus, once the claimant has successfully established that its claim was filed within the two-year prescriptive period; that the income related to the claimed CWT formed part of the return during the taxable year when the refund is claimed for; and the fact of withholding of said taxes, it shall be deemed to be entitled to its claimed CWT refund. If the CIR, as the one mandated to examine and decide matters of taxes and refunds,[31] finds otherwise, it is then incumbent upon it to prove the propriety of denying the claim before the court. Specifically, if the BIR asserts that the claimant is not entitled to the refund as the claimed CWT were already carried over to the succeeding taxable quarters, it is up to the BIR to prove such assertion.

In the case of *Republic v. Team Energy (Phils.) Corporation*,[32] the Court even stressed on the fact that the BIR ought to have its own copies, originals at that, of the claimant's quarterly returns on file, on the basis of which it could have easily rebut the claim that the excess or unutilized CWT sought for refund were carried over to the immediately succeeding taxable quarters. The Court even went further to emphatically rule in the said case that the failure to present such document during the trial is fatal against the BIR's case rather than the claimant's.

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[29] See *Commissioner of Internal Revenue v. PERF Realty Corporation*, *supra* note 17, at 453.

[30] See *Republic v. Team (Phils.) Energy Corporation*, 750 Phil. 700 (2015).

[31] NIRC, Section 4.

[32] *Supra* note 30, at 710.

It bears stressing that the power to decide matters concerning refunds of internal revenue taxes, among others, is vested in the CIR.[33] It has the duty to ascertain the veracity of such claims and should not just wait and hope for the burden to fall on the claimant when the issue reaches the court.[34] In *Commissioner of Internal Revenue v. PERF Realty Corporation*,[35] the Court ruled that it is the duty of the CIR to verify whether or not the claimant had carried over its excess CWT. The CTA's jurisdiction is appellate, meaning it merely has the authority to review the CIR's decisions on such matters. In the exercise of its authority to review, the CTA cannot dictate what particular evidence the parties must present to prove their respective cases. The means of ascertainment of a fact is best left to the party that alleges the same. The court's power is limited only to the appreciation of that means pursuant to the prevailing rules of evidence.[36]

Thus, this Court finds no basis to rule for the indispensability presenting the Quarterly ITRs for a CWT refund or tax credit claim.

At this juncture, it is imperative to focus the disquisition on the fact that PNB proffered its Annual ITR for 2006 to prove that it did not carry over its 2005 CWT to 2006. This Court is confounded by the CIR's submission that said ITR is not enough to fully ascertain that there was no carry over.

In *Winebrenner*, the Court explained that an Annual ITR contains the total taxable income earned for the four quarters of the taxable year, as well as deductions and tax credits previously reported or carried over in the Quarterly ITRs for the subject period. The Annual ITR or Final Adjustment Return for the taxable year subsequent to the year when the CWT forms

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[33] *Supra* note 31.

[34] See *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, *supra* note 26 at 396.

[35] *Supra* note 17, at 454.

[36] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, *supra* note 26, at 391.

part, perforce, can sufficiently reveal whether a carry over to the succeeding quarters was made even if the claimant has previously chosen the option of refund of, or tax credit for the claimed CWT. The Court, in the said case, proceeded to explain in detail, *viz*.:

> If the excess tax credits of the preceding year were deducted, whether in whole or in part, from the estimated income tax liabilities of any of the taxable quarters of the succeeding taxable year, the total amount of the tax credits deducted for the entire taxable year should appear in the Annual ITR under the item "Prior Year's Excess Credits." Otherwise, or if the tax credits were carried over to the succeeding quarters and the corporation did not report it in the annual ITR, there would be a discrepancy in the amounts of combined income and tax credits carried over for all quarters and the corporation would end up shouldering a bigger tax payable. **It must be remembered that taxes computed in the quarterly returns are mere estimates. It is the annual ITR which shows the aggregate amounts of income, deductions, and credits for all quarters of the taxable year. It is the final adjustment return which shows whether a corporation incurred a loss or gained a profit during the taxable quarter. Thus, the presentation of the annual ITR would suffice in proving that prior year's excess credits were not utilized for the taxable year in order to make a final determination of the total tax due.**[37] (Emphasis supplied; citation omitted)

Thus, despite PNB's failure to present at the onset its Quarterly ITRs for 2006, its Annual ITR for 2006 is apt and sufficient to show that no CWT carry over was made in 2006.

Besides, even if a contrary ruling would be issued by this Court in the case at bar, PNB cannot be prejudiced for relying on the prevailing rule that presentation of succeeding ITRs is not necessary. It is noteworthy that PNB attempted to file its 2006 Quarterly ITRs through a Motion to Reopen (To Allow [PNB's] Additional Evidence[38] dated March 16, 2010, which was actually granted by the CTA Third Division in its Resolution[39]

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[37] *Id*. at 393.

[38] *Rollo*, pp. 203-207.

[39] *Id*. at 213.

dated May 5, 2010. Relying, however, upon *Philam*,[40] and other pertinent jurisprudence also relied upon by the CTA *En Banc* in its assailed Amended Decision, PNB realized that the presentation of its 2006 Quarterly ITRs is not necessary. Hence, it filed a Motion to Withdraw[41] its previous motion to submit its 2006 Quarterly ITRs. Said withdrawal was also granted by the CTA Third Division in the same Resolution dated May 5, 2010.[42]

Anent, the CIR's argument, questioning the authenticity and due execution of the Certificates of Creditable Taxes Withheld, the same should be given scant consideration. Foremost, said argument is belatedly raised before this Court. These documents were admitted at the initial stage of the proceedings before the CTA Third Division and records show that no such objection was made during the formal offer of said documents. Moreover, these Certificates of Final Tax Withheld, complete in relevant details, were declared under the penalty of perjury. As such, they may be taken at face value.[43]

Besides, resolving this issue would necessitate a re-examination of evidence on record, which is not within the purview of a review under Rule 45 of the Rules of Court.[44] Further, it is well settled that factual findings of the CTA when supported by substantial evidence, will not be disturbed on appeal. Due to the nature of its functions, the tax court dedicates itself to the study and consideration of tax problems and necessarily develops expertise thereon. Unless there has been an abuse of discretion on its part, the Court accords the highest respect to the factual findings of the CTA.[45]

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[40] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, *supra* note 15.

[41] *Rollo*, pp. 208-211.

[42] *Supra* note 39.

[43] *Philippine Airlines, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 206079-80, January 17, 2018.

[44] *Yap v. Lagtapon*, G.R. No. 196347, January 23, 2017, 815 SCRA 94, 104-105.

[45] *Team Sual Corporation (Formerly Mirant Sual Corporation) v. Commissioner of Internal Revenue*, *supra* note 27.

In all, having established that PNB complied with the minimum statutory requirements above-enumerated, and that the submission of its Quarterly ITRs are not indispensable to its claim, we find no reversible error on the part of the CTA *En Banc* in ruling that PNB is entitled to the claimed refund or tax credit.

WHEREFORE, premises considered, the instant petition is **DENIED**. Accordingly, the Amended Decision dated February 4, 2014 and the Resolution dated May 27, 2014 of the Court of Tax Appeals *En Banc* in CTA EB Case No. 859 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Perlas-Bernabe, Caguioa, and *Lazaro-Javier, JJ.*, concur.

THIRD DIVISION

[G. R. No. 216632. March 13, 2019]

AUGUSTO REGALADO *y* LAYLAY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GENERALLY, FINDINGS OF FACT BY THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE GIVEN GREAT WEIGHT AND CREDENCE ON REVIEW; AN EXCEPTION IS WHEN EITHER OR BOTH OF THE LOWER COURTS OVERLOOKED OR MISCONSTRUED SUBSTANTIAL FACTS WHICH COULD HAVE AFFECTED THE OUTCOME OF THE CASE.— Generally, "the findings of

fact by the trial court, when affirmed by the [Court of Appeals], are given great weight and credence on review." This is because the trial court "is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses, their demeanor, conduct and attitude on the witness stand." Hence, this Court accords great respect to the trial court's findings, especially when affirmed by the Court of Appeals. An exception is when either or both of the lower courts "overlooked or misconstrued substantial facts which could have affected the outcome of the case. Here, the records show nothing that warrants a reversal of the Decisions of the Court of Appeals and the Regional Trial Court.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; CASE AT BAR.—** As for the conviction of illegal possession of dangerous drugs, the following elements must be established: "(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug." x x x What sustains petitioner's conviction is his damning admission in open court that the police officers had found the three (3) plastic sachets and four (4) sticks of marijuana in his possession during his arrest on December 17, 2002. He admitted telling the law enforcers where he had hidden the rest of the marijuana because he was scared. Ultimately, petitioner's free and conscious possession of the dangerous drug has been established, warranting his conviction.

3. **ID.; ID.; PROCEDURE FOR THE CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED, AND/OR SURRENDERED DRUGS AND/OR DRUG PARAPHERNALIA; ABSENT ANY JUSTIFIABLE GROUND FOR THE LAW ENFORCER'S DEVIATION FROM THE PROCEDURE CASTS DOUBT ON THE INTEGRITY OF THE SEIZED ITEMS; CASE AT BAR.—** However, this Court laments the prosecution's apparent nonchalance in observing the procedure for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia under Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640.

x x x These requirements under Section 21 were summarized in *Lescano v. People*: As regards the items seized and subjected to marking, Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable." Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place. Here, none of the three (3) people required by Section 21(1), as originally worded, was present during the physical inventory of the seized items. Moreover, this Court has held that the prosecution has "the positive duty to establish that *earnest efforts* were employed in contacting the representatives enumerated under Section 21 (1) of [Republic Act No.] 9165, or that *there was a justifiable ground* for failing to do so." Yet, not only did the prosecution fail to establish that earnest efforts were employed in securing the presence of the three (3) witnesses; it did not even bother to offer any justification for the law enforcers' deviation from the law's requirements. Since preliminaries do not appear on record, this Court cannot speculate why the law enforcers neglected the simple rules in the conduct of a buy-bust operation. Nonetheless, police officers are reminded that lapses like this—absent any justifiable ground—cast doubt on the integrity of the seized items and can be fatal to the prosecution's cause.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] assailing the Court of Appeals January 29, 2015 Decision[2] in CA-G.R. CR No. 36216. The Court of Appeals upheld the Regional Trial Court November 23, 2011 Decision[3] in Criminal Case No. 08-03 finding Augusto Regalado *y* Laylay (Regalado) guilty beyond reasonable doubt for violating Article II, Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

On January 31, 2003, two (2) informations were filed before the Regional Trial Court, charging Regalado with two (2) counts of violating Article II, Section 11 of Republic Act No. 9165.[4] The informations read:

In Crim. Case No. 08-03:

*That on or about the 17th day of December 2002, at around 2:00 o 'clock (sic) in the afternoon, at barangay (sic) Sibuyao, municipality (sic) of Torrijos, province (sic) of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did[,] then and there[,] wil[l]fully, unlawfully[,] [*and*] feloniously possess Cannabis Sativa (Marijuana) weighing not more than 300 grams, not being authorized by law to possess the same.*

CONTRARY TO LAW.

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[1] *Rollo*, pp. 12-38. Filed under Rule 45 of the Rules of Court.

[2] *Id*. at 40-52. The Decision was penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Samuel H. Gaerlan and Pedro B. Corales of the Sixteenth Division, Court of Appeals, Manila.

[3] *Id*. at 78-89. The Decision was penned by Presiding Judge Antonina M. Calderon-Magtubo of Branch 94, Regional Trial Court, Boac, Marinduque.

[4] *Id*. at 41.

In Crim. Case No. 09-03:

That on or about the 17th day of December 2002, at around 2:00 o 'clock (sic) in the afternoon, at barangay (sic) Sibuyao, municipality (sic) of Torrijos, province (sic) of Marinduque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did[,] then and there[,] wil[l]fully, unlawfully[,] [and] *feloniously possess Cannabis Sativa (Marijuana) weighing not more than 300 grams, not being authorized by law to possess the same.*

CONTRARY TO LAW.[5] (Emphasis in the original, citations omitted)

On arraignment, Regalado pleaded not guilty to the crimes charged. Trial then ensued.[6]

According to the prosecution, on December 17, 2002, a team of five (5) police officers led by Special Police Officer 2 Quirino Peñascosas (SPO2 Peñascosas), with designated poseur-buyer PO1 Dario Pedrigal (PO1 Pedrigal), PO2 Rodrigo Llante (PO2 Llante), PO1 Macrino Romeo Palma, and PO1 Manuelito Palma, conducted a buy-bust operation.[7]

At around 2:00 p.m. that day, PO1 Pedrigal went to Regalado's house while the rest of the team stayed about 200 meters behind him. There, PO1 Pedrigal asked Regalado's wife, Marilyn, "*Meron kayo ngayon, bibili ako*?"[8] Marilyn informed him that her husband was not in the house and that she would ask her daughter to fetch him.[9]

When Regalado arrived, he immediately inquired where PO1 Pedrigal came from, to which he replied that he was from Marlangga. Regalado then asked PO1 Pedrigal the quantity he sought to buy, to which the latter replied that he wanted two (2).[10]

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

[6] *Id*. at 42.

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

[8] *Id*. at 43.

[9] *Id*.

[10] *Id.* at 43.

Regalado went into his house, returning with a plastic sachet suspected to contain marijuana, which he then exchanged with PO1 Pedrigal's marked bills amounting to ₱200.00. Regalado took the money and put it in his pocket.

At this point, PO1 Pedrigal scratched his head—the pre-arranged signal signifying to the team that the transaction had been consummated. The rest of the team rushed to Regalado's house and identified themselves as police officers. They arrested Regalado after PO1 Pedrigal retrieved the marked money from his pocket.[11]

Upon the arrest, PO1 Pedrigal asked Regalado, "*Meron pa itong kasamahan*?"[12] to which Regalado admitted having more, pointing to the roof of his house. He turned over to PO1 Pedrigal a milk box that allegedly had two (2) plastic sachets and four (4) sticks of marijuana. PO1 Pedrigal kept all the confiscated pieces of evidence[13]

The police officers informed Regalado of his constitutional rights in Tagalog. Then, after informing Barangay Captain Isidro Palomares of what had transpired, they brought Regalado to the police station.[14]

At the police station, PO1 Pedrigal marked with initials "AR" the three (3) plastic sachets and four (4) sticks of suspected marijuana. He later turned them over, along with the marked money, to the investigator, PO2 Llante. PO2 Llante then brought the seized evidence, along with a Request for Laboratory Examination, to the Philippine National Police Crime Laboratory in Canlubang, Laguna to have them tested for the presence of illegal drugs.[15]

Police Chief Inspector Lorna Tria (Chief Inspector Tria), the forensic chemist, confirmed upon a laboratory examination

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[11] *Id*.

[12] *Id*. at 44.

[13] *Id*.

[14] *Id*.

[15] *Id*.

that the confiscated items were indeed marijuana. The seven (7) specimens with the "AR" markings weighed 6.40 grams, 13.93 grams, 22.60 grams, 0.49 gram, 0.40 gram, 0.36 gram, and 0.47 gram.[16] The specimens weighed a total of 44.65 grams. These results were evidenced by Chemistry Report No. D-2841-02.[17]

In his defense, Regalado alleged that on December 17, 2002, he was ploughing the field in his farm located about 100 meters from his house when his son, Alvin, told him to come home. There, he was met by a teenager who gave him ₱200.00, wanting to purchase marijuana.[18]

As soon as Regalado gave the teenager marijuana, he stated that five (5) police officers arrived and arrested him. PO1 Pedrigal recovered from him the ₱200.00, which the teenager had handed him. When asked about the rest of his stash, Regalado immediately divulged its hiding place and surrendered the marijuana "because he was scared."[19]

Regalado denied handing the marijuana to PO1 Pedrigal and maintained that the latter took it from the teenager. He claimed that he signed the confiscation receipt despite not understanding it as he did not know how to read. He likewise testified that he was not informed of his constitutional rights.[20]

In its November 23, 2011 Decision,[21] the Regional Trial Court found Regalado guilty of violating Article II, Section 11 of Republic Act No. 9165 in Criminal Case No. 08-03. However, it acquitted him in Criminal Case No. 09-03, ruling that one cannot be convicted twice for the same act.[22]

The dispositive portion of the November 23, 2011 Decision read:

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

[17] *Id*. at 45.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 78-89.

[22] *Id*. at 46.

WHEREFORE, premises considered, the accused Augusto Regalado y Laylay is hereby found guilty beyond reasonable doubt of (*sic*) violation of Section 11 of R.A. 9165 in Criminal Case No. 08-03. Applying the Indeterminate Sentence Law, he is hereby sentenced to imprisonment for a period of *12 years and one day as minimum to 14 years and eight months, as maximum* and is fined ₱300,000 without subsidiary imprisonment in case of insolvency. He is hereby acquitted in Criminal Case No. 09-03.

The property bond posted for his temporary liberty is hereby ordered cancelled.

Let the marijuana subject matter of these cases be disposed of in the manner provided by law.

SO ORDERED.[23] (Emphasis in the original)

On appeal, Regalado argued that the trial court erred when it appreciated the evidence despite the apprehending team's failure to prove the integrity and identity of the seized items under Section 21 of the Comprehensive Dangerous Drugs Act. He contended that the trial court erred in deviating from the established rule that by itself, the presumption of regularity in the performance of official duty should not prevail over his presumed innocence.[24]

In its January 29, 2015 Decision,[25] the Court of Appeals denied the appeal and affirmed the trial court's Decision:

WHEREFORE, the appeal is **DENIED**. The assailed disposition of the RTC in Crim. Case No. 08-03 is **AFFIRMED**. Costs against the Accused-Appellant.

SO ORDERED.[26] (Emphasis in the original)

According to the Court of Appeals, the prosecution sufficiently proved and established the elements of the crime of illegal

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[23] *Id*. at 88.

[24] *Id*. at 47.

[25] *Id*. at 40-52.

[26] *Id*. at 51.

possession of marijuana.[27] It ruled that the prosecution's lapses were not fatal, since it had nonetheless preserved the integrity and evidentiary value of the confiscated items. This, it held, was enough to establish Regalado's guilt.[28]

Thus, on March 27, 2015, Regalado filed this Petition for Review on Certiorari.[29]

Petitioner argues that the Court of Appeals erred in affirming the trial court's finding of his guilt.[30] He contends that the prosecution had no basis to justify its failure to strictly comply with the requirements under Section 21. He maintains that there was no elected official, media representative, or Department of Justice representative present during the physical inventory of the seized items. Moreover, no photographs of the seized items were presented in court.[31]

Petitioner further claims that the seized items were not immediately marked after his arrest, casting doubt on their origin.[32] He insists that there was no sufficient evidence to establish the chain of custody.[33]

This Court adopted respondent's Brief[34] before the Court of Appeals as its Comment.[35]

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[27] *Id*. at 48.

[28] *Id*. at 49.

[29] *Id*. at 12-38.

[30] *Id*. at 18.

[31] *Id*. at 19.

[32] *Id*. at 23.

[33] *Id*. at 25.

[34] *Id*. at 92-103.

[35] In its July 27, 2015 Resolution (*rollo*, pp. 104-105), this Court required respondent to comment on the Petition for Review. Respondent filed a Manifestation (*rollo*, pp. 124-127) on October 15, 2015 where it prayed that it be allowed to adopt its Brief filed before the Court of Appeals. This Court noted the Manifestation in its December 2, 2015 Resolution (*rollo*, pp. 129-130).

Respondent asserts that PO1 Pedrigal's testimony demonstrated petitioner's culpability, which sufficiently proved his conviction. It notes that the police officers' testimonies were further bolstered since petitioner does not impute any ill motive on their part. Courts, it asserts, may render judgment based on a witness' testimony as long as it is credible and positive.[36]

Respondent argues that noncompliance with Section 21 per se will not render the arrest illegal or the seized marijuana inadmissible, as the law itself provides an exception.[37] It points out that the "immediate confiscation" has no exact definition, and that marking in the nearest police station has been previously allowed by this Court.[38]

Finally, respondent claims that petitioner's admission of possessing the seized marijuana rendered the issue of noncompliance with the chain of custody rule as moot.[39]

For resolution is the lone issue of whether or not the absence of an elective official, a representative from the media, and a representative from the Department of Justice during the buy-bust operation, as well as the non-presentation of the photographs of the seized marijuana before the trial court warrants petitioner Augusto L. Regalado's acquittal.

This Court denies the Petition.

Generally, "the findings of fact by the trial court, when affirmed by the [Court of Appeals], are given great weight and credence on review."[40] This is because the trial court "is in the best position to assess the credibility of witnesses and their testimonies because of its unique opportunity to observe the witnesses, their demeanor, conduct and attitude on the witness

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[36] *Rollo*, pp. 97-98.

[37] *Id*. at 99.

[38] *Id*. at 100.

[39] *Id*. at 100-101.

[40] *People v. Feliciano, Jr.*, 734 Phil. 499, 521 (2014) [Per *J*. Leonen, Third Division].

stand."[41] Hence, this Court accords great respect to the trial court's findings,[42] especially when affirmed by the Court of Appeals.[43] An exception is when either or both of the lower courts "overlooked or misconstrued substantial facts which could have affected the outcome of the case.[44]

Here, the records show nothing that warrants a reversal of the Decisions of the Court of Appeals and the Regional Trial Court.

The allegations in both Informations, despite the buy-bust operation, charged petitioner with illegal *possession* of dangerous drugs, not sale. Hence, the trial court correctly acquitted him in Criminal Case No. 09-03, where the Information was worded exactly as that in Criminal Case No. 08-03, which charged him with illegal possession of dangerous drugs. Moreover, although the actual weight of the seized items (44.65 grams)[45] was not indicated in the Informations, this error was not fatal.

As for the conviction of illegal possession of dangerous drugs, the following elements must be established: "(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug."[46]

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[41] *Ditche v. Court of Appeals*, 384 Phil. 35, 46 (2000) [Per *J.* De Leon, Jr., Second Division].

[42] *People v. Montinola*, 567 Phil. 387, 404 (2008) [Per *J.* Carpio, Second Division] citing *People v. Fernandez*, 561 Phil. 287 (2007) [Per *J.* Carpio, Second Division]; *People v. Abulon*, 557 Phil. 428 (2007) [Per *J.* Tinga, *En Banc*]; and *People v. Bejic*, 552 Phil. 555 (2007) [Per *J.* Chico-Nazario, *En Banc*].

[43] *People v. Baraoil*, 690 Phil. 368, 377 (2012) [Per *J.* Reyes, Second Division].

[44] *People v. Montinola*, 567 Phil. 387, 404 (2008) [Per *J.* Carpio, Second Division] citing *People v. Fernandez*, 561 Phil. 287 (2007) [Per *J.* Carpio, Second Division]; *People v. Abulon*, 557 Phil. 428 (2007) [Per *J.* Tinga, *En Banc*]; and *People v. Bejic*, 552 Phil. 555 (2007) [Per *J.* Chico-Nazario, *En Banc*].

[45] *Rollo*, p. 45.

[46] *People v. Dela Cruz y De Guzman*, 744 Phil. 816, 825-826 (2014) [Per *J.* Leonen, Second Division].

Here, the testimonies of the law enforcers who conducted the buy-bust operation are clear and categorical. They recalled in detail the buy-bust operation and the steps they had taken to maintain the integrity of the seized marijuana.

Notably, the designated poseur-buyer, PO1 Pedrigal, clearly recounted in his testimony the transaction and petitioner's possession of the seized marijuana:

> [PROSECUTOR]: What happened when you reached the house of Augusto Regalado?
> [PO1 PEDRIGAL]: When I reached the house of Augusto Regalado his wife named Marilyn confronted me, sir.
>
> [PROSECUTOR]: What did she do or say when she confronted you?
> [PO1 PEDRIGAL]: I told her, sir, (*sic*) "meron kayo ngayon, bibili ako".
>
> [PROSECUTOR]: What happened when you say (*sic*) those words?
> [PO1 PEDRIGAL]: She told me that her husband is not in the house and she ordered her daughter to fetch him, sir.
>
> [PROSECUTOR]: What happened regarding the order?
> [PO1 PEDRIGAL]: I waited for several minutes and her daughter arrived followed by Augusto Regalado and I asked him "meron kayo ngayon?["]
>
> [PROSECUTOR]: And what happened when you uttered those words to him?
> [PO1 PEDRIGAL]: He asked me "taga saan ka"? and I told him, from Marlangga and he asked me how many and I told him only two (2).
>
> [PROSECUTOR]: When you told him only two (2), what happened next?
> [PO1 PEDRIGAL]: So, he entered the house while I waited outside near the door and when he came out he was holding a plastic sachet and he handed it to me and in exchange I handed to him money in different denominations in the amount of Two Hundred Pesos (₱200.00).
>
> [PROSECUTOR]: What transpired next after you handed to him the ₱200.00
> [PO1 PEDRIGAL]: He accepted the marked money from me and he handed to me the plastic sachet and he put the money in

his pocket and after that I made a signal to my co-policemen and then I shouted "*pulis ako*" and then I retrieved the marked money from his pocket and we arrested Augusto Regalado.

[PROSECUTOR]: After you retrieved the marked money and arrested Augusto Regalado, what happened next?

[PO1 PEDRIGAL]: Upon his arrest, we asked him if "meron pa itong kasamahan?" and he readily admitted and pointed to the roof of the house. So, we requested him to get the same and he readily did so.

[PROSECUTOR]: What actually was sold to you and what actually did he produce after he was arrested?

[PO1 PEDRIGAL]: What he sold to me was a plastic sachet containing marijuana and what he retrieved from the roof are two (2) plastic sachets of marijuana and four (4) sticks of marijuana.[47]

PO1 Pedrigal testified that he had kept the seized items until they were marked at the police station where they conducted the inventory. The seized items were then turned over to PO2 Llante, who also testified bringing the items to the crime laboratory for examination. This was confirmed by Chief Inspector Tria, the forensic chemist who prepared the report stating that the seized items were marijuana.[48]

What sustains petitioner's conviction is his damning admission in open court that the police officers had found the three (3) plastic sachets and four (4) sticks of marijuana in his possession during his arrest on December 17, 2002. He admitted telling the law enforcers where he had hidden the rest of the marijuana because he was scared.[49]

Ultimately, petitioner's free and conscious possession of the dangerous drug has been established, warranting his conviction.

However, this Court laments the prosecution's apparent nonchalance in observing the procedure for the custody and

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[47] *Rollo*, pp. 95-97.

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

[49] *Id*. at 86.

disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia under Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640. It 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 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[.]

These requirements under Section 21 were summarized in *Lescano v. People*:[50]

As regards the items seized and subjected to marking, Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable."

Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.[51]

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[50] 778 Phil. 460 (2016) [Per *J.* Leonen, Second Division].

[51] *Id*. at 475.

In *People v. Que*,[52] this Court explained how Republic Act No. 10640 relaxed the requirements under Section 21(1):

> It was relaxed with respect to the persons required to be present during the physical inventory and photographing of the seized items. Originally under Republic Act No. 9165, the use of the conjunctive "and" indicated that Section 21 required the presence of all of the following, in addition to "the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel":
>
> First, a representative from the media;
>
> Second, a representative from the Department of Justice; and
>
> Third, any elected public official.
>
> As amended by Republic Act No. 10640, Section 21 (1) uses the disjunctive "or," *i.e.*, "with an elected public official and a representative of the National Prosecution Service *or* the media." Thus, a representative from the media and a representative from the National Prosecution Service are now alternatives to each other.[53]
> (Emphasis in the original, citations omitted)

Here, none of the three (3) people required by Section 21(1), as originally worded,[54] was present during the physical inventory of the seized items.

Moreover, this Court has held that the prosecution has "the positive duty to establish that *earnest efforts* were employed in contacting the representatives enumerated under Section 21 (1) of [Republic Act No.] 9165, or that *there was a justifiable ground* for failing to do so."[55]

Yet, not only did the prosecution fail to establish that earnest efforts were employed in securing the presence of the three (3)

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[52] G.R. No. 212994, January 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63900> [Per *J.* Leonen, Third Division].

[53] *Id*.

[54] The buy-bust operation was conducted in 2002.

[55] *People v. Umipang*, 686 Phil. 1024, 1053 (2012) [Per *J.* Sereno, Second Division].

witnesses; it did not even bother to offer any justification for the law enforcers' deviation from the law's requirements. Since preliminaries do not appear on record, this Court cannot speculate why the law enforcers neglected the simple rules in the conduct of a buy-bust operation. Nonetheless, police officers are reminded that lapses like this—absent any justifiable ground—cast doubt on the integrity of the seized items and can be fatal to the prosecution's cause.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals January 29, 2015 Decision in CA-G.R. CR No. 36216 is **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 222192. March 13, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LAHMODIN AMERIL *y* ABDUL @ "AMOR/ MHONG",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — In sustaining a conviction for illegal sale of dangerous drugs,

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

"the following elements must first be established: (1) proof that the transaction or sale took place[;] and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence." The illegal drug itself constitutes the *corpus delicti* of the offense. Its existence must be proved beyond reasonable doubt. "Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; THE SEIZED ILLEGAL DRUGS CONSTITUTE THE *CORPUS DELICTI* OF THE ILLEGAL SALE OF DANGEROUS DRUGS AND THE IDENTITY MUST BE PROVED BEYOND REASONABLE DOUBT.— Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, outlines the procedure that police officers must follow in handling seized illegal drugs x x x. Failing to comply with Article II, Section 21, Paragraph 1 of Republic Act No. 9165 implies "a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*[,]" and "produces doubts as to the origins of the [seized illegal drugs]." x x x [I]t must be emphasized that the seized illegal drugs constitute the *corpus delicti* of the illegal sale of dangerous drugs. Its identity must be proved beyond reasonable doubt. When there is doubt on its identity, conviction cannot be sustained. x x x Here, x x x there is a discrepancy in the markings of the illegal drugs seized from accused-appellant. This raises doubts if the items presented in court were the exact ones taken from accused-appellant.

3. ID.; ID.; ID.; THE INTEGRITY OF THE *CORPUS DELICTI* IS COMPROMISED WHEN THERE IS A GAP IN THE CHAIN OF CUSTODY.— That the integrity of the *corpus delicti* had been compromised was further magnified by the gap in the chain of custody. Special Investigator Fernandez merely testified that he submitted the seized illegal drugs to the Forensic Chemistry Division for examination and safekeeping. He did not identify the person to whom he gave the seized illegal drugs upon delivery. While the prosecution stipulated that PSI Francisco received three (3) plastic sachets with markings "LAA-1," "LAA-2," and "LAA-3," the evidence presented showed that accused-appellant sold three (3) plastic

sachets with the markings "LLA-1," "LLA-2," and "LLA." Moreover, Special Investigator Fernandez testified that he used the markings "LAA-1," "LAA-2," and "LAA-3." Thus, the seized illegal drugs were referred to using three (3) sets of markings. The Regional Trial Court, having evaluated the evidence presented firsthand, should have been more cautious in convicting accused-appellant despite the obvious discrepancy in the markings of the seized drugs and procedural lapses committed by the arresting officers in handling the same. The glaring inconsistency in the markings of the seized illegal drugs should have warned the trial court and the Court of Appeals that something was amiss.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; STANDS ONLY WHEN NO REASON EXISTS IN THE RECORDS BY WHICH TO DOUBT THE REGULARITY OF THE PERFORMANCE OF OFFICIAL DUTY.— This Court has stressed that the presumption of regularity in the performance of official duty, which the Court of Appeals relied on in its Decision, "stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused." x x x The totality of the evidence presented shows that the arresting officers who conducted the buy-bust operation were remiss in the performance of their official functions. They made discrepancies in the markings of the seized illegal drugs, and failed to comply with the chain of custody. Consequently, the presumption of regularity in favor of [the] arresting officers is negated.

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.*:

At the core of every prosecution for the sale of illegal drugs is the constitutional mandate of the State to adduce proof on the identity and integrity of the seized illegal drugs. The wisdom behind this burden is to ensure that the items seized were neither tampered nor contaminated. Failure to overcome such burden calls for the acquittal of the accused.[1]

This resolves an Appeal from the Court of Appeals April 20, 2015 Decision[2] in CA-G.R. CR-HC No. 05502, which convicted Lahmodin Ameril *y* Abdul @ "Amor/Mhong" of violation of Article II, Section 5 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, for the illegal sale of dangerous drugs.

In an Information,[3] dated April 24, 2006 Ameril was charged with violation of Article II, Section 5 of Republic Act No. 9165. The accusatory portion read:

> That on or about **April 17, 2006**, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale three (3) transparent plastic sachets with the following markings and net weights, to wit:
>
> 1. "LAA" containing four point four one one two (4.4112) grams;
> 2. "LAA-2" containing four point four three five zero (4.4350) grams; and
> 3. "LAA" containing three point nine seven two seven (3.9727) grams

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[1] *Mallillin v. People*, 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

[2] *Rollo*, pp. 2-11. The Decision was penned by Associate Justice Ramon Paul L. Hernando (now a member of this court) and concurred in by Associate Justices Fernanda Lampas Peralta and Stephen C. Cruz of the Seventh Division, Court of Appeals, Manila.

[3] CA *Rollo*, pp. 12-13.

of white crystalline substance containing Methylamphetamine hydrochloride, known as "SHABU", which is a dangerous drug[.]

Contrary to law.[4] (Emphasis in the original)

On arraignment, Ameril pleaded not guilty. Trial on the merits then ensued.[5]

The prosecution presented as its witness Special Investigator Rolan Fernandez (Special Investigator Fernandez) of the National Bureau of Investigation.[6]

Special Investigator Fernandez testified that on April 10, 2006, a confidential informant came to the National Bureau of Investigation Reaction Arrest Division.[7] The informant told the Division Chief, Atty. Ruel Lasala, Jr. (Chief Lasala), that one (1) alias "Amor," later identified as Ameril, was selling prohibited drugs in Metro Manila.[8] Chief Lasala then instructed Special Investigator Fernandez to confirm the information.[9]

The informant called Ameril and introduced Special Investigator Fernandez as a prospective buyer.[10] Special Investigator Fernandez proposed to Ameril that he wanted to buy ₱30,000 worth of methylamphetamine hydrochloride (shabu), to which the latter agreed.[11]

The informant went to Ameril after the conversation to arrange the sale with Special Investigator Fernandez.[12] Later that day,

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[4] *Id*. at 12.

[5] *Rollo*, p. 3.

[6] CA *Rollo*, p. 19.

[7] *Rollo*, p. 3.

[8] *Id*.

[9] CA *Rollo*, p. 19.

[10] *Rollo*, p. 3.

[11] *Id*. at 3.

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

the informant called Special Investigator Fernandez to tell him that Ameril was ready to deliver the shabu.[13]

In the morning of April 17, 2006, the informant confirmed to Special Investigator Fernandez that Ameril would deliver the shabu at Solanie Hotel, Leon Guinto, Malate, Manila, at around 2:00 p.m. that day.[14] Special Investigator Fernandez then prepared the boodle money consisting of two (2) ₱500 bills placed on top of cut bond papers.[15] Special Investigator Fernandez placed his initials on the bills,[16] but forgot where he actually marked them.[17]

Special Investigator Fernandez also prepared a Pre-Operation Report/Coordination Sheet[18] and sent it to both the Philippine Drug Enforcement Agency and the local police.[19]

As agreed, Special Investigator Fernandez, who was designated as the poseur buyer,[20] would ring the cellphone of Special Investigator Elson Saul (Special Investigator Saul) to signify that the sale had been consummated.[21]

The buy-bust operation team, composed of Special Investigator Fernandez, Special Investigator Saul, and five (5) other officers, went to Solanie Hotel at around 2:30 p.m. Special Investigator Fernandez and the informant sat by one (1) of the umbrella tables in front of the hotel, while the rest positioned themselves along Leon Guinto, Malate, Manila.[22]

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[13] *Id*. 4

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] CA *Rollo*, p. 41.

[18] RTC Records, p. 6.

[19] *Rollo*, p. 4.

[20] *Id*.

[21] *Id*.

[22] *Id*.

Few minutes later, Ameril arrived at the hotel, where the informant introduced him to Special Investigator Fernandez. After a few minutes of conversation, Ameril asked Special Investigator Fernandez if he had the money, to which Special Investigator Fernandez replied that Ameril should first show the shabu. Ameril showed him a black paper bag, inside of which were three (3) small transparent plastic sachets containing white crystalline substance. Convinced that the sachets contained shabu, Special Investigator Fernandez gave the boodle money to Ameril.[23]

As soon as Ameril gave the paper bag to Special Investigator Fernandez, the latter made the pre-arranged signal. Special Investigator Fernandez introduced himself as a National Bureau of Investigation agent, while the other team members rushed to the area. Special Investigator Saul recovered the boodle money from Ameril.[24]

After the arrest, SI Fernandez marked the three (3) plastic sachets with Ameril's initials: (1) "LLA-1"; (2) "LLA-2"; and (3) "LLA-3." The marking was made in the presence of Kagawad Analiza E. Gloria (Kagawad Gloria) and Norman Arcega (Arcega)[25] of media outlet Police Files Tonite.[26] Special Investigator Fernandez also took photos and inventory of the seized items. Both Gloria and Arcega signed the inventory.[27]

Special Investigator Fernandez submitted the seized items to the Forensic Chemistry Division of the National Bureau of Investigation. Police Senior Inspector Felicisima Francisco (PSI Francisco) conducted a qualitative examination on the seized items, which tested positive for shabu.[28]

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[23] *Id*.

[24] *Id*. at 4.

[25] *Id*.

[26] RTC Records, p. 5.

[27] *Rollo*, pp. 4-5.

[28] *Id*. at 5.

Ameril denied the allegations against him. He claimed that at around 11:00 a.m. on April 17, 2006, he was in his house preparing to go to an agency in Pedro Gil in Manila to meet his friend, Moy Abdullah (Abdullah).[29] Abdullah told Ameril, who was applying for a job in Jeddah, Saudi Arabia,[30] to bring his old and new passports, NBI clearance, and driver's license to get his visa.[31]

When Ameril arrived at the Pedro Gil Station of the Light Rail Transit, he asked someone how to reach Aljaber Manpower International Agency. The man pointed him to a nearby agency.[32]

The man asked Ameril where he was from, to which he said he was from Maguindanao Street. The man told his companion that Ameril was from Maguindanao Street, and that they could ask him questions. They then told Ameril that they would bring him to their office. Ameril told them that somebody was waiting for him at the agency, but the two (2) men insisted on bringing him.[33]

At the National Bureau of Investigation office, Ameril saw Special Investigator Fernandez, who showed him photos of persons and asked if he knew them.[34] Ameril replied that he did not, as he had been in the area for just four (4) months.[35] Special Investigator Fernandez warned Ameril that he would be charged with obstruction of justice if he failed to identify the persons in the pictures.[36]

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[29] CA *Rollo*, p. 62.

[30] *Id*. at 64.

[31] CA *Rollo*, p. 21.

[32] *Id*.

[33] *Id*.

[34] *Rollo*, p. 5.

[35] CA *Rollo*, p. 21.

[36] *Rollo*, p. 5.

Special Investigator Fernandez then told the persons who brought Ameril to take him into custody and confiscate his belongings.[37]

Ameril was brought the next day to the Manila City Hall for inquest. He only learned on arraignment that he was charged with illegal sale of drugs.[38]

In its January 25, 2012 Decision,[39] the Regional Trial Court convicted Ameril. It ruled that the prosecution had successfully established his guilt[40] by presenting sufficient evidence that showed the elements of illegal sale of dangerous drugs.[41]

The Regional Trial Court noted that although the Information stated that the three (3) plastic sachets seized from Ameril were marked: (1) "LAA" containing 4.4112 grams; (2) "LAA-2" containing 4.4350 grams; and (3) "LAA" containing 3.9727 grams,[42] the evidence presented showed that the plastic sachets seized from Ameril were actually marked LLA-1, LLA-2, and LLA.[43]

Despite this inconsistency, the Regional Trial Court still convicted Ameril for the second plastic sachet containing 4.4350-grams of shabu on the ground that Ameril was informed that he was accused of selling it. The Regional Trial Court ruled that the prosecution proved this accusation.[44]

Aggrieved, Ameril appealed[45] before the Court of Appeals. In his Appellant's Brief,[46] Ameril argued that the prosecution

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[37] *Id*.

[38] *Id*.

[39] CA *Rollo*, pp. 17-24. The Decision in Crim. Case No. 06-243457 was penned by Presiding Judge Caroline Rivera-Colasito of Branch 23, Regional Trial Court, Manila.

[40] *Id*. at 21.

[41] *Rollo,* p. 5.

[42] CA *Rollo*, p. 22.

[43] *Id*.

[44] *Id*.

[45] *Id*. at 25.

[46] *Id*. at 53-76.

failed to prove the *corpus delicti*, as the documents and testimonies revealed flaws in the prosecution's handling of illegal drugs allegedly seized from him.[47] He emphasized that the details of where the seized items' markings took place were not on record.[48]

Ameril further argued that the inconsistencies in the markings of the seized illegal drugs "compromised the integrity of the seized items."[49]

In its April 20, 2015 Decision,[50] the Court of Appeals affirmed Ameril's conviction.[51] It ruled that the chain of custody of the seized illegal drugs was not in any way broken. The raiding team conducted the buy-bust operation in an orderly manner.[52] It emphasized that under the rules on evidence, law enforcers are presumed to have carried out their duties regularly under the law.[53]

Even if there was a variance in the marking of the seized illegal drugs, the Court of Appeals ruled that Ameril was still substantially apprised of the crime charged against him.[54]

Undaunted, Ameril, through counsel, filed a Notice of Appeal before the Court of Appeals.[55]

In its May 29, 2015 Resolution,[56] the Court of Appeals gave due course to Ameril's Notice of Appeal.

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[47] *Id*. at 64.

[48] *Id*. at 66.

[49] *Id*. at 67.

[50] *Rollo*, pp. 2-11.

[51] *Id*. at 10.

[52] *Id*. at 7.

[53] *Id*. at 9.

[54] *Id*. at 10.

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

[56] CA *Rollo*, p. 155.

On March 2, 2016, this Court notified accused-appellant Lahmodin A. Ameril and the People of the Philippines, through the Office of the Solicitor General, to file their respective supplemental briefs.[57]

Both the accused-appellant[58] and the Office of the Solicitor General[59] manifested that they would no longer file supplemental briefs.

The sole issue for this Court's resolution is whether or not the Court of Appeals correctly upheld the conviction of accused-appellant for violation of Article II, Section 5 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

This Court rules in the negative.

I

In sustaining a conviction for illegal sale of dangerous drugs, "the following elements must first be established: (1) proof that the transaction or sale took place[;] and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence."[60]

The illegal drug itself constitutes the *corpus delicti* of the offense. Its existence must be proved beyond reasonable doubt. "Proof beyond reasonable doubt demands that unwavering exactitude be observed in establishing the *corpus delicti*. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[61]

Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, outlines the procedure that police officers must follow in handling seized illegal drugs:

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

[58] *Id*. at 24-28.

[59] *Id*. at 21-23.

[60] *People v. Morales y Midarasa*, 630 Phil. 215, 228 (2010) [Per *J.* Del Castillo, Second Division].

[61] *Fajardo v. People*, 691 Phil. 752, 758-759 (2012) [Per *J.* Perez, Second Division].

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the 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. (Emphasis in the original)

In *Mallillin v. People*,[62] this Court emphasized the importance of the chain of custody:

Indeed, the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. *Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin — was handled by two police officers prior to examination who however did not testify in court on the condition

[62] *Mallillin v. People*, 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

and whereabouts of the exhibit at the time it was in their possession — was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. *The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing.* Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[63] (Emphasis supplied, citations omitted)

Failing to comply with Article II, Section 21, Paragraph 1 of Republic Act No. 9165 implies "a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*[,]"[64] and "produces doubts as to the origins of the [seized illegal drugs]."[65]

II

The Information filed against accused-appellant provided that he was caught selling three (3) transparent plastic sachets

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[63] *Id*. at 588-589.

[64] *People v. Morales y Midarasa*, 630 Phil. 215, 229 (2010) [Per *J*. Del Castillo, Second Division].

[65] *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per *J*. Mendoza, Second Division].

containing white crystalline substance known as shabu, marked "LAA," "LAA-2," and "LAA."[66]

However, the evidence presented during trial showed that accused-appellant sold three (3) plastic sachets with the markings "LLA-1," "LLA-2," and "LLA."[67]

Nonetheless, the Regional Trial Court brushed aside this discrepancy and still convicted the accused-appellant. It ruled:

> The chain of custody over the evidence was similarly established. The court is convinced of the integrity and proper preservation of the evidence. SI Fernandez testified that immediately after the arrest of the accused, he marked the evidence as LLA-1, LL-2 and LLA-3 and brought them to their office. Soon after, he delivered the three sachets to their crime laboratory for chemical analysis where it was found positive for illegal drugs. The team likewise substantially complied with the provisions of Section 21 as the evidence seized was properly marked, photographed, and inventoried in the presence of witnesses from the barangay and the media.
>
> . . . . . .
>
> WHEREFORE, premises considered, the court finds the accused LAHMODIN AMERIL y ABDUL a. k. a. "Amor/Mhong", GUILTY, beyond reasonable doubt of the offense of Violation of Section 5, Article II of R.A. 9165, and is hereby sentenced to suffer the penalty of life imprisonment AND to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).[68]

Contrary to the Regional Trial Court's findings, the integrity of the seized illegal drugs was not preserved.

Again, it must be emphasized that the seized illegal drugs constitute the *corpus delicti* of the illegal sale of dangerous drugs. Its identity must be proved beyond reasonable doubt.[69] When there is doubt on its identity, conviction cannot be sustained.[70]

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[66] CA *Rollo*, p. 12.

[67] *Id*. at 22.

[68] *Id*. at 23-24.

[69] *Fajardo v. People*, 691 Phil. 752 (2012) [Per *J*. Perez, Second Division].

[70] *People v. Lorenzo*, 633 Phil. 393 (2010) [Per *J*. Perez, Second Division].

In *People v. Garcia*,[71] this Court acquitted the accused. It held that the discrepancy in the markings of the seized items raised doubts if the items presented in court were the same ones taken from the accused upon arrest:

> PO1 Garcia testified that he had marked the seized item (on the wrapper) with the initial "**RP-1**". However, an examination of the two documents showed a different marking: on one hand, what was submitted to the PNP Crime Laboratory consisted of a single piece telephone directory paper containing suspected dried marijuana leaves fruiting tops with the marking "**RGR-1**" and thirteen pieces of rolling paper with the markings "**RGR-RP1**" to "**RGR-RP13**"; on the other hand, the PNP Crime Laboratory examined the following items with the corresponding markings: a printed paper with the marking "**RGR-1**" together with one small brick of dried suspected marijuana fruiting tops and thirteen pieces of small white paper with the markings "**RGP-RP1**" to "**RGP-RP13**".
>
> PO1 Garcia's testimony is the only testimonial evidence on record relating to the handling and marking of the seized items since the testimony of the forensic chemist in the case had been dispensed with by agreement between the prosecution and the defense. Unfortunately, PO1 Garcia was not asked to explain the discrepancy in the markings. Neither can the stipulated testimony of the forensic chemist now shed light on this point, as the records available to us do not disclose the exact details of the parties' stipulations.
>
> To our mind, the procedural lapses in the handling and identification of the seized items, as well as the unexplained discrepancy in their markings, collectively raise doubts on whether the items presented in court were the exact same items that were taken from Ruiz when he was arrested. These constitute major lapses that, standing unexplained, are fatal to the prosecution's case.[72] (Emphasis in the original, citations omitted)

Here, like in *Garcia*, there is a discrepancy in the markings of the illegal drugs seized from accused-appellant. This raises doubts if the items presented in court were the exact ones taken from accused-appellant.[73]

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[71] *People v. Garcia*, 599 Phil. 416 (2009) [Per *J*. Brion, Second Division].

[72] *Id*. at 431-432.

[73] *Id*. at 432.

During examination, Special Investigator Fernandez testified that he marked the seized illegal drugs with the initials LLA-1 and LLA-3:

Q For your information the Forensic Chemist inc (*sic*) charge of this case previously submitted to this Court the sachet you bought from this Alyas Amor, without first showing this to you please state for the record, how will you be able to recognize this?

A I think I have my signatures on the plastic sachet and placed the *initials LLA-1 and LLA-3*.[74] (Emphasis supplied)

However, on cross-examination, Special Investigator Fernandez stated that he marked the seized illegal drugs with initials LAA-1, LAA-2, and LAA-3:

Q - So since you marked it on the target area, were you able to ask the person there from the barangay to witness the marking Mr. Witness?

A - Yes, sir.

Q - And who was that?

A - It was the Kagawad of the barangay, sir, and also the media from the Police File Tonight, (*sic*) sir.

Q - You mean to say Mr. Witness, you have a form of the Inventory of the Seized Items with you at that time?

A - Yes, sir.

Q - So since you followed the Inventory you were able to photograph it?

A - Of course, because that is the procedure, sir.

Q - But Mr. Witness, there is nothing on file of the photographed (*sic*) of the seized items, but at any rate, you said you marked it Mr. Witness?

A - *I placed LAA-1, LAA-2 and LAA-3, sir.*[75] (Emphasis supplied)

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[74] TSN dated December 14, 2006, p. 20.

[75] TSN dated April 7, 2010, p. 7.

That the integrity of the *corpus delicti* had been compromised was further magnified by the gap in the chain of custody. Special Investigator Fernandez merely testified that he submitted the seized illegal drugs to the Forensic Chemistry Division for examination and safekeeping. He did not identify the person to whom he gave the seized illegal drugs upon delivery.[76]

While the prosecution stipulated that PSI Francisco received three (3) plastic sachets with markings "LAA-1," "LAA-2," and "LAA-3,"[77] the evidence presented showed that accused-appellant sold three (3) plastic sachets with the markings "LLA-1," "LLA-2," and "LLA."[78] Moreover, Special Investigator Fernandez testified that he used the markings "LAA-1," "LAA-2," and "LAA-3."

Thus, the seized illegal drugs were referred to using three (3) sets of markings. The Regional Trial Court, having evaluated the evidence presented firsthand, should have been more cautious in convicting accused-appellant despite the obvious discrepancy in the markings of the seized drugs and procedural lapses committed by the arresting officers in handling the same. The glaring inconsistency in the markings of the seized illegal drugs should have warned the trial court and the Court of Appeals that something was amiss.

III

This Court has stressed that the presumption of regularity in the performance of official duty, which the Court of Appeals relied on in its Decision,[79] "stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused."[80]

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[76] TSN dated December 14, 2006, p. 28.

[77] RTC Records, p. 36.

[78] CA *Rollo*, p. 22.

[79] *Rollo*, p. 9.

[80] *People v. Mendoza y Estrada*, 736 Phil. 749, 770 (2014) [Per *J.* Bersamin, First Division].

In *People v. Segundo*:[81]

Moreover, the presumption of regularity in the performance of their duties cannot work in favor of the law enforcers since the records revealed severe lapses in complying with the requirements provided for under the law. "The presumption stands when no reason exists in the records by which to doubt the regularity of the performance of official duty." Thus, this presumption "will never be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right of an accused to be presumed innocent."[82] (Citations omitted)

Moreover, in *People v. Mirantes*:[83]

The oft-cited presumption of regularity in the performance of official functions cannot by itself affect the constitutional presumption of innocence enjoyed by an accused, particularly when the prosecution's evidence is weak. The evidence of the prosecution must be strong enough to pierce the shield of this presumptive innocence and to establish the guilt of the accused beyond reasonable doubt. And where the evidence of the prosecution is insufficient to overcome this presumption, necessarily, the judgment of conviction of the court a quo must be set aside. The *onus probandi* on the prosecution is not discharged by casting doubts upon the innocence of an accused, but by eliminating all reasonable doubts as to his guilt.[84] (Citations omitted)

The totality of the evidence presented shows that the arresting officers who conducted the buy-bust operation were remiss in the performance of their official functions. They made discrepancies in the markings of the seized illegal drugs, and failed to comply with the chain of custody. Consequently, the presumption of regularity in favor of arresting officers is negated.

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[81] *People v. Segundo y Iglesias*, G.R. No. 205614, July 26, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/205614.pdf> [Per *J.* Leonen, Second Division].

[82] *Id*. at 21.

[83] *People v. Mirantes*, 284-A Phil. 630 (1992) [Per *J.* Regalado, Second Division].

[84] *Id*. at 642.

This Court ends with the words in *People v. Holgado, et al.*:[85]

> It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of *shabu* under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[86]

WHEREFORE, the Court of Appeals April 20, 2015 Decision in CA-G.R. CR-HC No. 05502 is **REVERSED** and **SET ASIDE**, accused-appellant Lahmodin Ameril y Abdul @ "Amor/Mhong" 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 some other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision. For their information, copies shall also be furnished to the Director General of the Philippine National Police and the Director General of the Philippine Drugs Enforcement Agency.

Let entry of final judgment be issued immediately.

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[85] 741 Phil. 78 (2014) [Per *J.* Leonen, Third Division].

[86] *Id*. at 100.

SO ORDERED.

Caguioa,[*] *Reyes, A. Jr., Gesmundo,*[**] and *Carandang, JJ.*, concur.

SECOND DIVISION

[G.R. No. 223295. March 13, 2019]

FALCON MARITIME AND ALLIED SERVICES, INC., YOKOHAMA MARINE AND MERCHANT CORPORATION, and/or FLORIDA Z. JOSE, *petitioners, vs.* **ANGELITO B. PANGASIAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; GENERALLY, ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS.— The general rule is that only questions of law may be raised and resolved by this Court on petitions brought under Rule 45 of the Rules of Court, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect. There are, however, recognized exceptions to this general rule, such as the instant case, where the judgment is based on a misapprehension of facts and the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. LABOR AND SOCIAL LEGISLATION; 2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-

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

[**] Additional member per Raffle dated March 4, 2019.

STANDARD EMPLOYMENT CONTRACT (POEA-SEC); ELEMENTS FOR COMPENSABILITY OF A DISABILITY.— Section 20(A) of the 2010 POEA-SEC, which is the rule applicable to this case since respondent was employed in 2011, governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board sea-going vessels during the term of his employment contract. x x x For disability to be compensable under the 2010 POEA-SEC, three elements must concur: (1) the seafarer must have submitted to a mandatory post-employment medical examination; (2) the injury or illness must be work-related; and (3) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

3. **ID.; ID.; ID.; TWO REQUISITES OF POST-EMPLOYMENT MEDICAL EXAMINATION; FAILURE TO COMPLY THEREWITH RESULTS IN THE FORFEITURE OF THE SEAFARER'S CLAIM FOR DISABILITY BENEFITS; EXCEPTIONS; CASE AT BAR.—** The post-employment medical examination has two requisites: (1) it is done by a company-designated physician; and (2) within three working days upon the seafarer's return. Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician. There is no denying that respondent submitted himself to post-employment medical examination within the required period. However, what is peculiar in this case is that his examination was confined only to the pain and swelling in his testicles as had been mentioned in the doctor's referral, as well as for abdominal pain that he informed the doctor he had been experiencing on and off since March 15, 2012. x x x Respondent's failure to disclose his lumbar problem is fatal to his cause. Given that the respondent failed to bring to the attention of the company-designated physician his back pains thereby precluding the latter from assessing whether the same is work-related or not, the respondent is deemed not to have undergone the required post-employment medical examination contemplated under the POEA-SEC relative to his back pains for purposes of claiming compensation therefor. This is not without rationale basis.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; ONE WHO CLAIMS ENTITLEMENT TO THE BENEFITS PROVIDED BY LAW SHOULD NOT ONLY COMPLY WITH THE PROCEDURAL REQUIREMENTS OF LAW BUT MUST ALSO ESTABLISH HIS RIGHT TO THE BENEFITS BY SUBSTANTIAL EVIDENCE; CASE AT BAR.— It is true that the POEA-SEC is designed primarily for the protection and benefit of Filipino seafarers in the pursuit of their employment on board ocean-going vessels and its provisions should be construed and applied fairly, reasonably, and liberally in favor or for the benefit of the seafarer and his dependents. However, one who claims entitlement to the benefits provided by law should not only comply with the procedural requirements of law, but must also establish his right to the benefits by substantial evidence. The burden, therefore, rests on the respondent to show that he suffered or contracted his injury while still employed as a seafarer, which resulted in his permanent disability. Regrettably, respondent failed to discharge this burden. Aside from his bare allegation that he experienced back pains during the term of his employment contract, he presented no other evidence to substantiate his claim.

5. LABOR AND SOCIAL LEGISLATION; 2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SICKNESS ALLOWANCE; AN AMOUNT EQUIVALENT TO HIS BASIC WAGE COMPUTED AT THE TIME THE SEAFARER SIGNED OFF UNTIL HE IS DECLARED FIT TO WORK OR THE DEGREE OF DISABILITY HAS BEEN ASSESSED BY THE COMPANY-DESIGNATED PHYSICIAN, BUT SHALL IN NO CASE EXCEED 120 DAYS; CASE AT BAR.— Under Section 20(A)(3) of the 2010 POEA-SEC, the amount of sickness allowance that the seafarer shall receive from his employer shall be in an amount equivalent to his basic wage computed at the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician, but shall in no case exceed 120 days. Since respondent signed off from the vessel on May 18, 2012 and was declared fit to work on August 28, 2012, he is entitled to a sickness allowance equivalent to 102 days or the amount of US$2,036.60 computed based on his basic pay of US$599.00 per month at 40 hours of work per week, or its equivalent amount in Philippine currency, minus the amount

> of ₱36,000.00 already advanced by the petitioners. While the respondent may have undergone a number of medical examinations and consultations, it must be taken into account that they were geared towards getting treatment and compensation for his back pains which the Court has already ruled to be not compensable. Thus, respondent cannot claim sickness allowance after August 28, 2012, the day he was declared fit to work.

APPEARANCES OF COUNSEL

Del Rosario and Del Rosario for petitioners.
Valmores & Valmores Law Offices for respondent.

D E C I S I O N

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

The Facts and the Case

Before this Court is a Petition for Review on *Certiorari* seeking to annul the August 10, 2015 Decision[1] and the February 29, 2016 Resolution[2] of the Court of Appeals (CA) in CA-GR. SP No. 135163 which affirmed with modification the November 5, 2013 Decision[3] and the March 24, 2014 Resolution[4] of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board-NCR (Panel) in Case No. AC-949-NCMB-NCR-45-09-06-13, which awarded the respondent his claims for permanent and total disability benefits, moral damages, illness allowance, reimbursement for medical expenses and attorney's fees.

From 2002 to 2012, Falcon Maritime and Allied Services, Inc. (Falcon Maritime), Yokohama Marine and Merchant

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[1] Penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla, concurring; *rollo*, pp. 62-75.

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

[3] *Id*. at 116-149.

[4] *Id*. at 151-153.

Corporation (Yokohama), and/or Florida Z. Jose (Jose) [collectively, the petitioners], continuously hired Angelito B. Pangasian (respondent) as Chief Cook under various contracts.[5]

After undergoing the requisite pre-employment medical examination on April 13, 2011 and having been declared "*fit for sea duty, without restrictions*,"[6] respondent was rehired by the petitioners on July 21, 2011 to resume his former position as Chief Cook on board the reefer ship *M/V New Hayatsuki*,[7] under the following terms and conditions of employment:

1.1 Duration of Contract: 9 MONTHS
1.2 Position: CHIEF COOK
1.3 Basic Pay: US$599.00
1.4 Hours of Work: 40 HOURS PER WEEK
1.5 Overtime: Fixed/Closed: US$ 446.00 (GRTD 103 HRS)
1.6 Leave Pay: US$ 180.00/SBS 54.00
1.7 TOTAL:
1.8 Point of Hire: MANILA, PHILIPPINES[8]

The employment contract was duly approved by the Philippine Overseas Employment Administration (POEA)[9] and was covered by the International Bargaining Forum All Japan Seamen's Union/Associated Marine Officers' and Seamen's Union of the Philippines-International Mariners Management Association of Japan Collective Bargaining Agreement (CBA).[10]

Respondent left the Philippines and boarded *M/V New Hayatsuki* at the port of Manta, Ecuador on July 23, 2011.[11]

Aside from the normal duties of a Chief Cook, respondent alleged that he also helped in the loading and unloading of

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[5] *Id*. at 565.

[6] *Id*. at 564.

[7] *Id*. at 541.

[8] *Id*.

[9] *Id*. at 176.

[10] *Id*. at 435-455.

[11] *Id*. at 566.

tons of cargoes of skipjack, tuna fish and big squid from numerous fishing boats in the high seas of the Pacific Ocean and then unloading them at different ports of destinations.[12]

On March 15, 2012, while the *M/V New Hayatsuki* was sailing on the Pacific Ocean within the State of Peru in West South America, respondent noticed swelling and felt pain in his testicles after lifting, carrying and loading heavy sacks of big squid into the ship and performing chamber cleaning works. Respondent informed his Chief Officer about this and he was given antibiotics for temporary relief.[13]

At around 9:00 p.m. of April 17, 2012, in yet another course of loading heavy sacks full of skipjack, tuna fish and big squid into the ship, respondent averred that he accidentally slipped and lost his balance. Although he felt a crack at his lower back, he did not make much of it given that the pain was tolerable at that time. He continued with his task of loading the cargoes together with the other crew members until the reefer ship was fully loaded and set sail for Bangkok, Thailand where the cargoes will be unloaded.[14]

On April 20, 2012, while the reefer ship was en route to Bangkok, Thailand, respondent alleged that the swelling and the pain in his testicles, and his back pains became alarming so he reported the same to his ship master, Captain Isamo Yamamoto (Captain Yamamoto),[15] and requested for a referral to a port doctor in Bangkok, Thailand, their next port of call.[16]

When they reached the port of Bangkok, Thailand on May 18, 2012, respondent was surprised when the ship captain, instead of referring him to a port doctor, told him that he will be repatriated and that his replacement was already waiting to board

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[12] *Id*. at 228, 520.

[13] *Id*. at 521.

[14] *Id*. at 228-229.

[15] Also referred to as "Isamu Yamamoto" in some parts of the *rollo*.

[16] *Rollo*, p. 229.

the reefer ship. Thus, respondent claimed that he just asked Captain Yamamoto for a medical referral upon his arrival in the Philippines.[17]

Respondent left Bangkok, Thailand on May 18, 2012 and arrived in the Philippines on the same day. Without wasting time, he immediately went to Falcon Maritime, the local manning agency, and personally delivered Captain Yamamoto's referral letter to petitioner Jose, who, in turn, referred him to NGC Medical Specialist Clinic, Inc.

On May 21, 2012, respondent was examined by Dr. Paul C. Comising (Dr. Comising), the company-designated physician, and was diagnosed with *varicocoele, bilateral*.[18]

On May 22, 2012, he underwent Inguinoscrotal Ultrasound with Color Doppler at the University Physicians Medical Center which revealed he following findings:

IMPRESSION:

1. BILATERAL VARICOCO[E]LE, MORE SEVERE IN THE LEFT[;]
2. EPIDIDYMAL HEAD CYSTS VERSUS SPERMATOCOELES, RIGHT[;]
3. NORMAL ULTRASOUND OF THE TESTES AND LEFT [EPIDIDYMIS; and]
4. UNENLARGED INGUINAL LYMPH NODE, BILATERAL[19]

On May 23, 2012, respondent underwent various tests such as CBC, BUN, creatinine, cholesterol, LDL, SGPT, SGOT, urinalysis and abdominal ultrasound, all of which yielded normal results. However, his inguinoscrotal ultrasound showed *varicocoele, bilateral*. Thus, Dr. Comising recommended a procedure called varicocoelectomy, bilateral.[20]

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[17] *Id*.

[18] *Id*. at 194. Sometimes referred to as "*varicocele, bilateral*" in some parts of the *rollo*.

[19] *Id*. at 568.

[20] *Id*. at 195.

On June 26, 2012, respondent underwent varicocoelectomy, bilateral at the Manila Doctor's Hospital.[21] The histopathologic diagnosis[22] was:

VARICOCOELECTOMY,[23] BILATERAL
VARICOCOELE

Upon his return for evaluation on July 5, 2012, Dr. Comising noted that there was minimal tolerable pain over the operative wounds which were healing well.[24] On his follow-up check-up on July 12, 2012, the doctor observed that there was decreasing pain over the operative wounds.[25] During his check-up on August 28, 2012, Dr. Comising noted that the pain respondent was feeling in the operative wounds has resolved and the wounds have healed well. As such, respondent was declared fit to work.[26]

Doubtful of his fit to work assessment, respondent wrote petitioners, through Jose, immediately the following day informing them that despite his operation and the said assessment, he still continues to feel pain on his surgical wound and experience numbness on the site of operation. He also feels pain on his spine. He, thus, asked that he be reevaluated and Magnetic Resonance Imaging (MRI) be performed on him to determine his present state. He also asked for illness allowance.[27]

Since he did not get any response on his requests from the petitioners and anxious to know the real cause of his lower back pains, respondent decided to undergo MRI of his lumbo-sacral spines at the BDM MRI Center, Inc. on September 21, 2012.[28] The result of the MRI was:

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[21] *Id*. at 196, 569-570.

[22] *Id*. at 571.

[23] Sometimes referred to as "varicocelectomy" in some parts of the *rollo*.

[24] *Rollo*, p. 197.

[25] *Id*. at 198.

[26] *Id*. at 199.

[27] *Id*. at 572. In his letter, respondent referred to Dr. Comising as "Dr. Cruz."

[28] *Id*. at 573.

IMPRESSION:

> DEGENERATIVE DISC DISEASE, L3-L4 AND L4-L5
> BROAD BASED DISC BULGE WITH AN ANNULAR TEAR AT L4-L5[29]

On October 1, 2012, respondent consulted Dr. Omar T. Cortes (Dr. Cortes), Chief of Urology Section, Department of Surgery, Armed Forces of the Philippines Medical Center (AFPMC) for a second opinion. Dr. Cortes interviewed the respondent and studied the medical records and documents he presented which showed that he had *Varicoc[o]ele, Bilateral S/P Varicoc[o]electomy, Bilateral; Broad-based disc bulge with annular tear at level L4-L5; and Degenerative disc disease L3-L4 and L4-L5.* In a Certification dated October 5, 2012, Dr. Cortes opined that the present clinical status and health problem of the respondent may have been brought about by strenuous physical activities and that the condition of his spine poses a serious health problem which requires immediate spine surgical intervention. Respondent's inguinal problem may spontaneously resolve in a year's time. However, pending the needed surgery, the condition of his spine may worsen and become irreversible, thereby incapacitating him physically permanently.[30]

On October 11, 2012, respondent wrote petitioners a follow-up letter to inform them that he was constrained to undergo MRI at his own expense as he did not receive any reply on his first letter request despite the lapse of more than one month from the time it was written. He also asked for further medical assistance, having been advised by his doctor to continue with his physical therapy.[31]

On October 12, 2012, respondent went to Dr. Francis Pimentel (Dr. Pimentel), Physical Medicine and Rehabilitation, EMG-NCV, who diagnosed him to be suffering from *herniated nucleus*

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[29] *Id*.

[30] *Id*. at 574-575.

[31] *Id*. at 576.

pulposus (HNP) and recommended that he undergo six sessions of physical therapy.[32]

On October 25, 2012, respondent again wrote the petitioners, through Jose, appealing for medical assistance, treatment and reimbursement of the expenses he incurred for his physical therapy, and expressing that such will be of great help inasmuch as he cannot yet resume his work because of his Injuries.[33]

On November 9, 2012, respondent was seen again by Dr. Pimentel who noted that he was diagnosed with HNP and advised him to continue with his physical therapy twice a week for another six sessions.[34]

On November 29, 2012, St. Dominic Medical Center issued a Physical Therapy Report[35] which showed that respondent, who was noted with (+) HNP, (-) DM, (-) CAD, and diagnosed by Dr. Pimentel "*with HNP and complains of intermittent localized dull aching pain on both paralumbars[, with] pain scale 5/10 aggravated upon prolonged standing*" after undergoing 15 physical therapy sessions has shown improvements as follows:

> Improvements noted on after 15 PT treatments from Oct. 13, 2012 to Nov. 29, 2012:
>
> 1. Decreased pain on (B) paralumbars from pain scale 5/10 to 3/10[;]
> 2. Increase in (B) trunk rotation by 5°, (B) hip flexion with knee extended by 20° as to active motion[; and]
> 3. Improved ADL difficulty from moderate to minimal.[36]

Inasmuch as respondent was not restored to his previous condition despite having undergone varicocoele surgery and numerous sessions of physiotherapy, and as certified by his

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[32] *Id*. at 577.

[33] *Id*. at 578.

[34] *Id*. at 579.

[35] *Id*. at 472.

[36] *Id*.

private physicians that he was already suffering from total and permanent disability, he filed a claim with the petitioners for the payment of his disability benefits based on POEA-Standard Employment Contract (POEA-SEC). Petitioners, however, refused to grant his claim on the ground that the respondent had already been declared fit to work by the company-designated physician.[37]

Because petitioners refused his claims, respondent filed a Notice to Arbitrate before the Panel on December 11, 2012.[38]

On December 19, 2012, respondent consulted an independent orthopedic specialist, Dr. Manuel Fidel M. Magtira (Dr. Magtira) of the Department of Orthopaedic Surgery & Traumatology, AFPMC for an assessment of his lumbar injury based on the result of his September 21, 2012 MRI. In the December 19, 2012 Medical Report[39] Dr. Magtira issued, he opined that respondent "*continues to experience back pain. His back is stiff, making it difficult for him to bend and pick up objects from the floor. He could not lift heavy objects. Sitting or standing for a long time, makes his discomfort worse. He has difficult[y] running, and climbing up or going down the stairs. The demands of a Seaman's work are heavy. [Respondent] has lost his pre[-] injury capacity and is not capable of working at his previous occupation. He is totally and permanently disabled with Grade 1 Impediment based on the POEA contract*."[40]

On November 5, 2013, the Panel rendered a Decision,[41] the dispositive portion of which reads as follows:

WHEREFORE, respondents are ordered to solidarily pay complainant:

1. Disability Benefit in the amount of **US$ 60,000.00** or its equivalent amount in Philippine currency, computed at the rate of exchange at the time of payment;

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[37] *Id*. at 126.

[38] *Id*.

[39] *Id*. at 598-600.

[40] *Id*. at 598.

[41] *Supra* note 3.

2. Moral damages amounting to US$3,000.00 or its equivalent amount in local currency;

3. Illness Allowance in the amount of **US$ 2,595.66** less Php. 36,000.00 and medical expenses reimbursement in the amount of **Php. 7,645.75**.

4. Attorney's fees equivalent to 10% of the total award.

SO ORDERED. [42]

It held that respondent was in perfect health condition before he boarded petitioners' reefer ship as shown by the result of his pre-employment medical examination. However, prior to his disembarkation, respondent complained of testicular pains, swelling, and lower back pains. The series of medical tests he went through revealed that he was suffering from multiple disabilities, namely:

> *Varicoc[o]ele, Bilateral* S/P Varicoc[o]electomy, Bilateral
> Broad-based disc bulge with annular tear at level L4-L5
> Degenerative disc disease L3-L4 and L4-L5

While working as a Chief Cook for *M/V New Hayatsuki*, respondent performed strenuous physical activities which included the constant lifting, carrying, pushing and pulling of heavy materials and ship provisions. On top of these, he was also tasked to help the other crew members during loading and unloading of heavy sacks full of skipjack, tuna fish and big squid from different fishing boats plying the Pacific Ocean to different ports of unloading destinations. In fact, it was in one of these loading tasks, or on April 17, 2012, that respondent slipped while carrying a heavy sack of big squid, and then felt a crack at his back and pain thereon. On the other hand, *varicocoele* develops over time and worsens when the patient is physically exerting himself, standing or sitting. Prolonged exertion is also more likely to bring pain. The Panel rejected the claim of the petitioners that respondent's back pains is not work-related because he did not complain or mention it even to the company-designated physician when he was getting treated

[42] *Id*. at 148-149.

for his *varicocoele, bilateral* since respondent was able to sufficiently explain the absence of any report on his back pains.

Given that after continuous medical treatment, respondent remained incapacitated to resume his sea duties despite the lapse of 18 months from the time of repatriation, coupled with the evaluation of medical experts who examined his health condition that he is now unfit to perform his customary work, the Panel held that respondent is entitled to total and permanent disability compensation based on POEA-SEC. Respondent must also be reimbursed of his medical expenses for his physical therapy sessions as evidenced by the medical receipts[43] he presented pursuant to Article 25 of the CBA, and granted sickness allowance under Article 26 of the CBA.

The Panel further held that the petitioners cannot validly reject respondent's claims for disability benefits on the ground that he had been declared fit to work by the company-designated physician as the latter's assessment is not final and conclusive, and does not deprive the seafarer of the right to seek a second opinion. The Panel pointed out that after respondent was declared fit to work by the company-designated physician, he wrote the petitioners the very next day to dispute the said findings, raised concerns about his back and requested for a medical reevaluation and treatment which were all not heeded, thereby prompting the respondent to seek medical attention using his own funds. His medical evaluation, after receiving extensive treatment, showed that he is unfit to work at his previous job. The detailed, comprehensive, extensive and medically-backed up evaluation and assessment of respondent's doctor must prevail over the unsupported fit-to-work declaration of the company-designated physician.

Anent the claims of respondent for damages, the Panel ruled that the (a) ship captain's lack of candidness in informing respondent that he will be repatriated upon reaching Bangkok, Thailand and the insensitivity of informing him of his immediate repatriation without giving him a chance to prepare himself

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[43] *Id*. at 473-488.

for the shocking news; (b) the manner by which the company-designated physician rebuffed his request for inclusion of his lower back pains in his medical referral; (c) his questionable declaration of being fit to work within the 120-day period from his repatriation, notwithstanding the fact that he was still not well; and (d) the consistent cold indifference petitioners treated respondent's three letter requests for medical treatment, medical assistance, and medical reimbursement all show the abusive and fraudulent manner by which petitioners dealt with their moral and legal obligations toward the respondent in order to avoid the payment of disability benefits clearly due him. The actuations of the petitioners which were all prejudicial to the respondent entitled the latter to an award of moral damages.

The Panel also found the award of 10% attorney's fees to the respondent justified in view of the fact that respondent was forced to litigate and had incurred expenses to protect his rights and interests.

Petitioners moved for reconsideration but the same was denied by the Panel in a Resolution[44] dated March 24, 2014.

On August 10, 2015, the CA rendered a Decision,[45] the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the Petition is **DISMISSED**. Accordingly, the *Decision* dated 5 November 2013 and the *Resolution* of the Panel of Voluntary Arbitrators, Department of Labor and Employment (DOLE), National Conciliation and Mediation Board (NCMB) — National Capital Region (NCR), Intramuros, Manila, are hereby **AFFIRMED WITH MODIFICATION** in that petitioners are hereby ordered to pay respondent the legal interest of 12% *per annum* of the total monetary awards, computed from [the] date of private respondent's repatriation or on May 18, 2012 until finality of judgment, and 6% *per annum* from finality of judgment until their full satisfaction.
>
> **SO ORDERED.**[46]

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[44] *Supra* note 4.

[45] *Supra* note 1.

[46] *Id*. at 74.

Like the Panel, the CA held that respondent was able to establish the work connection of his multiple disabilities to his daily duties as Chief Cook on board *M/V New Hayatsuki* taking into account the nature of his work, the daily working conditions while on sea duty and his additional strenuous activities of pushing, pulling, lifting, carrying, loading and unloading of heavy materials, provisions and cargoes. Since his condition was shown to be work-related, the same is compensable. While it may be true that respondent was already operated on to address his *varicocoele, bilateral* and was financially assisted by the petitioners in his operation, petitioners still remained liable to the respondent because he still continues to suffer numbing pain on his back, cannot resume his sea duties, is unable to perform tasks producing stress on his back and is unable to perform even his customary work.

The CA also found not worthy of credence the fit-to-work assessment of respondent by the company-designated physician in light of the opposing medical opinions of Drs. Cortes and Magtira which were supported not only by the present state of the respondent, but also by diagnostic tests and procedures and reasonable findings. The appellate court also took into account that respondent had been working for the petitioners for almost a decade. Since respondent was unfit to work and unable to resume work at his previous occupation and in any capacity, and was unable to perform his job as a Chief Cook for more than 120 days, the CA held that respondent was permanently and totally disabled and was properly assessed to be suffering from a Grade 1 disability.

Petitioners moved for reconsideration, but the CA denied it in its February 29, 2016 Resolution.[47]

Hence, this petition.

The Issues

Petitioners submit the following issues for this Court's consideration:

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[47] *Supra* note 2.

I

THE HONORABLE [CA] COMMITTED SERIOUS ERRORS OF LAW IN AFFIRMING THE PANEL'S AWARD OF PERMANENT/ TOTAL DISABILITY BENEFITS TO RESPONDENT CONSIDERING THAT THE RESPONDENT'S ALLEGED BACK PAIN **WAS NOT THE ILLNESS FOR WHICH HE WAS REPATRIATED**. THEREFORE, SAID ILLNESS **DID NOT EXIST** DURING THE EXISTENCE OF THE [RESPONDENT'S] EMPLOYMENT CONTRACT OR EVEN THEREAFTER DURING THE [RESPONDENT'S] TREATMENT FOR ***VARICOCOELE, BILATERAL***. HENCE, THE ALLEGED *BACK PAIN* IS **NOT WORK-RELATED AND NOT COMPENSABLE** UNDER THE POEA-SEC.

II

THE HONORABLE [CA] ERRONEOUSLY HELD THAT THE RESPONDENT IS PERMANENTLY UNFIT FOR SEA DUTIES ON THE BASIS OF THE ALLEGATION THAT HE WAS UNABLE TO PERFORM ANY GAINFUL OCCUPATION FOR MORE THAN 120 DAYS.

III

THE [HONORABLE CA] PALPABLY ERRED IN AWARDING THE RESPONDENT PAYMENT FOR ILLNESS ALLOWANCE AND MEDICAL REIMBURSEMENTS.

IV

THE [HONORABLE CA] ERRONEOUSLY AWARDED THE RESPONDENT DAMAGES AND ATTORNEY'S FEES.[48]

The Arguments of the Parties

Petitioners contended that the CA erred in affirming the award of disability benefits to the respondent for his back pains since there is absolutely no evidence on record that he reported said illness to vessel authorities. As proof, they presented Captain Yamamoto's May 18, 2012 letter which specifically reported that what respondent complained of was "*testicle pain and swelling during chamber cleaning*."[49] Had respondent truly

[48] *Rollo*, pp. 39-40.

[49] *Id*. at 567.

complained of and reported his back pains, the ship captain would have no reason to conceal the same. Respondent's claim that the company-designated physician refused to examine him for back pains for the reason that said condition was not included in the referral letter should not be believed for being self-serving and lacking of any substantiation. Petitioners insisted that what is clear from the records is that respondent was only referred for treatment for *varicocoele, bilateral*. After undergoing the recommended surgery, and after the pain in his operative wounds have resolved and healed well, he was declared fit to work. Petitioners emphasized that respondent made known to them his lower back pains only after his treatment, that is, through his August 29, 2012 letter. The fact that respondent sought treatment for his back pains only on December 19, 2012, or seven months after his repatriation as shown by the medical report issued by Dr. Magtira on even date proved that such illness was contracted after his repatriation. Given that the illness that respondent was seeking compensation for, specifically his back pains, is an entirely different illness, which was absent during the term of his contract and even several months thereafter, and not for the *varicocoele, bilateral* that he was complaining about during his nine-month contract with the petitioners and for which he was treated upon his arrival in the Philippines, the said illness is clearly not work-related and not compensable.

Petitioners contended further that the CA erred when it considered respondent as permanently unfit for sea duties when he was not able to go back to his seafaring work within 120 days for two reasons. First, the 120-day rule should not have been used as basis for the award of disability benefits because respondent's illness is not work-related. Second, the 120-day rule has been superseded by the 2010 POEA-SEC. The 2010 POEA-SEC and relevant jurisprudence stated that the disability shall be based solely on the disability gradings provided under Section 32 of POEA-SEC, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

As for the claims for sickness allowance, petitioners averred that respondent is no longer entitled to it as he had already

been paid the same as evidenced by check vouchers dated August 22, 2012, September 20, 2012, and December 5, 2012 for ₱20,000.00, ₱10,000.00, and ₱6,000.00, respectively, issued by the petitioners.[50] Neither is respondent entitled to medical reimbursement because petitioners shouldered the costs of his treatments as well as the professional fees of his attending physicians.

Petitioners also argued that there is no basis for the award of moral damages in favor of the respondent. First, there is no truth that he was immediately repatriated upon the vessel's arrival in Bangkok, Thailand. His repatriation was by reason that his contract had already ended. Thus, there is nothing fraudulent in his repatriation. Second, there is no evidence that he reported his lower back pains to the company-designated physician. There is also no evidence that the company-designated physician rebuffed his request for the inclusion of his lower back pains in his medical referral. His not being treated for back pains is not tainted by fraud but occasioned by the lack of report thereof. Petitioners have no obligation to cause the treatment of a condition that was not contracted during the term of the seafarer's employment contract. Third, there is nothing questionable about the fit to work certification issued by the company-designated physician inasmuch as the same had been issued to the respondent after 99 days of treatment. Since petitioners were never remiss in fulfilling their obligations towards the respondent and their acts were not tainted with malice or bad faith, they cannot be held liable for moral damages for refusing to honor respondent's baseless demands.

Lastly, petitioners averred that attorney's fees should not have been awarded to the respondent as none of the exceptional circumstances mentioned in Article 2208 of the Civil Code had been shown to exist in this case.[51]

For his part, respondent averred that the issues raised by the petitioners are purely factual, which cannot be entertained by

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[50] *Id.* at 319-321.

[51] *Id*. at 52-53.

this Court in the exercise of its discretionary appellate jurisdiction. Considering that the factual findings of the Panel had been affirmed by the CA, the same must be accorded not only respect but even finality. At any rate, he contended that he had sufficiently shown that his back pains was work-related; that he had been suffering from it while he was still on board petitioners' vessel; and that he reported it to the ship captain. Petitioners never denied in any of the pleadings that they filed before the Panel and the CA that during his last contract with the petitioners, he was involved in at least three loading operations of marine cargoes. After lifting heavy cargoes on March 15, 2012, he experienced testicular swelling and pain which he reported to the Chief Officer. On April 17, 2012, while carrying heavy sacks of squid, his foot slipped which caused him to lose his balance. He felt a crack at his lower back. While he did not report the slipping incident on April 17, 2012, he reported it on April 20, 2012 to Captain Yamamoto when his back pains had become unbearable. His duties as Chief Cook and the additional strenuous activities of lifting, carrying, loading and unloading heavy cargoes reasonably established the work relation of his back pains to his work. The CA also correctly ruled that he is suffering from permanent and total disability. Contrary to the claim of the petitioners, respondent argued that jurisprudence has consistently ruled that in the assessment of whether a seafarer's injury is partial and permanent or total and permanent, the same must be so characterized not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC, but also under the relevant provisions of the Labor Code and the Amended Rules on Employee Compensation (AREC) implementing Title II, Book IV of the Labor Code. Since he is unable to perform his job as Chief Cook for more than 120 days, he is permanently and totally disabled and properly assessed to be suffering from Grade 1 disability. He was also correctly awarded sickness allowance pursuant to Section 20(A)(3) of the POEA-SEC and reimbursement for the expenses he incurred for his physical therapy sessions. Anent the attorney's fees granted to him, respondent claimed that the same was correctly awarded in his favor as he was forced to litigate by reason of petitioners' adamant denial of his claim for full

disability benefits. Petitioners' stubborn refusal to satisfy his valid claims entitled him to recover moral damages.[52]

The Ruling of the Court

Preliminary considerations: Only questions of law may be raised in a petition for review, exceptions

The general rule is that only questions of law may be raised and resolved by this Court on petitions brought under Rule 45 of the Rules of Court, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect. There are, however, recognized exceptions to this general rule, such as the instant case, where the judgment is based on a misapprehension of facts and the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record.[53]

Respondent is not entitled to disability benefits

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings. By law, the relevant statutory povisions are Articles 197 to 199 (formerly Articles 191 to 193) of the Labor Code in relation to Section 2(a), Rule X of the AREC. By contract, the material contracts are the POEA-SEC, which is deemed incorporated in every seafarer's employment contract and considered to be the minimum requirements acceptable to the government, the parties' CBA, if any, and the employment agreement between the seafarer and the employer.

Section 20(A) of the 2010 POEA-SEC, which is the rule applicable to this case since respondent was employed in 2011,

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[52] *Id*. at 518-540.

[53] *Gamboa v. Maunlad Trans, Inc*., G.R. No. 232905, August 20, 2018.

governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board seagoing vessels during the term of his employment contract.[54] The section provides:

> SEC. 20. COMPENSATION AND BENEFITS. —
>
> A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> 1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;
>
> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.
>
> 3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.
>
> The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

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[54] *Id*.

> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.
>
> 4. Those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related.

For disability to be compensable under the 2010 POEA-SEC, three elements must concur: (1) the seafarer must have submitted to a mandatory post-employment medical examination; (2) the injury or illness must be work-related; and (3) the work-related injury or illness must have existed during the term of the seafarer's employment contract.

The post-employment medical examination has two requisites: (1) it is done by a company-designated physician; and (2) within three working days upon the seafarer's return.[55] Failure to comply with such requirement results in the forfeiture of the seafarer's claim for disability benefits. There are, however, exceptions to the rule: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.[56]

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[55] *Ceriola v. NAESS Shipping Phils., Inc.*, 758 Phil. 321, 334 (2015).

[56] *De Andres v. Diamond H Marine Services & Shipping Agency, Inc*., G.R. No. 217345, July 12, 2017, 831 SCRA 129, 146-147.

There is no denying that respondent submitted himself to post-employment medical examination within the required period. However, what is peculiar in this case is that his examination was confined only to the pain and swelling in his testicles as had been mentioned in the doctor's referral, as well as for abdominal pain that he informed the doctor he had been experiencing on and off since March 15, 2012.[57] Respondent claimed that he brought to the attention of the company-designated physician his back pains but the company-designated physician refused to examine him for such condition as it was not the ailment referred to him. The Panel believed the respondent. It held:

> For his back pains which [petitioners] find baseless and not work-related since Mr. Pangasian never complained nor mentioned such back pains even to the company-designated physician during his treatment for his varicocele, this panel is inclined to believe complainant's explanation. Mr. Pangasian narrated that while the reefer ship was sailing to Bangkok, Thailand, he informed the ship master of his testicular pains and swelling and his lower back pains, the reasons why he requested for referral to a port doctor in Bangkok, Thailand. **When they reached Bangkok, he was bluntly told by the ship captain that he would be immediately relieved and repatriated to the Philippines, to his bewilderment, the reason why he failed to notice that the doctor referral he requested from the ship captain did not include a referral for his back pains.** Complainant likewise narrated that when he reported to the company doctor in connection with the ship captain's referral for his testicular pain and swelling, he requested that his lower back pains be included but that the company-doctor outrightly rejected his proposition explaining that it was not included in the referral letter.[58] x x x (Emphasis supplied)

A close scrutiny of the records reveals that the findings of the Panel is not supported by the evidence on record. The records would show that the explanation alluded to by the Panel is based on the *Reply (to [Petitioners'] Position Paper)* filed by the

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[57] *Supra* note 18.

[58] *Rollo*, p. 133.

respondent before it.[59] The problem is that the Panel believed respondent's word hook, line, and sinker even if the same contradicts respondent's very own letter dated August 29, 2012. The letter reads:

x x x x x x x x x

Magandang araw po. Ako po si Angelito B. Pangasian, Chief Cook *sa barkong M/V Hayatsuki. Dumating po ako dito sa Pilipinas* last May 18, 2012. During my contract, month of March 2012 *ay nagko[-] complain na po ako sa* pain *sa likod at maging sa aking* testicles. *Me mga* time *na tumataas ang aking* blood pressure due to heavy work *dahil ako lang po mag-isa ang nagtatrabaho sa* kitchen. **Last May 18, 2012 *ay nag*-request *na po ako sa aking Kapitan* thru letter *na maipa[-]*check-up ako due to testicle pain** *noong mag[-]* disembark *kami sa* Bangkok *pero ang* advise *po ng Kapitan ay dito na lamang sa Pilipinas ako magpa[-]*check-up.

Last June 21, 2012 *nag[-]report po ako sa inyong* agency and I was referred to NGC under Dr. Cruz for further medical check-up. *Naoperahan po ako sa varicoc[o]ele, bilateral* last July 26, 2012.

Nito pong last check-up *ko* (August 28, 2012) *ay sinabihan po ako ni* Dr. Cruz *na* fit to work *na daw po ako. Nagpapasalamat po ako sa lahat ng inyong tulong* medical. *Kaya lamang napilitan po akong sumulat sa inyo dahil sa ngayon po naroon pa rin ang sakit doon sa naoperahan at manhid pa rin ang aking pakiramdam. Ang aking likod sa gulugod ay sumasakit din po.*

Sa ngayon po ay di pa ako tuluyang magaling. Ako po ay nakikiusap na kung maaari ay maipa-evaluate uli ako at matignan muli upang malaman ko ang tunay kong kalagayan. Nakikiusap din po ako na sana ay maipa- MRI *ako dahil ang sakit sa aking likod ay hindi nagbago. Makikiusap din po sana ako na maibigay po ang aking* illness allowance *na hanggang ngayon po ay wala pa akong natatanggap.*[60] (Emphasis, italics and underscoring supplied)

x x x x x x x x x

Respondent's letter shows that there is no truth that the ship captain failed to include his back pains in the doctor's referral

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[59] *Id*. at 329-330.

[60] *Id*. at 465.

and that because he was in a state of shock and disbelief upon learning that he will be immediately repatriated that he failed to notice such omission. The truth of the matter was that his back pains was not included in the referral precisely because his *written request* only asked for a referral for his testicular pain. If respondent had truly been experiencing continuing back pains while he was still on board the vessel, then it stands to reason that respondent's written request for medical referral would not only be for his testicular pain but would naturally include his back pains, especially so when he claimed that the same had become unbearable.

Moreover, respondent's contention that the company-designated physician refused to examine and treat him for his back pains because it was not included in the referral is not worthy of belief. Aside from the pain and swelling in his testicles, respondent's abdominal pain was likewise taken into account when the company-designated physician examined the condition of the respondent following his repatriation. The May 21, 2012 Medical Report prepared by Dr. Comising supports this finding. Thus:

x x x x x x x x x

REVIEW OF THE SYSTEM

(-) Fever	(-) Body Weakness	(-) Headache	(-) Blurring Vision
(-) Constipation	(-) Difficulty of Breathing	(-) LBM	(-) Chest Pain
(-) Body Numbness	(-) Difficulty with [A]mbulation		

x x x x x x x x x

REPORT:

1st

The patient is a 45-year-old, chief cook **who claimed he developed on and off abdominal pain** with left testicular pain since March 15, 2012. No medications were taken and no consultations done. He finished his contract and was referred to our clinic for evaluation and treatment.

He was seen at our clinic today. **He is complaining of on and off abdominal pain** with left testicular pain. On physical examination, patient is conscious, coherent and ambulatory. The abdomen is flabby

soft and non tendern. There is note of engorged blood vessel on both testicle which are tender. The following were requested: CBC, BUN, creatinine, lipid profile, uric acid, SGPT, SGOT, urinalysis, **ultrasound of the abdomen and inguinoscrotal area.**

DIAGNOSIS:

Varicocoele, bilateral[61] (Emphases supplied)

x x x x x x x x x

The foregoing shows that contrary to the contention of the respondent, the company-designated physician would not have left undiagnosed and untreated an illness or injury that was brought to his attention, with or without a referral. Otherwise, the post-employment medical examination of the respondent would have only been confined to his testicular pain, the only ailment referred to the company-designated physician, and would not include his abdominal pain. Such was not the case here.

Also telling is the negative answers respondent gave when he was asked if he was experiencing body numbness, body weakness and difficulty in ambulation at the time of his examination. If his back pains was already existing at the time of his post-employment medical examination and his condition was slowly debilitating him as his back pains worsened and became unbearable, then he would not have answered the way he did.

Respondent's failure to disclose his lumbar problem is fatal to his cause. Given that the respondent failed to bring to the attention of the company-designated physician his back pains thereby precluding the latter from assessing whether the same is work-related or not, the respondent is deemed not to have undergone the required post-employment medical examination contemplated under the POEA-SEC relative to his back pains for purposes of claiming compensation therefor. This is not without rationale basis.

The High Court has consistently held that the three-day mandatory reporting requirement must be strictly observed since

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[61] *Supra* note 18.

within three days from repatriation, it would be fairly manageable for the company-designated physician to identify whether the illness or injury was contracted during the term of the seafarer's employment or that his working conditions increased the risk of contracting the ailment. Moreover, the post-employment medical examination within three days from arrival is required to ascertain the seafarer's physical condition, since to ignore the rule would set a precedent with negative repercussions because it would open the floodgates to seafarers claiming disability benefits that are not work-related or which arise after the employment. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employer would have no protection against unrelated claims. Therefore, it is the company-designated physician who must proclaim that the seafarer suffered a permanent disability, whether total or partial, due to either illness or injury, during the term of the latter's employment.[62]

To be sure, the assessment of the company-designated physician is not final, binding, or conclusive on the claimant, the labor tribunal, or the courts. The seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit.[63]

Unfortunately, in this case, the company-designated physician had no opportunity to assess the back pains of the respondent since, to emphasize, he made no mention of such back pains to the company-designated physician during his post-employment medical examination. To hold the petitioners liable for disability benefits when they were robbed of the opportunity to determine the work relation of the injury now being complained of by the respondent, a right guaranteed by the POEA-SEC, would be the height of injustice.

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[62] See *The Heirs of the Late Delfin Dela Cruz v. Philippine Transmarine Carriers, Inc*., 758 Phil. 382, 394-395 (2015); *Tagud v. BSM Crew Service Centre Phils., Inc.*, G.R. No. 219370, December 6, 2017, 848 SCRA 176, 189.

[63] *Dizon v. Naess Shipping Phils., Inc*., 786 Phil. 90, 99 (2016).

It is true that the POEA-SEC is designed primarily for the protection and benefit of Filipino seafarers in the pursuit of their employment on board ocean-going vessels and its provisions should be construed and applied fairly, reasonably, and liberally in favor or for the benefit of the seafarer and his dependents. However, one who claims entitlement to the benefits provided by law should not only comply with the procedural requirements of law, but must also establish his right to the benefits by substantial evidence. The burden, therefore, rests on the respondent to show that he suffered or contracted his injury while still employed as a seafarer, which resulted in his permanent disability.[64]

Regrettably, respondent failed to discharge this burden. Aside from his bare allegation that he experienced back pains during the term of his employment contract, he presented no other evidence to substantiate his claim. To reiterate, when he underwent post-employment medical examination, he did not call the attention of the company-designated physician to his back pains. In fact, when he was asked if he was experiencing numbness or weakness in his body or difficulty with ambulation, he answered in the negative. On record, he informed the petitioners about his lumbar problem only on August 29, 2012, or three months after he was repatriated. Thus, the reasonable conclusion is that at the time of his repatriation, respondent was not suffering from any back pains requiring any medical assistance. That he was found to be suffering from *degenerative disc disease, L3-L4 and L4-L5* and *broad based disc bulge with annular tear at L4-L5* when he underwent medical tests and was examined by his doctors after August 29, 2012 is of no moment. It is well noted that many other incidents could have occurred in the duration of three months from the time he was repatriated until he consulted a private physician which could have triggered the pain in his lower back and that such illness or injury could not have been work-related at the time he was still employed by petitioners.[65]

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[64] *Tagud v. BSM Crew Service Centre Phils., Inc*., *supra* note 62, at 189-190.

[65] *Id*. at 190.

In sum, respondent utterly failed to establish by substantial evidence his entitlement to disability benefits for his back pains for his failure to effectively undergo the required post-employment medical examination contemplated by the POEA-SEC by a company-designated physician within three working days from his return without valid or justifiable reason; that his back pain was work-related; and that it was contracted during the term of his employment contract.

Respondent is entitled to sickness allowance

While the Court rules that respondent is not entitled to disability benefits for his back pains, the Court does not lose sight that when the respondent was repatriated on May 18, 2012, he was already complaining of pain and swelling in his testicles. His post-employment medical examination on May 21, 2012 revealed that he was suffering from *varicocoele, bilateral* for which he was treated and operated on. After a series of follow-up check-ups, he was declared fit to work on August 28, 2012. As respondent was suffering from an illness that required medical attention after he was repatriated, he is clearly entitled to a sickness allowance pursuant to Section 20(A)(3) of the 2010 POEA-SEC. Petitioners acknowledged their obligation as in fact they had already paid the amount of ₱36,000.00 to the respondent.[66] The question now is this: How much sickness allowance is respondent entitled to?

Under Section 20(A)(3) of the 2010 POEA-SEC, the amount of sickness allowance that the seafarer shall receive from his employer shall be in an amount equivalent to his basic wage computed at the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician, but shall in no case exceed 120 days.

Since respondent signed off from the vessel on May 18, 2012 and was declared fit to work on August 28, 2012, he is entitled to a sickness allowance equivalent to 102 days or the amount of US$2,036.60 computed based on his basic pay of US$599.00

[66] *Supra* note 50.

per month at 40 hours of work per week, or its equivalent amount in Philippine currency, minus the amount of ₱36,000.00 already advanced by the petitioners.

While the respondent may have undergone a number of medical examinations and consultations, it must be taken into account that they were geared towards getting treatment and compensation for his back pains which the Court has already ruled to be not compensable. Thus, respondent cannot claim sickness allowance after August 28, 2012, the day he was declared fit to work.

Respondent is not entitled to a reimbursement of medical expenses, damages and attorney's fees

Inasmuch as respondent is seeking reimbursement for the expenses he incurred for undergoing physical therapy for his back pains, an injury which, as mentioned above, the Court held to be not compensable, petitioners cannot be made liable for the same.

Also, given that petitioners are justified in refusing to satisfy respondent's baseless claims, they cannot be held liable for moral damages and attorney's fees.

One final note

The Constitutional mandate in providing full protection to labor is not meant to be a sword to oppress employers. This Court's assurance to this policy does not stop us from upholding the employer when it is in the right. Thus, when evidence contradicts compensability, the claim cannot prosper, otherwise it causes injustice to the employer.[67]

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed August 10, 2015 Decision and the February 29, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 135163 are **REVERSED** and **SET ASIDE**. The petitioners are found jointly and severally liable for the payment

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[67] *Madridejos v. NYK-FIL Ship Management, Inc.*, G.R. No. 204262, June 7, 2017, 826 SCRA 452, 482.

of sickness allowance to the respondent in the amount of US$ 2,036.60, or its equivalent amount in Philippine currency at the time of payment.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Perlas-Bernabe, Caguioa, and *Lazaro-Javier, JJ.*, concur.

THIRD DIVISION

[G.R. No. 226053. March 13, 2019]

MARK ANTHONY REYES *y* MAQUINA,[*] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; CHAIN OF CUSTODY; REQUIRES THE IDENTIFICATION OF THE PERSONS WHO HANDLED THE CONFISCATED ITEMS FOR THE PURPOSE OF DULY MONITORING THE AUTHORIZED MOVEMENTS OF ILLEGAL DRUGS AND/OR PARAPHERNALIA FROM THE TIME OF SEIZURE UNTIL PRESENTED IN COURT; DEFINED.— In the case of *People v. Alivio, et al.*, it was explained that the chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court. Section l(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,

[*] Also referred to as "Naquila" and "Nequila" in some parts of the *rollo*.

defined the chain of custody rule in the following manner: b. "**Chain of Custody**" means 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 [was] made in the course of safekeeping and use in court as evidence, and the final disposition[.]

2. ID.; ID.; ID.; ID.; LINKS THAT MUST BE ESTABLISHED; CASE AT BAR.— 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 According to the prosecution, PO3 Reycitez turned over the sachet of *shabu* to SI2 Tablate who marked the seized *shabu* with "MARM." Photographs of Reyes and the sachet of suspected *shabu* were then taken by the team. Thereafter, Reyes was brought to the hospital (where he received medical treatment for the bullet wound he sustained) and then transferred to the PDEA office for booking and documentation. At the PDEA office, letter-requests for laboratory examination of the sachet of suspected *shabu* and for drug test examination on Reyes were prepared. x x x To the Court's mind, the testimony of PO3 Reycitez and SI2 Tablate failed to demonstrate the stability in the links that the prosecution should have established, namely: (a) the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; (b) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (c) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (d) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. *First*, it is unclear as to who between PO3 Reycitez and SI2 Tablate initially had possession of the seized drug when the same was confiscated. They also failed to explain why the seized drug was not immediately marked by PO3 Reycitez when he was

the designated poseur-buyer who was with the confidential informant when the transaction took place. The records show that it was SI2 Tablate who placed the markings thereon. Since the marking appears to have been belatedly done, it is also unclear whether or not the marking was done in the presence of Reyes, immediately after he was arrested. *Second*, apart from a general averment that photographs of Reyes and the seized drug were taken, there was no express mention that the same were done in the presence of the witnesses, as mandated by Section 21, Article II of RA No. 9165.

3. ID.; ID.; ID.; ID.; PRESENCE OF INDISPENSABLE WITNESSES 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 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) a representative from the media; (2) a representative from the Department of Justice (DOJ); and (3) any elected public official**. 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.

4. ID.; ID.; ID.; ID.; 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 EXERTED THEIR BEST EFFORT TO COMPLY WITH THE SAME AND THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE IS PROVEN AS A FACT.— 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 out in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact. Highlighting the mandatory nature of this requirement is the recent case of *People of the Philippines v. Romy Lim y Miranda*. 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. The Court, likewise, pointed out that given the increasing number of poorly built up drug-related cases in its docket, Section 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations should be enforced as a mandatory policy. x x x Simply put, the prosecution cannot simply invoke the saving clause found in Section 21, Article II of R.A. No. 9165 — that the integrity and evidentiary value of the seized items have been preserved - without justifying its failure to comply with the requirements stated therein.

5. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CANNOT PREVAIL WHEN THERE ARE LAPSES IN THE PROCEDURES UNDERTAKEN BY THE AGENTS OF THE LAW, AS THE LAPSES THEMSELVES ARE AFFIRMATIVE PROOFS OF IRREGULARITY.— The failure of the police officers to justify their non-compliance with the requirements set forth in Section 21, Article II of R.A. No. 9165 constitutes a substantial gap or break in the chain of custody which, as a result, casts serious doubts on the integrity and evidentiary value of the *corpus delicti*. Judicial reliance on the presumption of regularity in the performance of official duty, despite the lapses in the procedures undertaken by the agents of the law, is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity. These circumstances, taken collectively, seriously bring into question the existence of the seized prohibited drug and cast grave doubts as to the guilt of the accused-appellant; thus, the presumption of regularity in the performance of official functions cannot, by its lonesome, overcome the constitutional presumption of innocence. Evidence of guilt beyond reasonable doubt and nothing else is met not by bestowing distrust on the innocence but by obliterating all doubts as to his culpability.

APPEARANCES OF COUNSEL

Del Castillo Quina & Sabanal Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

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

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision[2] dated October 22, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 01113-MIN, and the Resolution[3] dated July 14, 2016, finding petitioner Mark Anthony Reyes *y* Maquina (Reyes) guilty beyond reasonable doubt of Illegal Sale and Illegal Possession of Dangerous Drugs defined and penalized under Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

The instant case stemmed from an Information[4] dated December 9, 2008, accusing Reyes of violation of Section 5, Article II of R.A. No. 9165 or Illegal Sale of methamphetamine hydrochloride, a dangerous drug also known as *shabu*. The accusatory portion of the information reads:

> That on November 21, 2008[,] at more or less 1:00 o'clock dawn, near Pocquinto Building, Kauswagan National Highway, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly sell and/or offer for sale, and give away to a confidential informant acting as poseur buyer One (1) heat-sealed transparent plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu,

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[1] *Rollo*, pp. 5-19.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Henri Jean Paul B. Inting and Rafael Antonio M. Santos, concurring; *id*. at 21-39.

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

[4] *Id*. at 22.

a dangerous drug, [with a total weight of 0.45 gram, accused knowing the same to be a dangerous drug,] in consideration of Php 10,000.00.

Contrary to Section 5, Paragraph 1, Article II of Republic Act No. 9165.[5]

Version of the Prosecution

The facts, as narrated by prosecution witnesses SI2 (formerly IO2) Alex Tablate (SI2 Tablate) and Police Officer 3 Benjamin Jay Reycitez (PO3 Reycitez), are as follows:

On November 20, 2008, at about 5:00 p.m., the Philippine Drug Enforcement Agency's (PDEA) confidential informant reported that a certain Jojo Reyes, later identified as Reyes, was engaged in the sale of illegal drugs. Upon checking and confirming that Reyes was listed in the agency's watchlist, they immediately informed their Regional Director who instructed them to form an entrapment team composed of: a) SI2 Tablate as team leader; b) PO3 Reycitez as poseur-buyer; c) IO1 Jerard Pica (IO1 Pica); d) IO1 Rebosura; and e) IO1 Dela Cerna.[6]

The plan was for Reyes and the informant to meet in front of Pocquinto Building, Kauswagan, National Highway between 12 midnight and 1:00 a.m.[7]

IO1 Pica, IO1 Rebosura and IO1 Dela Cerna went to the agreed meeting place. The confidential informant and PO3 Reycitez alighted from the vehicle and positioned themselves five to seven meters away from the Revo. The whole team waited for almost an hour before Reyes arrived in his motor vehicle. Reyes parked at the side of the road where PO3 Reycitez and the confidential informant were standing. The confidential informant and Reyes talked a while, as PO3 Reycitez stood next to the confidential informant, listening in on the conversation. Reyes then handed the sachet of *shabu* to the confidential informant. At that, PO3 Reycitez made the pre-

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[5] *Id*.

[6] *Id*. at 23.

[7] *Id*.

arranged signal. The rest of the team who were hidden inside the vehicle went out and rushed towards Reyes. Reyes attempted to flee, but was prevailed upon.[8]

SI2 Tablate read to him his constitutional (Miranda) rights. PO3 Reycitez, on the other hand, turned over the sachet of *shabu* to SI2 Tablate who put the markings "MARM" thereon. Photographs of Reyes and the sachet of *shabu* were likewise taken by the entrapment team.[9]

SI2 Tablate explained that no buy-bust money was recovered because there was actually no money involved in the transaction, although they had earlier prepared a boodle money for the buy-bust.[10]

Reyes was taken to the hospital after he suffered a bullet wound on his leg when he tried to escape and the police officer had to employ force to accost him. When his condition became stable, he was brought to the PDEA office for booking and for documentation. Letter-requests for laboratory examination of the sachet of suspected *shabu* and for drug test examination on Reyes were prepared. The seized sachet brought to the Philippine National Police (PNP) Crime Laboratory was found positive for the presence of methamphetamine hydrochloride, otherwise known as *shabu*. The drug test conducted on Reyes, likewise, resulted positive for Methamphetamine Hydrochloride (*shabu*).[11]

Version of the Defense

Reyes vehemently denied the accusations against him. He denied that there was a buy-bust operation executed by the PDEA on November 21, 2008, but he admitted his presence in Pocquinto Building, Kauswagan National Highway.[12]

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[8] *Id*. at 23-24.

[9] *Id*. at 24.

[10] *Id*.

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

[12] *Id*. at 25.

Reyes explained that on the evening of November 20, 2008, he was waiting for his friend, Tomas Celdran, who invited him to a meeting in Pyramid, Kauswagan at around 11:30 p.m. When he parked his motor vehicle, a Toyota Revo vehicle heading towards his direction suddenly halted and several men alighted therefrom pointing their guns at him. He was told not to move. Thinking that the men were bandits, he ran southward and that was when he was shot on the right foot. He fell on the ground, and the men caught up with him and handcuffed him. The armed men introduced themselves as PDEA agents and arrested him. A woman suddenly appeared from nowhere with a camera, and placed a plastic sachet containing crystalline substance on the seat of his motorcycle. She forced him to point to that sachet and the PDEA agent took photos of him.[13]

Two other witnesses for the defense, Kevin Pabilona (Pabilona) and Jorge Michael Calugay (Calugay), testified that at around 10:00 p.m., they were having a drinking session at a boarding house located at Pocquinto Building in Kauswagan. At around 1:00 a.m. of November 21, 2008, as Pabilona was about to go home, Calugay accompanied him in hailing a taxi cab. Both saw a speeding Toyota Revo and an Isuzu Crosswind. They claimed that both vehicles stopped beside the man on the motor vehicle and men started to alight from them, pointing guns at the man, later identified as Reyes. The two witnesses panicked and ran back to the boarding house, where they played computer games. Then they heard gunshots. When they noticed neighbors coming out of their respective houses, they themselves went out to check the commotion. It was then when they came to know that the armed men were PDEA agents and that the man shot was Reyes.[14]

On June 14, 2013, the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, convicted Reyes for Illegal Possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165. According to the RTC, the prosecution was able to establish the guilt of Reyes beyond

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[13] *Id*.

[14] *Id*. at 26.

reasonable doubt, but not for the crime charged (Illegal Sale); rather, for the lesser offense of Illegal Possession, an offense which is necessarily included in the offense charged. The dispositive portion of the RTC Decision[15] reads:

> WHEREFORE, premises considered, this Court finds the accused MARK ANTHONY REYES y MAQUINA GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 11 of R.A. 9165 and hereby sentences him to suffer the penalty of imprisonment ranging from Twelve (12) years and one (1) day to Fourteen (14) years, and to pay a Fine in the amount of ₱300,000.00 without subsidiary imprisonment in case of non-payment of Fine.[16]

On appeal, the CA modified the decision of the lower court and adjudged Reyes guilty of Illegal Sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165. The dispositive portion of the CA Decision[17] dated October 22, 2015 reads:

> FOR THESE REASONS, the assailed Judgment is AFFIRMED with MODIFICATION. We find Mark Anthony Reyes y Maquina GUILTY beyond reasonable doubt of violating Section 5, Article II of [R.A.] No. 9165. He is sentenced to suffer the penalty of life imprisonment and a fine of ₱500,000.00.
>
> SO ORDERED.[18]

Reyes moved for reconsideration which was, however, denied by the CA in a Resolution[19] dated July 14, 2016; hence, the instant petition.

The pivotal issue for this Court's resolution is whether or not Reyes' conviction for Illegal Sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, should be upheld.

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[15] Rendered by Presiding Judge Arthur L. Abundiente; *id.* at 43-50.

[16] *Id*. at 49.

[17] *Id*. at 21-39.

[18] *Id*. at 38.

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

Ruling of the Court

The petition is impressed with merit.

In cases involving dangerous drugs, 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.[20]

Records bear that initially, the issue raised by the parties, and discussed by the RTC and the CA, circled on whether or not Reyes could be held liable for Illegal Sale (and not merely illegal possession) of dangerous drugs notwithstanding the absence of marked money signifying consummation of the sale transaction.

The RTC ratiocinated that since the last element or requisite for a valid buy-bust operation, *i.e., consideration/payment of marked money*, is lacking, Reyes could not be held liable for illegal sale but only for illegal possession, an offense that is necessarily included in the former. The CA, on the other hand, ruled that the act of delivering dangerous drugs (*shabu*) undoubtedly falls within the ambit of Section 5, Article II of R.A. No. 9165. The pertinent, portions of the CA decision read:

> As earlier noted, Reyes delivered a sachet of shabu to the confidential informant and PO3 Reycitez, the poseur buyer. And so, at the time of his arrest, Reyes had just committed a crime, particularly that which falls under Section 5 of RA 9165 — or the delivery of shabu to another person. Section 5 reads:

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[20] *People of the Philippines v. Ronaldo Paz y Dionisio*, G.R. No. 229512, January 31, 2018, citing *People v. Viterbo, et al.*, 739 Phil. 593, 601 (2014); *People v. Alivio, et al.*, 664 Phil. 565, 580 (2011); and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

> 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.
>
> x x x x x x x x x
>
> Notably, Reyes was not indicted solely for illegal sale of shabu. He was prosecuted, too, because he allegedly violated Section 5 of RA 9165. x x x.
>
> x x x x x x x x x
>
> This being the case, the two requisites for a valid *in flagrante delicto* arrest were attendant when Reyes was arrested. He executed an overt act of delivering a sachet of shabu worth Php 10,000.00 to the confidential informant. This overt act was done in the presence of PO3 Reycitez who acted as poseur buyer and was standing next to the confidential informant when Reyes committed the offense.[21] (Emphases Ours)

Although the Court agrees with the CA that Reyes may be held liable under Section 5, Article II of R.A. No. 9165 for the delivery of *shabu* even without consideration, We cannot turn a blind eye to the glaring procedural lapses in the evidence proffered by the prosecution.

The Rule on Chain of Custody was not observed

In the case of *People v. Alivio, et al.*,[22] it was explained that the chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly

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[21] *Rollo*, pp. 30-31.

[22] 664 Phil. 565 (2011).

monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court. Section l(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, defined the chain of custody rule in the following manner:

> b. "**Chain of Custody**" means 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 [was] made in the course of safekeeping and use in court as evidence, and the final disposition[.]

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*.:

> **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)

According to the prosecution, PO3 Reycitez turned over the sachet of *shabu* to SI2 Tablate who marked the seized *shabu* with "MARM." Photographs of Reyes and the sachet of suspected *shabu* were then taken by the team. Thereafter, Reyes was brought to the hospital (where he received medical treatment for the bullet wound he sustained) and then transferred to the PDEA office for booking and documentation. At the PDEA office, letter-requests for laboratory examination of the sachet of suspected *shabu* and for drug test examination on Reyes were prepared. The seized sachet of suspected *shabu* was then brought to the PNP Crime Laboratory for examination, which yielded the following results:

> SPECIMEN SUBMITTED:
>
> A One (1) heat-sealed transparent plastic with markings "MARM[*"*] containing 0.45 gram of white crystalline substance x x x
>
> x x x x x x x x x
>
> FINDINGS:
>
> Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for the presence of [Methamphetamine] Hydrochloride (shabu), a dangerous drug x x x
>
> CONCLUSION:
>
> Specimen A contains [Methamphetamine Hydrochloride] (shabu), a dangerous drug x x x
>
> The drug test on Reyes also ended positive for Methamphetamine Hydrochloride (shabu).[23] (Citations omitted)

To the Court's mind, the testimony of PO3 Reycitez and SI2 Tablate failed to demonstrate the stability in the links that the prosecution should have established, namely: (a) the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; (b) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (c) the turnover by the investigating officer of the illegal drug

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[23] *Rollo*, pp. 24-25.

to the forensic chemist for laboratory examination; and (d) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[24]

First, it is unclear as to who between PO3 Reycitez and SI2 Tablate initially had possession of the seized drug when the same was confiscated. They also failed to explain why the seized drug was not immediately marked by PO3 Reycitez when he was the designated poseur-buyer who was with the confidential informant when the transaction took place. The records show that it was SI2 Tablate who placed the markings thereon. Since the marking appears to have been belatedly done, it is also unclear whether or not the marking was done in the presence of Reyes, immediately after he was arrested.

Second, apart from a general averment that photographs of Reyes and the seized drug were taken, there was no express mention that the same were done in the presence of the witnesses, as mandated by Section 21, Article II of RA No. 9165.

Section 21, Article II of R.A. No. 9165 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) a representative from the media; (2) a representative from the Department of Justice (DOJ); and (3) any elected public official**.

The Court, in *People v. Mendoza*,[25] 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.*:

> 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 [seized drugs], 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

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[24] *People v. Kamad*, 624 Phil. 289, 304 (2010).

[25] 736 Phil. 749 (2014).

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.[26]

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 out in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

Highlighting the mandatory nature of this requirement is the recent case of *People of the Philippines v. Romy Lim y Miranda*.[27] 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. The Court, likewise, pointed out that given the increasing number of poorly built up drug-related cases in its docket, Section 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations should be enforced as a mandatory policy. The pertinent portions of the decision read:

> To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, [Section] 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations directs:
>
> > A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.
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> While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus,

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[26] *Id*. at 764.

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

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.[28] (Citations omitted)

Simply put, the prosecution cannot simply invoke the saving clause found in Section 21, Article II of R.A. No. 9165 — that the integrity and evidentiary value of the seized items have been preserved — without justifying its 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 has been a clear and deliberate disregard of procedural safeguards by the police officers themselves. The Court's ruling in *People v. Umipang*[29] 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

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[28] *Id.*

[29] 686 Phil. 1024 (2012).

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 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."[30] (Citations omitted)

The failure of the police officers to justify their non-compliance with the requirements set forth in Section 21, Article II of R.A. No. 9165 constitutes a substantial gap or break in the chain of custody which, as a result, casts serious doubts on the integrity and evidentiary value of the *corpus delicti*.

[30] *Id*. at 1053-1054.

Judicial reliance on the presumption of regularity in the performance of official duty, despite the lapses in the procedures undertaken by the agents of the law, is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.[31] These circumstances, taken collectively, seriously bring into question the existence of the seized prohibited drug and cast grave doubts as to the guilt of the accused-appellant; thus, the presumption of regularity in the performance of official functions cannot, by its lonesome, overcome the constitutional presumption of innocence. Evidence of guilt beyond reasonable doubt and nothing else is met not by bestowing distrust on the innocence but by obliterating all doubts as to his culpability.[32]

The Court has, in many occasions, reversed decisions of the lower courts and set an accused free when his case has been marred with large gaps and holes, primarily, in the manner by which the handling of the confiscated drugs had transpired. Any indicia of doubt in the evidence of the prosecution that puts into question the fundamental principles of credibility and integrity of the *corpus delicti* makes an acquittal a matter of course.

WHEREFORE, premises considered, the petition for review is **GRANTED**. The Decision dated October 22, 2015 of the Court of Appeals in CA-G.R. CR No. 01113-MIN and its Resolution dated July 14, 2016, which modified the judgment of the Regional Trial Court of Cagayan de Oro City, Branch 25, in Criminal Case No. 2008-776, are **REVERSED** and **SET ASIDE**. Accordingly, petitioner Mark Anthony Reyes *y* Maquina is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Director is **ORDERED**

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[31] *People v. Mendoza*, *supra* note 25, at 770.

[32] *Mallillin v. People*, 576 Phil. 576, 579 (2008).

to **REPORT** to this Court, within five (5) days from receipt of this Decision, the action he has undertaken.

Let copies of this Decision be furnished the Department of Justice and the Philippine National Police for their information and guidance.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 226152. March 13, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LUISITO CARTINA *y* GARCIA, ALLAN JEPEZ *y* TUSCANO and NELSON RAMOS, JR. *y* CARTINA,** *accused-appellants.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; A SEARCH AND SEIZURE CARRIED OUT WITHOUT A JUDICIAL WARRANT WILL BE CONSIDERED UNREASONABLE AND ANY EVIDENCE OBTAINED THEREFROM SHALL BE INADMISSIBLE FOR ANY PURPOSE IN ANY PROCEEDING, BUT ONE OF THE EXCEPTIONS TO THE PROSCRIPTION IS A STOP AND FRISK SITUATION.— Indeed, a search and consequent seizure must be carried out

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

with a judicial warrant; otherwise, it becomes unreasonable and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding. Said proscription, however, admits of exceptions, one of which is during a stop and frisk situation. x x x In the case under review, sufficient facts engendered in the minds of the police officers that Jepez and Ramos, Jr. were in the act of committing a crime. Consider the following instances: the police officers were on a mission to entrap Cartina who was verified to be engaged in selling illegal drugs; Jepez and Ramos, Jr. were with Cartina when the officers saw the latter at the target area; when the poseur-buyer introduced himself as a MADAC operative, the duo immediately fled from the scene; and when they were subdued, they were searched and each was found in possession of a plastic sachet containing suspected *shabu*. Indubitably, Jepez and Ramos, Jr. were then illegally committing the crime of possession of dangerous drugs in the presence of the police officers. The seized items were therefore admissible in evidence.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED ITEMS; NON-COMPLIANCE WITH THE PROCEDURES THEREON WILL NOT NECESSARILY INVALIDATE THE SEIZURE AND CUSTODY OF THE DANGEROUS DRUGS PROVIDED THERE ARE JUSTIFIABLE GROUNDS FOR THE NON-COMPLIANCE, AND PROVIDED THAT THE INTEGRITY OF THE EVIDENCE OF THE *CORPUS DELICTI* IS PRESERVED.— The procedural guidelines that the arresting officers must observe in the handling of seized illegal drugs to ensure the preservation of the identity and integrity thereof is embodied in Section 21, paragraph 1, Article II of RA 9165 x x x. This is implemented by Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165 x x x. In the present case, there was a clear non-observance of the x x x procedure. MADAC operative Encarnacion categorically admitted during his cross-examination that, aside from *Kagawad* Parrucho, there was no representative from the media and the DOJ present during the inventory of the seized items. x x x. "RA 9165 and its [IRR] both state that non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds

for the non-compliance, and provided that the integrity of the evidence of the *corpus delicti* was preserved." In the present case, the police officers did not bother to offer any excuses or sort of justification for their omission. It is imperative for the prosecution to establish a justifiable cause for non-compliance with the procedural requirements set by law. "[W]hen there is gross disregard of the procedural safeguards prescribed in the substantive law (RA 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. x x x Accordingly, 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."

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 from the April 28, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07425, affirming with modification the February 18, 2015 Decision[2] of the Regional Trial Court (RTC), Branch 64, Makati City in Criminal Case Nos. 12-1958 to 1959,12-1960 and 12-1961.

Appellants Luisito Cartina *y* Garcia (Cartina), Allan Jepez *y* Tuscano (Jepez) and Nelson Ramos, Jr. *y* Cartina (Ramos, Jr.) were apprehended on two separate but related incidents on October 30, 2012 along Washington Street, *Barangay* Pio del Pilar, Makati City. The apprehending officers were members of a team of the Makati Anti-Drug Abuse Council (MADAC)

[1] CA *rollo*, pp. 107-120; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Sesinando E. Villon and Pedro B. Corales.

[2] Records, pp. 168-177; penned by Judge Gina M. Bibat-Palamos.

tasked to conduct a buy-bust operation on Cartina who was reportedly engaged in illegal drug activities. After their arrest and investigation, Cartina was charged in two separate Informations with violation of Sections 5 and 11, Article II of Republic Act (RA) No. 9165[3] while Jepez and Ramos, Jr., through separate Information, were each indicted for violation of Section 11, Article II of the same law.

The accusatory portion of the Information charging Cartina with violation of Section 5 reads as follows:

Criminal Case No. 12-1958:

On the 30th day of October 2012, in the city of Makati, the Philippines, accused, not being authorized by law, without the corresponding license and prescription, did then and there willfully, unlawfully and feloniously sell, deliver and distribute zero point zero two (0.02) gram of methamphetamine hydrochloride, a dangerous drug, in consideration of Php300.

CONTRARY TO LAW.[4]

For violation of Section 11, the crime was allegedly committed by Cartina in the following manner:

Criminal Case No. 12-1959:

On the 30th day of October 2012, in the city of Makati, the Philippines, accused, not being lawfully authorized to possess any dangerous drugs and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody, and control zero point zero five (0.05) and zero point zero two (0.02) [gram] of methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[5]

The Informations[6] against Jepez and Ramos, Jr. contained substantially the same averments as that charging Cartina with

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[3] The Comprehensive Dangerous Drugs Act of 2002.

[4] Records, p. 1.

[5] *Id*. at 5.

[6] *Id*. at 7 and 9.

violation of Section 11 of the same law, except for the quantity of methamphetamine hydrochloride allegedly possessed by Jepez which was zero point zero one (0.01) gram, while that of Ramos, Jr. was zero point zero three (0.03) gram.

Appellants, when arraigned on November 14, 2012, entered their respective pleas of not guilty. After the termination of the pre-trial, a joint trial on the merits ensued.

Version of the Prosecution

On October 30, 2012, after confirming the veracity of an information earlier received from a confidential informant (CI) that Cartina was selling *shabu* in Washington Street, Barangay Pio del Pilar, Makati City, Police Senior Inspector Armando L. Yu (PSI Yu) formed an entrapment team to apprehend the suspected drug dealer. The team was composed of PSI Yu as team leader, MADAC operatives Delno A. Encarnacion (MADAC operative Encarnacion), the appointed poseur-buyer, Alfonso R. Juan, Jr. (Juan, Jr.), Police Officer Renie E. Aseboque (PO2 Aseboque), as members and Jojnyfer Cureg (Cureg) as photographer, and others. For the undertaking, MADAC operative Encarnacion was provided with three (3) pieces of ₱100 bills to be used in the entrapment.

After a short briefing, the team was dispatched to the target area at around 10:00 p.m. of said date. At the place, MADAC operative Encarnacion and the CI saw Cartina and approached the latter while the back-up members were in strategic positions. The CI introduced MADAC operative Encarnacion to Cartina, who at the time was with two male companions, and a deal was made. MADAC operative Encarnacion handed Cartina the three ₱100.00 bills and, in return, the latter gave him a plastic sachet containing suspected *shabu*. After receiving the plastic sachet, MADAC operative Encarnacion placed a white towel at the back pocket of his pants as a pre-arranged signal to his colleagues. Right then and there, Cartina was placed under arrest and was informed of his constitutional rights. After Cartina was frisked, MADAC operative Encarnacion recovered two other plastic sachets from the left pocket and the ₱300.00 from the right pocket.

Meanwhile, the two male companions of Cartina who were identified as Jepez and Ramos, Jr., scampered away but were eventually subdued by Juan, Jr. and PO2 Aseboque. When asked to empty their pockets, one piece of small plastic sachet containing white crystalline substance were recovered from each of them. These items seized from Jepez and Ramos, Jr. were turned over to MADAC operative Encarnacion. They then brought appellants, together with the items seized to the *barangay* hall of *Barangay* Pio del Pilar for inventory and marking. Thereat, MADAC operative Encarnacion prepared an inventory receipt and marked the items with his initials "DAE," "DAE-1," "DAE-2," "DAE-3," and "DAE-4," in the presence of appellants, *Barangay Kagawad* Cesar S. Parrucho (*Kagawad* Parrucho) while Cureg took photographs.

Thereafter, the team returned to their office where a Joint Affidavit of Arrest was prepared. Senior Police Officer 1 Nildo T. Orsua (SPO1 Orsua), the investigator, also prepared the request for Laboratory Examination after the seized items were turned over to him. The Request, together with the seized items and the Chain of Custody Form, were brought by MADAC operative Encarnacion to the Southern Police District (SPD) Crime Laboratory and received by PO3 Elmar B. Manuel. Later upon examination, PSI Anamelisa S. Bacani of the SPD Crime Laboratory, per her Physical Science Report No. D-655-125, confirmed that the plastic sachets recovered from the appellants were positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.

Version of the Defense

The defense' version of the facts, as summarized by the CA, is as follows:

> On [October 30,] 2012, while appellants Jepez and Ramos, Jr., were taking a bath near a 'poso' (water pump) located about three (3) meters away from the latter's house, with appellant Cartina about two (2) meters away, six (6) armed persons in civilian attire, whom they later on identified as MADAC operatives, approached and asked them about the location of one Cedric @ 'Mata.' After responding in the negative, the armed men allegedly mauled them and made

them board a van. They were first brought to the MADAC office where the operatives showed them a plastic sachet containing white crystalline substance and were taken to the barangay hall thereafter where the men summoned a barangay kagawad. Thereat, their photos were taken with the plastic sachet containing white crystalline substance which they denied ownership of. They were thereafter brought to the Scene of the Crime Operatives and to the Pasay General Hospital and were detained afterwards. They denied the charges against them.[7]

Ruling of the Regional Trial Court

The RTC gave credence to the version of the prosecution. It ruled that all the elements of the crimes charged were duly proved and established. The RTC also held that the integrity and evidentiary value of the items seized from appellants were properly preserved by the buy-bust team under the chain of custody rule. It rejected appellants' defense of denial. By Decision dated February 18, 2015, the RTC convicted appellants. The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. 12-1958, finding the accused Luisito Cartina y Garcia, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing him to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) without subsidiary imprisonment in case of insolvency; and
>
> 2. In Criminal Case Nos. 12-1959 to 1961, finding each of the accused Luisito Cartina y Garcia, Allan Jepez y Tuscano and Nelson Ramos, Jr. y Cartina, GUILTY of the charge for violation of Section 11, Article II of RA 9165 and sentencing each of them to an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of FOUR HUNDRED THOUSAND PESOS (₱400,000.00) without subsidiary imprisonment in case of insolvency.
>
> SO ORDERED.[8]

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[7] CA *rollo*, p. 113.

[8] Records, pp. 176-177.

Unsatisfied, appellants interposed an appeal with the CA.

Ruling of the Court of Appeals

The CA sustained appellants' conviction holding that the prosecution was able to establish all the essential elements of the crimes for which they were charged. It ruled in favor of the legality of the warrantless arrest and search of appellants. The CA was not convinced that there was failure to comply with Section 21 of RA 9165. It was shown that the law enforcers' chain of custody over the seized items was unbroken leading to the preservation of the integrity and evidentiary value of the illicit drugs. The dispositive portion of the April 28, 2016 Decision of the CA reads:

> WHEREFORE, premises considered, the instant Appeal is DENIED and the Decision dated 18 February 2015 of Branch 64, Regional Trial Court of Makati City is hereby AFFIRMED with MODIFICATION, in that the penalty of life imprisonment upon appellant Luisito Cartina y Garcia, is imposed without eligibility for parole.
>
> SO ORDERED.[9]

Hence, the present appeal.

Pursuant to our Resolution[10] dated September 28, 2016, the parties manifested that they are just adopting their respective briefs filed with the CA as their Supplemental Briefs.

The Court's Ruling

At the outset, the Court takes note that, in the appellants' brief, there was no substantial discussion on Cartina's warrantless arrest, and the search and seizure of the illegal items, thereby implying his amenability to the findings and conclusions of the courts below that he was caught in *flagrante delicto* during a validly conducted buy-bust operation.

Much has been said in the brief, however, on the warrantless arrest, search and seizure on appellants Jepez and Ramos, Jr.

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[9] CA *rollo*, p. 120.

[10] *Rollo*, p. 21.

They claim that, at the time of their arrest, they were merely conversing with Cartina and were not committing any overt physical act which would indicate that they were committing a crime. Since there was no valid warrantless arrest, there was likewise no valid warrantless search.

We beg to disagree.

Indeed, a search and consequent seizure must be carried out with a judicial warrant; otherwise, it becomes unreasonable and any evidence obtained therefrom shall be inadmissible for any purpose in any proceeding. Said proscription, however, admits of exceptions, one of which is during a stop and frisk situation.

In *Sanchez v. People*,[11] a stop and frisk was defined and elucidated, thus:

> x x x as the act of a police officer to stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband. The police officer should properly introduce himself and make initial inquiries, approach and restrain a person who manifests unusual and suspicious conduct, in other to check the latter's outer clothing for possibly concealed weapons. The apprehending police officer must have a genuine reason, in accordance with the police officer's experience and the surrounding conditions, to warrant the belief that the person to be held has weapons (or contraband) concealed about him. It should therefore be emphasized that a search and seizure should precede the arrest for this principle to apply.

In the case under review, sufficient facts engendered in the minds of the police officers that Jepez and Ramos, Jr. were in the act of committing a crime. Consider the following instances: the police officers were on a mission to entrap Cartina who was verified to be engaged in selling illegal drugs; Jepez and Ramos, Jr. were with Cartina when the officers saw the latter at the target area; when the poseur-buyer introduced himself as a MADAC operative, the duo immediately fled from the

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[11] 747 Phil. 552, 572 (2014), citing *People v. Chua*, 444 Phil. 757, 773-774 (2003).

scene; and when they were subdued, they were searched and each was found in possession of a plastic sachet containing suspected *shabu*. Indubitably, Jepez and Ramos, Jr. were then illegally committing the crime of possession of dangerous drugs in the presence of the police officers. The seized items were therefore admissible in evidence.

In this regard, we share the observation of the Office of the Solicitor General which is quoted hereunder:

> The search made on Jepez and Ramos falls squarely within 'stop and frisk' searches where the police officer may stop a citizen on the street, interrogate him, and pat him for weapon(s) or contraband upon probable cause. It must be noted that Jepez and Ramos were present during the buy-bust transaction and when Encarnacion introduced himself as a MADAC operative and arrested Cartina, Jepez and Ramos tried to flee. Appellants Jepez and Ramos' actuations constitute sufficient probable cause for the police officers to hold them down and conduct a search on their persons. The aforementioned acts of appellants create enough, 'suspiciousness' for the police to validly hold them down and conduct a search.[12]

Appellants' next argument is centered on the arresting officers' failure to comply with the requirements for the proper custody of seized dangerous drugs under RA 9165. They claim that the officers failed to make a physical inventory and take photographs of the seized items in the presence of a representative from the Department of Justice (DOJ) and the media thus raising uncertainty about the identity of the seized items presented in evidence.

We find appellants' argument well-founded.

The procedural guidelines that the arresting officers must observe in the handling of seized illegal drugs to ensure the preservation of the identity and integrity thereof is embodied in Section 21, paragraph 1, Article II of RA 9165 which states:

> SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous*

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[12] CA *rollo*, pp. 93-94.

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.

This is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which 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:

(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 the present case, there was a clear non-observance of the above-mentioned procedure. MADAC operative Encarnacion categorically admitted during his cross-examination that, aside from *Kagawad* Parrucho, there was no representative from the media and the DOJ present during the inventory of the seized items. His testimony during the cross-examination pertinently stated thus:

ATTY PUZON
Who was present at that time of the preparation of the Inventory Receipt?

WITNESS
Me, accused Cartina, Jepez and Ramos, and my immediate back up PO2 Renie Aseboque and Alfonso Juan, and Brgy. Kagawad Parrucho, and the photographer.

ATTY. PUZON
All of these persons that you mentioned were likewise present at that time of the signing of the Inventory Receipt?

WITNESS
Yes, ma'am, they were present.

ATTY. PUZON
Who was the barangay official present during the inventory?

WITNESS
Brgy. Kagawad Cesar Parrucho, ma'am.

ATTY. PUZON
While you were preparing for the Inventory Receipt, there was no representative coming from the DOJ, correct?

WITNESS
None, ma'am.

ATTY. PUZON
There was no representative coming from the media?

WITNESS
None, ma'am.

ATTY. PUZON
Likewise at that time the accused has no representative or counsel of his own during the time of the preparation of the Inventory Receipt?

WITNESS
None, ma'am.

ATTY. PUZON
That would be all for the witness, Your Honor.[13]

"RA 9165 and its [IRR] both state that non-compliance with the procedures thereby delineated and set would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance, and provided that the integrity of the evidence of the *corpus delicti* was preserved."[14]

In the present case, the police officers did not bother to offer any excuses or sort of justification for their omission. It is imperative for the prosecution to establish a justifiable cause for non-compliance with the procedural requirements set by law.[15]

"[W]hen there is gross disregard of the procedural safeguards prescribed in the substantive law (RA 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. x x x Accordingly, 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."[16]

WHEREFORE, the appeal is **GRANTED**. The appealed April 28, 2016 Decision of the Court of Appeals in CA-G.R.

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[13] TSN, July 31, 2013, pp. 44-45.

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

[15] *People v. Oniza*, 713 Phil. 521, 529 (2013).

[16] *People v. Ancheta*, 687 Phil. 569, 580 (2012).

CR-H.C. No. 07425 which affirmed with modification the February 18, 2015 Decision of Makati City, Regional Trial Court, Branch 64, is **REVERSED and SET ASIDE**. Appellant Luisito Cartina *y* Garcia, is hereby **ACQUITTED** of the charges in Criminal Case Nos. 12-1958 and 12-1959 while appellants Allan Jepez *y* Tuscano and Nelson Ramos, Jr. *y* Cartina are **ACQUITTED** of the charges in Criminal Case Nos. 12-1960 and 12-1961, respectively, on the ground of reasonable doubt.

The Director General of the Bureau of Corrections is hereby **ORDERED** to immediately **RELEASE** appellants from custody unless they are detained for some other lawful cause and submit his compliance within ten (10) days from notice.

SO ORDERED.

Bersamin, C.J., Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

THIRD DIVISION

[G.R. No. 233251. March 13, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBEN D. DURAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. — In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place, and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of *corpus delicti* is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; MARKING AND INVENTORY; THREE-WITNESS REQUIREMENT; THE UNJUSTIFIED NON-COMPLIANCE THEREWITH RESULTS IN A SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY OF THE SEIZED ITEM FROM THE ACCUSED WHICH PUTS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEM IN QUESTION.— Section 21 of R.A. No. 9165 provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team x x x. To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21(a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and *added a saving clause* in case the procedure is not followed x x x. R.A. No. 10640, which amended Section 21 of R.A. No. 9165, incorporated the saving clause contained in the IRR, and requires only two (2) witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; and (b) either a representative from the National Prosecution Service or the media. x x x Considering that the crime charged was committed by appellant on December 6, 2013, it is the original provision of Section 21 and its IRR, which is applicable. It is provided that the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than three (3) witnesses, namely: (a) a representative from the media, and (b) the DOJ; and (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame-up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." x x x It bears stressing that while it was shown that the *Barangay* Captain was present during the marking and inventory of the seized item, the other witnesses required under Section 21(1) of R.A. No. 9165, *i.e.*, representatives from media and the DOJ, were not present. Although the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over

the items as void and invalid, the prosecution must satisfactorily prove that: (a) there is justifiable ground for non-compliance, and (b) the integrity and evidentiary value of the seized items are properly preserved. Here, the prosecution did not provide any plausible explanation or justification on why the presence of the representatives from media and DOJ was not secured. 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. x x x The unjustified non-compliance by the police officers of the required procedures under Section 21 of R.A. No. 9165 and its IRR resulted in a substantial gap in the chain of custody of the seized item from appellant which put the integrity and evidentiary value of the seized item in question. Resultantly, the appellant must be acquitted of the crime charged.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before us is an appeal from the Decision[1] dated June 8, 2017 of the Court of Appeals (*CA*), Cagayan de Oro City, in CA-G.R. CR-HC No. 01523 finding appellant guilty of illegal sale of marijuana, a dangerous drug, in violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

In an Information[2] dated December 9, 2013, appellant was charged with violation of Section 5, Art. II of R.A. No. 9165, as follows:

That on or about December 6, 2013, in the Municipality of Carmen, Province of Davao del Norte, Philippines, and within the jurisdiction

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[1] Penned by Associate Justice Edgardo T. Lloren, concurred in by Associate Justices Ronaldo B. Martin and Louis P. Acosta; *rollo*, pp. 3-13.

[2] Records, p. 1.

of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly deal, sell and distribute dried marijuana fruiting tops weighing 9.9875 grams to PO2 Bencent T. Manglalan, who acted as poseur[-]buyer.[3]

Appellant, duly assisted by counsel, was arraigned and pleaded not guilty[4] to the charge. Pre-trial and trial thereafter ensued.

The prosecution presented the testimonies of PO2 Bencent T. Manglalan[*] (*PO2 Manglalan*) and SPO1 Jonathan O. Tabigue[**] (*SPO1 Tabigue*) which established the following:

At 9:30 p.m. of December 6, 2013, PO2 Manglalan and SPO1 Tabigue were on duty at Carmen Police Station, Davao del Norte, when their Chief of Police, Police Senior Inspector (*PSI*) Reny Valdesco received a report from their confidential informant (*CI*) that appellant was selling marijuana at Purok 3-A,[***] *Barangay* Sto. Nino, Carmen.[5] Immediately, PSI Valdesco conducted a briefing for a possible entrapment operation on the appellant. The briefing was attended by Police Inspector (*PI*) Ruel V. Sinahon, PO2 Manglalan who was designated to act as the poseur buyer, SPO1 Tabigue as the arresting officer, and the CI.[6] PO2 Manglalan was given a ₱200 bill as the buy-bust money which he marked by placing number "10" thereon.[7] The *Barangay* Captain of Purok 3-A was informed of the buy-bust operation.[8] At 9:55 p.m., the team left the police station on board the motorcycles. PO2 Manglalan was the driver of

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[3] *Id.*

[4] *Id.* at 17.

[*] Also referred to as "Maglalan" in some part of the *rollo* and records.

[**] Also referred to as "Tabique" in some parts of the *rollo* and records.

[***] Also referred to as "Purok 3C" in some parts of the *rollo* and records.

[5] TSN, November 13, 2014, p. 3.

[6] *Id.* at 4-5.

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

[8] TSN, January 26, 2015, pp. 20-21.

the motorcycle with SPO1 Tabigue as his back rider.[9] They were following the motorcycle driven by the CI who led them to the target area.[10] Upon reaching the area, the team positioned themselves at the corner portion of the *barangay* road and highway. PO2 Manglalan and the CI waited for appellant, while SPO1 Tabigue positioned himself at the dark portion of the road which was about 20 meters away from them.[11] The rest of the buy-bust team were standing at the other side of the road waiting for their call.[12] After 5-10 minutes, appellant arrived on board a motorcycle driven by another person and was parked near an electric post which was 20-25 meters away from where PO2 Manglalan and the CI were waiting.[13] When appellant alighted from the motorcycle, PO2 Manglalan and the CI approached the former and the CI introduced PO2 Manglalan as "*Ku-an*," who would like to score as he had already told him earlier.[14] Appellant then pulled out from his right pocket the marijuana wrapped in a printed paper and gave it to PO2 Manglalan and told them that he was in a hurry.[15] After verifying the content that it was indeed marijuana fruiting tops, PO2 Manglalan gave the ₱200 marked money to appellant who took and placed it inside his pocket.[16] PO2 Manglalan then held appellant's hand and introduced himself as a policeman and informed him of his offense.[17] SPO1 Tabigue ran towards them and started frisking the appellant and was able to recover from the latter's pocket the buy-bust money.[18] The other team members

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[9] *Id.* at 7-8.

[10] *Id.* at 7.

[11] TSN, November 13, 2014, pp. 10-11.

[12] *Id.* at 10.

[13] *Id.* at 10-11.

[14] *Id.* at 12.

[15] *Id.*

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

[17] *Id.* at 13.

[18] *Id.* at 14.

then arrived.[19]Appellant's companion who was still on the motorcycle hurriedly fled.[20]

PO2 Manglalan and SPO1 Tabigue marked this seized item with "BTM" and "JOB," respectively, at the crime scene and in the presence of the appellant and *Barangay* Captain Mario Catungal, while PO3 Bernard Gabisan took pictures.[21] The team, together with the appellant, proceeded to the police station with SPO1 Tabigue having custody of the seized item.[22] The inventory of the seized item was made at the police station.[23] SPO1 Tabigue handed the seized item to PO3 Gabisan, the investigator of the case, for documentation and preparation of the request for laboratory examination.[24] PO2 Manglalan then delivered the seized item to the crime laboratory at 1:35 a.m. the following day,[25] which was received by a certain PO1 Rhuffy D. Federe.[26] Chemistry Report No. D-259-2013[27] was issued by Police Chief Inspector Virginia S. Gucor, Forensic Chemist, which showed that the examination of the seized item weighing 9.9875 grams yielded positive results for marijuana, a dangerous drug.

Appellant denied the charge. He claimed that in the early evening of December 6, 2013, he was riding a motorcycle for hire on his way to the house of Roselyn Catobog in Purok 3 Cebulano, Carmen, to invite her to watch the opening of Christmas lighting in *Barangay* Ising.[28] While on his way, the motorcycle he was riding was flagged down by a woman whom

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[19] *Id.*

[20] *Id.*

[21] *Id.* at 14-16.

[22] *Id.* at 18.

[23] *Id.* at 17.

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

[25] *Id.* at 19.

[26] *Id.* at 20.

[27] Records, p. 24.

[28] TSN, June 24, 2015, pp. 5-7.

he later learned was a childhood friend of Roselyn and was on the way to Roselyn's house to invite her also to watch the Christmas lighting.[29] He later learned the name of the woman as Antonette Yama.[30] He, together with Roselyn and Antonette, rode a motorcycle driven by Antonette's cousin on the way to *Barangay* Ising when Antonette asked the driver to stop at a corner of *Barangay* Sto. Nino and the national highway.[31] When the motorcycle stopped, two men wearing civilian clothes came to them, pointed a gun at him and pulled him out of the motorcycle, frisked him and directed him to drop on the ground, took his cellphone and ₱100.00 cash, and arrested him for allegedly selling marijuana fruiting tops.[32]

Roselyn Catabog corroborated appellant's testimony.[33] She also testified that she had a brief relationship with appellant before he was arrested; that she learned from appellant's cousin that a crime was imputed against appellant; and, that she acceded to the request of appellant's cousin to testify as she pitied appellant who was not selling marijuana at the time of his arrest.[34]

On February 11, 2016, the Regional Trial Court (*RTC*), Branch 34, Panabo City rendered its Decision,[35] the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered finding Roben D. Duran guilty beyond reasonable doubt of violating Section 5 of Republic Act No. 9165. Accordingly, he is sentenced to suffer the penalty of life imprisonment and fine in the amount of Php500,000.00.

The one (1) pack of dried marijuana fruiting tops weighing 9.9875 grams is hereby ordered confiscated and forfeited in favor of the

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[29] *Id.* at 6-7.

[30] *Id.* at 9.

[31] *Id.* at 19.

[32] *Id.* at 19-21.

[33] TSN, August 19, 2015, pp. 5-14.

[34] *Id.* at 14-15.

[35] CA *rollo*, pp. 39-52; Per Presiding Judge Dax Gonzaga Xenos.

government through the PDEA to be disposed of by the latter in accordance with existing laws and regulations. In connection thereto, PDEA Regional Office XI, Davao City is directed to assume custody of the subject drug for its proper disposition and destruction within ten (10) days from notice.

SO ORDERED.[36]

The RTC found that the prosecution failed to establish the adverted sale of the subject marijuana between the poseur-buyer and the appellant, since there was no discussion between them relative to the object and consideration that took place; and, that appellant simply handed the marijuana to PO2 Manglalan after declaring that he was in a hurry. However, appellant can be held liable for the act of dealing and distributing marijuana which was included in the charge since the exchange of marijuana and the money was deemed established. It also found that while there was no cogent reason why the inventory was not done at the crime scene, however, it was shown that the integrity and evidentiary value of the illegal substance was preserved.

Appellant filed his Notice of Appeal. After the filing of the parties' respective briefs before the CA, the case was submitted for decision.

On June 8, 2017, the CA rendered its assailed Decision denying the appeal, the dispositive portion of which reads:

ACCORDINGLY, the appeal is denied. The Decision dated February 11, 2016, of the Regional Trial Court (RTC), Eleventh (11th) Judicial Region, Branch 34, Panabo City, finding the accused-appellant Roben D. Duran in Criminal Case No. CrC 611-2013, guilty beyond reasonable doubt of violating Section 5 of Republic Act No. 9165 is AFFIRMED.

SO ORDERED.[37]

The CA held that the prosecution was able to establish all the elements of the illegal sale of marijuana. Appellant was positively identified by PO2 Manglalan as the same person from

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[36] *Id.* at 52.

[37] *Rollo*, p. 13.

whom he purchased the dried marijuana fruiting tops for a consideration of ₱200.00 during a legitimate buy-bust operation; that the marijuana fruiting tops wrapped in printed paper and marked with "BTM" and "JOB," which was presented in court, was the same specimen brought by PO2 Manglalan during the buy-bust operation. The CA found that the prosecution was able to prove the chain of custody of the confiscated marijuana. PO2 Manglalan and SPO1 Tabigue marked the seized item with "BTM" and "JOB," respectively; SPO1 Tabigue took custody of the seized item and brought it to the police station where he turned it over to PO3 Gabisan, who prepared the request for laboratory examination; that PO2 Manglalan delivered the seized item to the crime laboratory for examination; and, that PCI Gucor examined the confiscated item and prepared Chemistry Report No. D-259-2013 confirming that the specimen tested positive for marijuana. The seized item was presented during trial and was identified by PO2 Manglalan and SPO1 Tabigue.

Appellant filed a Notice of Appeal with this Court. We required the parties to simultaneously file their respective supplemental briefs if they so desired. Both parties filed their respective Manifestations stating that they are no longer filing their supplemental briefs and were adopting all the issues and arguments filed before the CA to avoid repetition of the same.

Appellant argues that the integrity of the drug presented in court is doubtful because of the apparent non-compliance with Section 21 of R.A. No. 9165; the non-presentation of the investigator to testify on how he preserved the evidence transferred to him; and, the non-presentation of the forensic chemist or the receiving police officer at the crime laboratory.

We find merit in the appeal.

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place, and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[38] The existence

[38] *People v. Battung*, G.R. No. 230717, June 20, 2018, citing *People v. Morales*, 630 Phil. 215, 228 (2010).

of *corpus delicti* is essential to a judgment of conviction.[39] Hence, the identity of the dangerous drug must be clearly established.

Section 21 of R.A. No. 9165 provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team, to wit:

> Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. The PDEA shall take charge and have custody of all dangerous drugs, plant sources or 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 persons/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

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and *added a saving clause* in case the procedure is not followed:[40]

> (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

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[39] *Id.*, citing *People v. Jaafar*, G.R. No. 219829, January 18, 2017, 815 SCRA 19, 28.

[40] *Id.*, citing *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

> 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**.[41]

R.A. No. 10640,[42] which amended Section 21 of R.A. No. 9165, incorporated the saving clause contained in the IRR, and requires only two (2) witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; and (b) either a representative from the National Prosecution Service or the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts."[43] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous

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[41] Emphasis supplied.

[42] *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."*

[43] *People v. Battung, supra* note 38, citing Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

Drugs had conducted, which revealed that "compliance with the rule on witnesses during the physical inventory is difficult." For one, media representatives are not always available in all corners of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended.[44]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and ensure [its] standard implementation.[45] Senator Sotto explained why the said provision should be amended:

> Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21 (a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of the seized illegal drugs.
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> x x x x x x x x x
>
> Section 21 (a) of RA 9165 need to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.
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> It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure of illegal drugs or at the nearest police station or office

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[44] *Id.*

[45] *Id.*

of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[46]

Considering that the crime charged was committed by appellant on December 6, 2013, it is the original provision of Section 21 and its IRR, which is applicable. It is provided that the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than three (3) witnesses, namely: (a) a representative from the media, and (b) the DOJ; and (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame-up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."

In this case, it was established by the testimonies of PO2 Manglalan and SPO1 Tabigue that they marked the seized item in the presence of the appellant and *Barangay* Captain Catungal at the crime scene and that photographs were taken of the same. Their testimonies also showed that the seized item was only inventoried at the police station and the certificate of inventory was signed by *Barangay* Captain Catungal and that photographs

[46] *Id.*

of the same were taken. We note, however, that aside from the signature of the *barangay* captain appearing on the certificate of inventory, there were names and signatures of alleged media and DOJ representatives appearing on the spaces provided for such, notwithstanding that nowhere in the testimonies of the police officers that they mentioned of any media and DOJ representatives present during the inventory and the photographing of the item seized from appellant. Consequently, the veracity of the certificate of inventory becomes questionable.

It bears stressing that while it was shown that the *Barangay* Captain was present during the marking and inventory of the seized item, the other witnesses required under Section 21(1) of R.A. No. 9165, *i.e.*, representatives from media and the DOJ, were not present. Although the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, the prosecution must satisfactorily prove that: (a) there is justifiable ground for non-compliance, and (b) the integrity and evidentiary value of the seized items are properly preserved. Here, the prosecution did not provide any plausible explanation or justification on why the presence of the representatives from media and DOJ was not secured. 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.[47]

In *People v. Angelita Reyes, et al.*,[48] this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

> x x x It must be emphasized that the prosecution must able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote

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[47] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[48] G.R. No. 219953, April 23, 2018.

areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125[49] of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

We reiterated the above-mentioned ruling in *People v. Vicente Sipin y De Castro*,[50] thus:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required under Article 125 of the Revised Penal Could prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

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[49] Article 125. *Delay in the delivery of detained persons to the proper judicial authorities*.— The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of: twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent. In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

[50] G.R. No. 224290, June 11, 2018.

The unjustified non-compliance by the police officers of the required procedures under Section 21 of R.A. No. 9165 and its IRR resulted in a substantial gap in the chain of custody of the seized item from appellant which put the integrity and evidentiary value of the seized item in question. Resultantly, the appellant must be acquitted of the crime charged.

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 8, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 01523 is hereby **REVERSED** and **SET ASIDE**. Appellant Roben D. Duran is, accordingly, **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The Penal Superintendent of the Davao Prison and Penal Farm is **ORDERED** to immediately cause the release of appellant from detention, unless he is being held for some other lawful cause, and to inform this Court his action hereon within five (5) days from receipt of this Decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 234038. March 13, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOY JIGGER P. BAYANG and JAY M. CABRIDO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY

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

RULE; COMPLIANCE WITH SECTION 21 OF RA 9165 IS DETERMINATIVE OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* AND ULTIMATELY THE FATE OF THE ACCUSED.— Section 21 now only requires ***two (2) witnesses*** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media. The prosecution has the burden of proving a valid cause for non-compliance with the procedure laid down from the foregoing Section, as amended. During the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. Moreover, strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence. Since compliance with the procedure in Section 21, as amended, is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately the fate of the liberty of the accused, the appellate court, including this Court, is not precluded from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.

2. **ID.; ID.; ID.; ID.; ABSENCE OF THE REQUIRED SECOND WITNESS IS FATAL TO THE PROSECUTION IN CASE AT BAR SINCE THE REASON INTERPOSED IS NOT SUFFICIENT TO JUSTIFY NON-COMPLIANCE.—** As admitted, the absence of the second witness was because the team did not call any representative from the DOJ, and the member of the media that they called wasn't able to come since he was in another place. x x x It is imperative for the prosecution to show the courts that the non-compliance with the procedural safeguards provided under Section 21 was not consciously ignored. The procedure is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. While the non-compliance with Section 21 of R.A. No. 9165 is not fatal to the prosecution's case, provided that

the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers, this exception will only be triggered by the existence of a ground that justifies departure from the general rule. The saving clause applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. Since the amount of *shabu* involved in this case is minuscule, with just 0.07 gram of *shabu* for illegal sale and three sachets each containing 0.04 gram for illegal possession, there is a need for strict compliance with the rule on chain of custody in order to prove that the integrity and evidentiary value of the evidence seized had been preserved. To the mind of this Court, the reason interposed by the prosecution is not sufficient to justify the non-compliance of the absence of one of the required two witnesses. There was no evidence that the buy-bust team exerted earnest effort to comply with the requirements of the law as to the witnesses present during the physical inventory of the seized items.

3. **ID.; ID.; ID.; EFFECTS OF NON-COMPLIANCE; FAILURE OF THE PROSECUTION TO COMPLY WITH THE CHAIN OF CUSTODY RULE IS EQUIVALENT TO FAILURE TO ESTABLISH THE *CORPUS DELICTI*; ACCUSED MUST BE ACQUITTED OF THE CRIMES CHARGED.—** Non-observance of the mandatory requirements under Section 21 of R.A. No. 9165 casts doubt on the integrity of the *shabu* supposedly seized from accused-appellants. The prosecution's failure to comply with the chain of custody rule is equivalent to its failure to establish the *corpus delicti* and, therefore, its failure to prove that the crime was indeed committed. For failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from appellants, and to prove as a fact any justifiable reason for non-compliance with Section 21 of R.A. No. 9165 and its Implementing Rules and Regulations, accused-appellants must be acquitted of the crimes charged.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before this Court is an appeal from the June 7, 2017 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 08375, which affirmed the January 28, 2016 Decision[2] of the Regional Trial Court (*RTC*) of Pasig City, Branch 164, finding accused-appellants Joy Jigger Bayang (*Bayang*) and Jay M. Cabrido (*Cabrido*) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165 (*R.A. No. 9165*), otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

In three (3) separate Informations dated August 22, 2014, accused-appellants were charged before the RTC with violations of Sections 5 and 11, Art. II of R.A. No. 9165, the accusatory portions of which read:

In Criminal Case No. 19477-D against Bayang and Cabrido for illegal sale of dangerous drug:

> On or about August 20, 2014, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding each other, not being lawfully authorized to possess any dangerous drug, did, then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 (*sic*) Marvin Santos y Avila, a police poseur[-]buyer, one (1) heat[-]sealed transparent plastic sachet containing 0.07 gram of white crystalline substance, which was found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of said law.[3]

In Criminal Case No. 19478-D against Bayang for illegal possession of dangerous drug:

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[1] Penned by Associate Justice Socorro B. Inting, with Associate Justices Romeo F. Barza (now Presiding Justice of the CA) and Ramon Paul L. Hernando (now a member of this Court), concurring; *rollo,* pp. 2-15.

[2] Penned by Presiding Judge Jennifer Albano Pilar; CA *rollo,* pp. 43-54.

[3] Records, p. 1.

On or about August 20, 2014, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control two (2) heat-sealed transparent plastic sachets each containing 0.04 gram of white crystalline substance or a total of 0.08 gram of white crystalline substance, which were found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of said law.[4]

In Criminal Case No. 19479-D against Cabrido for illegal possession of dangerous drug:

On or about August 20, 2014, in Pasig City and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing 0.04 gram of white crystalline substance which was found positive to the test for Methamphetamine Hydrochloride, a dangerous drug, in violation of said law.[5]

When arraigned, accused-appellants pleaded not guilty to the charges. Pre-trial and trial thereafter ensued.

The evidence for the prosecution established that, at 8:00 a.m. on August 20, 2014, the members of the Anti-Drug Abuse Council of Pasig City (*ADCOP*), headed by Zenaida Concepcion (*Concepcion*), and a confidential informant (*CI*) went to the office of the Station Anti-Illegal Drugs Special Operation Task Group (*SAID-SOTG*), Pasig City Police Station to report the rampant selling of *shabu* at M79 Street, Soldiers Village, Barangay Sta. Lucia, Pasig City. A certain alias "Tatay" (*Tatay*) was the most notorious seller in the area, and his house was used for drug sessions. Police Senior Inspector (*PSI*) Alan A. Miparanum (*Miparanum*) formed a buy-bust team to conduct the operation against Tatay. PSI Miparanum designated Police Officer 2 Marvin A. Santos (*PO2 Santos*) as poseur-buyer, while

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[4] *Id.* at 4.

[5] *Id.* at 7.

Police Officer 1 Jimposse I. Chua (*PO1 Chua*) was the immediate back-up. After the briefing, PO2 Santos prepared the coordination sheet and the pre-operation report naming Tatay as one of the targets. He coordinated with the EPD District Anti-Illegal Drugs Special Operations Task Group and the Philippine Drug Enforcement Agency (*PDEA*). Thereafter, the PDEA gave the buy-bust team the authority, with Control No. 0814-00225, to conduct a buy-bust operation against Tatay.[6]

At 8:00 p.m. on the same date, the CI returned to the Pasig City SAID-SOTG office and informed PSI Miparanum and the buy-bust team that he spotted Tatay at M79 Street. At 9:00 p.m., the team and the CI arrived at the target area. PO1 Chua and the others strategically positioned themselves. While walking along the street, PO2 Santos and the CI noticed a man, later identified as Cabrido, standing beside the road as if waiting. Cabrido approached them and asked who they are looking for. PO2 Santos replied that he was looking for Tatay because they wanted to buy shabu. According to Cabrido, Tatay was no longer around since Bayang stopped his operation. He then told them to follow him to Bayang's house. Upon arriving, Cabrido knocked at the door and said that somebody wants to "score."[7] Bayang went out and asked PO2 Santos how much did he want to buy. PO2 Santos answered "dos" and simultaneously handed the two ₱100.00 bill marked money. After pocketing the money, Bayang brought out four transparent plastic sachets containing white crystalline substance, and handed one to Cabrido telling him to sell it along the road. Cabrido walked away after receiving the same. Thereafter, PO2 Santos scratched his head, the pre-arranged signal, after he received the plastic sachet from Bayang. He grabbed Bayang, introduced himself as a police officer, and instructed the latter to empty his pockets. He was able to seize two sachets from Bayang's pocket.[8] He marked the plastic sachets with 1MAS/JIGGER 08/20/2014, 2MAS/JIGGER 08/20/2014, and 3MAS/JIGGER 08/20/2014, and signed them.

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[6] CA *rollo*, pp. 46-47.

[7] Meant to buy *shabu*.

[8] CA *rollo*, p. 47.

Meanwhile, PO1 Chua dashed towards PO2 Santos upon seeing the latter scratching his head. He heard PO2 Santos instructing him to arrest Cabrido, the man advancing towards his direction. PO1 Chua promptly arrested Cabrido, and ordered the latter to empty his pockets, which yielded to discovery of a sachet of suspected shabu. He marked the sachet with JIC-JAY-08-20-14, and signed it. PSI Miparanum ordered the team to proceed to the *barangay* hall of Sta. Lucia because of the crowd and concern for the safety of the team, the accused, and the seized pieces of evidence. Thus, they conducted the inventory at the *barangay* hall. PO2 Santos accomplished the inventory in the presence of both accused and *Barangay Kagawad* Randy Ilagan (*Ilagan*). Photographs were also taken during the inventory. They proceeded to the SAID-SOTG Office of the Pasig City Police Station where the pieces of evidence were transferred to the investigator, PO1 Lodjie Coz (*PO1 Coz*). PO1 Coz prepared the chain of custody form and the request for laboratory examination, and went to the EPD Crime Laboratory Office in Marikina City to submit the plastic sachets containing white crystalline substance to the forensic chemist, Police Inspector Anghelisa S. Vicente (*PI Vicente*). PI Vicente examined the contents of the sachets, and the result revealed that the crystalline substance was positive for the presence of methamphetamine hydrochloride, a dangerous drug.[9]

On the other hand, the defense posits a different narration of the events. At 9:00 p.m. on August 20, 2014, Bayang and Cabrido were having supper at the former's house when armed men entered and commanded them to drop on the floor facing down. The men handcuffed them, and asked where alias Tatay was. They denied knowing someone called Tatay. Nevertheless, they were boarded into a van and were brought to the *barangay* hall of Sta. Lucia, Pasig City. The men summoned *Barangay Kagawad* Ilagan, showed the latter the four heat-sealed plastic sachets, and requested him to sign a document. They were brought to a small room where PO2 Santos demanded ₱100,000.00 in

[9] *Id.* at 48.

exchange for their release. Since they were unable to produce the amount, they were charged.[10]

On January 28, 2016, the RTC rendered a Decision, the *fallo* of which reads:

> **WHEREFORE**, judgement is rendered as follows:
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> **1.** In Criminal Case No. 19477-D, the Court finds the accused, Joy Jigger P. Bayang and Jay M. Cabrido **GUILTY** beyond reasonable doubt of violation of Section 5, Article II of RA No. 9165, and hereby impose[s] upon each of them the **penalty of life imprisonment and a fine of five hundred thousand pesos ([₱]500,000.00)**.
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> **2.** In Criminal Case No. 19478-D, the Court also finds accused Joy Jigger P. Bayang **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA No. 9165, and hereby imposes upon him an indeterminate penalty of imprisonment from **twelve (12) years and one (1) day, as the minimum term, to fifteen (15) years, as the maximum term, and to pay a fine of three hundred thousand pesos [₱]300,000.00)**.
>
> **3.** In Criminal Case No. 19479-D, the Court also finds accused Jay M. Cabrido **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA No. 9165, and hereby imposes upon him an indeterminate penalty of imprisonment from **twelve (12) years and one (1) day, as the minimum term, to fifteen (15) years, as the maximum term, and to pay a fine of three hundred thousand pesos ([₱]300,000.00)**.
>
> The sachets of *shabu* (Exhibits "N", "O", "P" and "Q") subject matter of these cases are hereby ordered confiscated in favor of the government, and the Branch Clerk of this Court is directed to turn over the said evidence to the Philippine Drug Enforcement Agency for destruction in accordance with law.
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> **SO ORDERED.**[11]

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[10] *Id.* at 49.

[11] *Id.* at 53-54. (Emphasis in the original)

The trial court held that the prosecution duly proved and established the elements of illegal sale and illegal possession of dangerous drugs. PO2 Santos and PO1 Chua categorically stated that they caught both accused *in flagrante delicto* selling and possessing shabu. The prosecution witnesses proved the transaction or sale wherein Bayang delivered a sachet containing 0.07 gram of shabu to the poseur-buyer. It was also established that (a) both accused had no authority to sell or to possess any dangerous drug; (b) during the buy-bust operation, Bayang sold and delivered ₱200 worth of white crystalline substance in a heat-sealed transparent plastic sachet to PO2 Santos; and (c) as a result of the search incidental to a valid warrantless arrest, Bayang was caught in possession of two sachets of shabu containing 0.04 gram each, while Cabrido was caught with one sachet of shabu containing 0.04 gram. There was no doubt that the bought item and the confiscated items from the accused-appellants were also the same items marked by PO2 Santos and PO1 Chua, sent to the EPD Crime Laboratory, and later on tested positive for methamphetamine hydrochloride.

On appeal, the CA affirmed with modification the decision of the RTC. The CA held that the prosecution has undoubtedly established the integrity and evidentiary value of the seized drugs. There was no evidence that the arresting officers lost possession and control of the sachets until the turnover to the police station. The sachets were marked at the place of arrest in the presence of both the accused. The accused-appellants, *Barangay Kagawad* Ilagan, and Concepcion of ADCOP witnessed the physical inventory and taking of photographs of the seized items. The seized items were turned over to the investigating officer who prepared the chain of custody form and request for laboratory examination. Thereafter, the items tested positive for methamphetamine hydrochloride. Also, the seized shabu and the marked money were presented in evidence. The decretal portion of the Decision reads:

WHEREFORE, in light of the foregoing, the appeal is **DENIED**. The assailed Judgment dated 28 January 2016 of the Regional Trial Court of Pasig City, Branch 164, in Criminal Cases Nos. 19477-D, 19478-D, and 19479-D, is hereby **AFFIRMED with MODIFICATION**

that the accused-appellants are not eligible for parole with respect to the case for illegal sale of shabu.

SO ORDERED.[12]

The CA gave due course to accused-appellants' appeal from the June 7, 2017 Decision. This Court required the parties to submit their respective supplemental briefs, if they so desired. In its Manifestation in Lieu of Supplemental Brief[13] dated February 5, 2018, the Office of the Solicitor General informed the Court that it no longer intends to file a supplemental brief there being no events, occurrences or conditions which have happened while the CA's decision was rendered. Similarly, Bayang and Cabrido indicated that they will no longer file a supplemental brief since no new issues material to the case, which were not elaborated upon in the appellants' brief before the CA, was discovered.[14]

Basically, Bayang and Cabrido argues that the police officers failed to observe the proper procedure in preserving the chain of custody as required under Section 21 of R.A. No. 9165. They failed to secure a representative from the National Prosecution Service or the media. The inventory and photographing of the seized items were conducted at the *barangay* hall instead of the nearest police station or the nearest office of the apprehending officer or team.

The Court finds merit in the appeal.

Jurisprudence provides that the identity of the prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[15]

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[12] *Rollo,* p. 14.

[13] *Id.* at 23-26.

[14] *Id.* at 28-30. (Emphasis in the original)

[15] *People v. Viterbo*, 739 Phil. 593, 601 (2014).

Section 21 of R.A. No. 9165, as amended by R.A. No. 10640,[16] provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team, 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:
>
> (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. x x x. (Emphases supplied)

From the foregoing, Section 21 now only requires ***two (2) witnesses*** to be present during the conduct of the physical

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[16] *AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002.* Approved July 15, 2014.

inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

The prosecution has the burden of proving a valid cause for non-compliance with the procedure laid down from the foregoing Section, as amended. During the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence.[17] Moreover, strict adherence to Section 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.[18]

Since compliance with the procedure in Section 21, as amended, is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately the fate of the liberty of the accused, the appellate court, including this Court, is not precluded from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction.[19]

An examination of the records reveals that the prosecution failed to establish compliance with the procedures under Section 21 of R.A. No. 9165, as amended. PO2 Santos admitted in his cross-examination that there was no representative from the Department of Justice (*DOJ*) or any media practitioner, to wit:

ATTY. ATIENZA

Q: You said you marked the evidence that you confiscated from alias Jigger at the place of arrest, is that correct?
A: Yes, sir.' (*sic*)

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[17] *People v. Battung*, G.R. No. 230717, June 20, 2018.

[18] *People v. Holgado*, 741 Phil. 78, 93 (2014).

[19] *People v. Miranda*, G.R. No. 229671, January 31, 2018.

Q: But the photograph of the evidence and the inventory were prepared when you were already at the barangay?
A: Yes, ma'am.

Q: There was no mentioned (*sic*) or justification in your affidavit of arrest why you prepared the inventory and the photograph at the barangay, is that correct?
A: Yes, ma'am.

Q: But you are very well aware that the photograph and the inventory should be conducted at the place of arrest where the person was arrested, is that correct?
A: Yes, ma'am.

Q: And there was also no representative from the media or DOJ who witnessed the preparation of the inventory?
A: Yes, ma'am.

Q: Was it you who personally prepared the inventory?
A: Yes, ma'am.

x x x x x x x x x

REDIRECT-EXAM BY PROS. PONPON:

Q: What justification do you have, if any, why the inventory was not made in the place of arrest of the accused?
A: During that time there were many people who were curious and already trying to interfere, so the chief decided that we will just mark the evidence and accomplishing (*sic*) the inventory at the barangay hall.

Q: How about the fact that there is no representative from the National Prosecution Service that witness (sic) the inventory?
A: We were not able to contact a representative from the media (*sic*).

Q: Why is it that instead of conducting the inventory in your office, you made it at the barangay
A: The barangay hall [is] nearer to the place of arrest.

x x x x x x x x x

RECROSS- EXAM BY ATTY. ATIENZA:

Q: Was it you who personally contacted the media personnel?
A: Yes, ma'am.

x x x x x x x x x

Q: What was the reason why he was not able to arrive?
A: He was on another place not in Pasig.

Q: But you did not mention that in your affidavit?
A: Yes, ma'am.[20]

The presence of the representatives from the media [*or*] the DOJ, *and* of any elected public official was precisely necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.[21] In other words, their presence was to ensure against planting of evidence and frame-up.[22] Securing the presence of these persons is not impossible.[23] 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.[24]

In the case at bar, the absence of the required second witness is readily apparent in the Inventory of Seized Evidence[25] presented before the court. Moreover, the witnesses admitted that there was no presence of the member of the DOJ or the media during the taking of physical inventory and photographs. The prosecution never alleged and proved any of the reasons that the presence of the required witnesses was not obtained for, as enumerated by this Court in *People v. Battung*,[26] to wit: (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**

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[20] TSN, September 17, 2015, pp. 7-9.

[21] *People v. Mendoza*, 736 Phil. 749, 761-762 (2014). (Emphasis supplied)

[22] *People v. Andrada*, G.R. No. 232299, June 20, 2018.

[23] *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 555.

[24] *Lescano v. People*, 778 Phil. 460, 473 (2016).

[25] Records, p. 22.

[26] *People v. Battung, supra* note 17.

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**.[27]

As admitted, the absence of the second witness was because the team did not call any representative from the DOJ, and the member of the media that they called wasn't able to come since he was in another place. PSI Miparanum received the report from the CI and the members of the ADCOP at 8:00 a.m., and immediately formed the buy-bust team and coordinated with the PDEA for the operation. Thus, the team had the entire day to coordinate with the persons required by law to be present during the physical inventory. The time PO2 Santos received the reply from the media practitioner was not even alleged so as to at least show that there was not enough time to contact another witness. There was also no evidence that the team tried to secure the presence of another person to substitute.

It is imperative for the prosecution to show the courts that the non-compliance with the procedural safeguards provided under Section 21 was not consciously ignored. The procedure is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[28] While the non-compliance with Section 21 of R.A. No. 9165 is not

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[27] *Id.*

[28] *People v. Geronimo*, G.R. No. 225500, September 11, 2017, 839 SCRA 336, 352.

fatal to the prosecution's case, provided that the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers, this exception will only be triggered by the existence of a ground that justifies departure from the general rule.[29] The saving clause applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.[30]

Since the amount of shabu involved in this case is minuscule, with just 0.07 gram of shabu for illegal sale and three sachets each containing 0.04 gram for illegal possession, there is a need for strict compliance with the rule on chain of custody in order to prove that the integrity and evidentiary value of the evidence seized had been preserved. To the mind of this Court, the reason interposed by the prosecution is not sufficient to justify the non-compliance of the absence of one of the required two witnesses. There was no evidence that the buy-bust team exerted earnest effort to comply with the requirements of the law as to the witnesses present during the physical inventory of the seized items.

Non-observance of the mandatory requirements under Section 21 of R.A. No. 9165 casts doubt on the integrity of the shabu supposedly seized from accused-appellants.[31] The prosecution's failure to comply with the chain of custody rule is equivalent to its failure to establish the *corpus delicti* and, therefore, its failure to prove that the crime was indeed committed.[32] For failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from appellants, and to prove as a fact any justifiable reason for non-compliance with Section 21 of R.A. No. 9165 and its Implementing Rules and Regulations, accused-appellants must be acquitted of the crimes charged.

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[29] *People v. Pringas*, 558 Phil. 579, 594 (2007).

[30] *People v. Andrada, supra* note 22.

[31] *People v. Jaafar*, 803 Phil. 582, 595 (2017).

[32] *People v. Pagaduan*, 641 Phil. 432, 449-450 (2010).

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 7, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 08375 is hereby **REVERSED** and **SET ASIDE**. Accused-appellants Joy Jigger P. Bayang and Jay M. Cabrido are, accordingly, **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. The Director of the Bureau of Corrections is **ORDERED** to immediately cause the release of accused-appellants from detention, unless they are being held for some other lawful cause, and to **REPORT** to this Court compliance herewith within five (5) days from receipt of this Decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 235898. March 13, 2019]

MARLON DOMINGUEZ *y* ARGANA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ANY OBJECTION INVOLVING THE ARREST OR THE PROCEDURE IN THE ACQUISITION BY THE COURT OF JURISDICTION OVER THE PERSON OF AN ACCUSED

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[*] Designated Additional Member in lieu of Associate Justice Ramon Paul L. Hernando per Raffle dated March 11, 2019.

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

MUST BE MADE BEFORE HE ENTERS HIS PLEA, OTHERWISE, THE OBJECTION IS DEEMED WAIVED.— Well settled is the rule that an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived. Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection. Applying the foregoing, the Court agrees that Dominguez had already waived his objection to the validity of his arrest. However, it must be stressed that such waiver only affects the jurisdiction of the court over the person of the accused but does not carry a waiver of the admissibility of evidence.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; EVIDENCE OBTAINED IN VIOLATION THEREOF SHALL BE INADMISSIBLE EVIDENCE FOR ANY PURPOSE IN ANY PROCEEDING.** — Enshrined in the Constitution is the inviolable right of the people to be secure in their persons and properties against unreasonable searches and seizures, as defined under Section 2, Article III thereof. x x x To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. **In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.**

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; WARRANTLESS SEARCH AND SEIZURE, WHEN VALID.—** [T]he constitutional proscription against warrantless searches and seizures is not absolute but admits of certain exceptions, namely: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence; (2) seizure of evidence in plain view; (3) search of moving vehicles; (4) consented warrantless search; (5) customs search;

(6) stop and frisk situations (Terry search); and (7) exigent and emergency circumstances.

4. ID.; ID.; ARREST; ARREST OF A SUSPECT *IN FLAGRANTE DELICTO;* ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— In *People v. Racho,* the Court ruled that **the determination of validity of the warrantless arrest would also determine the validity of the warrantless search that was incident to the arrest.** A determination of whether there existed probable cause to effect an arrest should therefore be determined first. x x x The circumstances as stated above do not give rise to a reasonable suspicion that Dominguez was in possession of *shabu.* From a meter away, even with perfect vision, SPO 1 Parchaso would not have been able to identify with reasonable accuracy the contents of the plastic sachet. **Dominguez' acts of standing on the street and holding a plastic sachet in his hands are not by themselves sufficient to incite suspicion of criminal activity or to create probable cause enough to justify a warrantless arrest.** In fact, SPO 1 Parchaso' s testimony reveals that before the arrest was made, he only saw that Dominguez was holding a small plastic sachet. He was unable to describe what said plastic sachet contained, if any. He only mentioned that the plastic contained *"pinaghihinalaang shabu"* after he had already arrested Dominguez and subsequently confiscated said plastic sachet. x x x The prosecution failed to establish the conditions set forth in Section 5 (a), Rule 11362 of the Rules of Court that: (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. As already discussed, standing on the street and holding a plastic sachet in one's hands cannot in any way be considered as criminal acts. Verily, it is not enough that the arresting officer had reasonable ground to believe that the accused had just committed a crime; a crime must, in fact, have been committed first, which does not obtain in this case.

5. ID.; ID.; SEARCH AND SEIZURE; WARRANTLESS SEARCH AND SEIZURE; WHEN VALID; SEIZURE OF EVIDENCE IN PLAIN VIEW; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— As regards the ruling of the CA, wherein it noted that Dominguez was caught with a sachet of *shabu* in plain view, the Court holds that the plainview doctrine is inapplicable

in the case at bar. In *People v. Compacion,* citing *People v. Musa,* the Court explained how the plain view doctrine applies and ruled that it does not apply if it is not readily apparent to the police officers that they have evidence incriminating the accused. x x x The plain view doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband, or otherwise subject to seizure. The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area. In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand, and its discovery inadvertent. In the case at hand, while it can be said that the presence of the police officers was legitimate as they were patrolling the area and that discovery of the plastic sachet was inadvertent, it should be emphasized that, as to the third requisite, it was clearly not apparent that such plastic sachet is an evidence of a crime, a contraband, or otherwise subject to seizure. To recall, when SPO 1 Parchaso saw Dominguez, he only saw that Dominguez was holding a very small plastic sachet. To the Court's mind, a very small plastic sachet is not readily apparent as evidence incriminating Dominguez, such that it can be seized without a warrant. A very small plastic sachet can contain just about anything. It could even be just that — a very small plastic sachet — and nothing more. Although laboratory results later showed that the plastic sachet taken from Dominguez indeed contained *shabu,* this cannot justify the seizure of the plastic sachet from Dominguez because at the time of the warrantless seizure, it was not readily apparent to SPO 1 Parchaso that the very small plastic sachet contained anything, much less *shabu.* Thus, the circumstances of this case do not justify a seizure based on the plain view doctrine.

6. ID.; EVIDENCE; ADMISSIBILITY; THERE BEING NO WARRANTLESS SEARCH INCIDENTAL TO A LAWFUL ARREST OR SEIZURE OF EVIDENCE IN PLAIN VIEW, THE CONFISCATED SHABU WHICH IS *CORPUS DELICTI* OF THE CRIME CHARGED IS RENDERED INADMISSIBLE; ACQUITTAL PROPER.— In sum, despite the fact that Dominguez can no longer question the validity of his arrest, it

is crystal clear that the sachet of *shabu* seized from him during the warrantless search is inadmissible in evidence against him. There being no warrantless search incidental to a lawful arrest or seizure of evidence in plain view, the *shabu* purportedly seized from Dominguez is rendered inadmissible in evidence for being the proverbial fruit of the poisonous tree. As the confiscated *shabu* is the very *corpus delicti* of the crime charged, Dominguez must be acquitted and exonerated from all criminal liability.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by Marlon Dominguez y Argana (Dominguez) assailing the Decision[2] dated May 9, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38665, which affirmed the Decision[3] dated March 22, 2016 of the Regional Trial Court of Muntinlupa City, Branch 203 (RTC) in Criminal Case No. 10-533, finding Dominguez guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"[4] as amended.

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[1] *Rollo*, pp. 11-32.

[2] *Id*. at 36-49. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Ricardo R. Rosario and Maria Filomena D. Singh concurring.

[3] *Id*. at 112-128. Penned by Presiding Judge Myra B. Quiambao.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, As AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

The Facts

Dominguez was charged with violation of Section 11, Article II of RA 9165. The accusatory portion of the Information reads as follows:

> That on or about the 17th day of August 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, unlawfully and feloniously, have in his possession, custody and control Metamphetamine Hydrochloride, a dangerous drug weighing 0.03 [gram] contained in a transparent plastic sachet, in violation of the above-cited law.
>
> CONTRARY TO LAW.[5]

Upon arraignment, Dominguez pleaded not guilty to the crime charged. Thereafter, trial ensued.

Version of the Prosecution

At around 2:00 in the morning of August 17, 2010, SPO1 Gerardo Parchaso (SPO1 Parchaso) was conducting monitoring and possible arrest of violators of RA 9165 at Purok 3, Brgy. Poblacion, Muntinlupa City.[6] From a meter away, he saw a man wearing a red shirt and white shorts, holding with his left hand a small transparent plastic sachet containing white crystalline substance suspected to be *shabu*. This man was later identified as Dominguez.[7]

SPO1 Parchaso grabbed the hands of Dominguez and seized therefrom one heat-sealed transparent plastic sachet containing the substance suspected to be *shabu*.[8] Assisted by PO2 Salvador Genova (PO2 Genova), SPO1 Parchaso introduced himself as a police officer, arrested Dominguez, and informed him of his violation and his rights under the law.[9] However, seeing that

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[5] *Rollo*, p. 37.

[6] *Id*. at 38.

[7] *Id*.

[8] *Id*.

[9] *Id*.

there was already a crowd gathering in the area, SPO1 Parchaso and PO2 Genova decided to leave the scene, and brought Dominguez and the seized item to their office.[10]

At the police station, SPO1 Parchaso marked the seized item with "MD," the initials of Dominguez.[11] With the help of Police Inspector Domingo J. Diaz (P/Insp. Diaz), and another police officer, PO2 Mark Sherwin Forastero (PO2 Forastero), they prepared Dominguez's Booking and Information Sheet, and took photographs of Dominguez and the marked seized item.[12] They also conducted the inventory which was witnessed by Orlando Rodriguez, a local government employee of Muntinlupa City.[13] SPO1 Parchaso explained that despite P/Insp. Diaz's calls to the representatives of the Department of Justice (DOJ) and the media to witness the inventory, no one came.[14] Nevertheless, they still proceeded with the inventory to comply with the period within which to bring the evidence to the Philippine National Police — Southern Police District (PNP-SPD) Crime Laboratory for examination.[15]

The marked seized item was brought to the PNP-SPD Crime Laboratory for examination. SPO1 Parchaso was the one who prepared the request for laboratory examination, but it was PO2 Genova who delivered the marked seized item. Upon inquiry, SPO1 Parchaso explained that it was only PO2 Genova who had an identification card at the time of delivery.[16] Nonetheless, the request was received by PNP Non-Uniformed Personnel Bernardo Bucayan, Jr. (NUP Bucayan, Jr.), which he turned over to Police Chief Inspector Abraham Verde Tecson (PCI Tecson).[17]

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[10] *Id*.

[11] *Id*. at 39.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*.

[17] *Id*.

Based on Physical Science Report No. D-294-10S, prepared by PCI Tecson, the specimen weighing 0.03 gram, yielded a positive result for *shabu*.[18]

Version of the Defense

Dominguez vehemently denied the accusations against him. He testified that at 11:00 in the evening of August 16, 2010, while he was at home watching television and eating inside his house at Argana St., Brgy. Poblacion, Muntinlupa City, two men in civilian clothes entered therein and arrested him.[19] They immediately grabbed him by his shorts and nape and told him not to resist.[20]

The two men introduced themselves as police officers.[21] When Dominguez asked the men, "*Ano pong kasalanan ko sa inyo?*"[22] The men replied, "*Sumama ka na sa amin para hindi ka masaktan*."[23] Immediately thereafter, the men brought Dominguez and boarded him on a white Toyota Revo, where he was told, "*Aregluhin mo na lang ito*," to which he replied, "*Sir, ano hong aaregluhing sinasabi niyo?*"[24]

The man, later identified as Police Officer Bob Yangson (PO Yangson), showed Dominguez a plastic sachet containing a white crystalline substance, and insisted that the same was recovered from him.[25] The other man was later identified as PO2 Forastero. At the police station, PO Yangson and PO2 Forastero took a photograph of Dominguez while they reiterated that Dominguez should settle the matter to avoid criminal charges.[26]

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[18] *Id*.

[19] *Id*. at 40.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*.

However, Dominguez did not enter into any settlement with them because he denied having possessed said sachet and also, due to lack of money.[27]

The wife of Dominguez, Rowelyn, also testified that on August 17, 2010, at around 11:00 in the evening, two men who introduced themselves as police officers barged inside their house.[28] She saw PO2 Forastero slap and punch Dominguez while the other police officer held him.[29] When they brought Dominguez at the police station, Rowelyn followed them. She claimed that PO2 Forastero told her: "*Misis halika, may ₱50,000 ka ba?*" to which she replied: "*Sir, wala po akong ₱50,000.00, ako'y isang mananahi lang po ngayon, hindi po ako makakabigay sa inyo ng ₱50,000.00.*"[30] Thereafter, PO2 Forastero said that they will detain and charge Dominguez with violation of Section 5 or Section 11 of RA 9165.[31]

Ruling of the RTC

After trial on the merits, in its Decision[32] dated March 22, 2016, the RTC convicted Dominguez of the crime charged. The RTC held that the prosecution sufficiently established all the elements for illegal possession of dangerous drugs, and that the integrity of the *shabu* seized from Dominguez had been duly preserved. It further held that chain of custody has not been broken. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Marlon Dominguez y Argana @ "OXO" guilty beyond reasonable doubt of violation of Section 11, Article II of R.A. No. 9165. Accordingly, the accused is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day as

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[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] *Id*.

[31] *Id*.

[32] *Supra* note 3.

minimum to fourteen (14) years as maximum to pay a fine in the amount of Three Hundred Thousand Pesos (₱300,000.00).

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SO ORDERED.[33]

Aggrieved, Dominguez appealed to the CA.

Ruling of the CA

In the questioned Decision[34] dated May 9, 2017, the CA affirmed the RTC's conviction of Dominguez, holding that the prosecution was able to prove the elements of the crime charged. The CA explained:

> A close look at the sequence of events narrated by the prosecution witnesses particularly by SPO1 Parchaso shows that during the police officers' monitoring, accused-appellant was caught with a sachet of *shabu* in plain view and *in flagrante delicto*[.] It bears stressing that accused-appellant was particularly identified by SPO1 Parchaso as the person in possession of the seized sachet marked as "*MD*." Subsequently, through chemical analysis, the contents of the same sachet were found to be *shabu*. Accused-appellant was positively found to be in possession of prohibited drugs without proof that he was duly authorized by law to possess them. Having been caught *in flagrante delicto*, there is, therefore, a *prima facie* evidence of *animus possidendi* on the part of accused-appellant — a burden of evidence, which accused-appellant miserably failed to discharge in this case.[35]

The CA also held that there was no showing that the integrity and evidentiary value of the seized item was compromised. It stated that the chain of custody can be easily established. It further stressed that defenses of denial and frame-up cannot prevail over the positive and categorical assertions of the police officers, particularly SPO1 Parchaso, who was a stranger to Dominguez and against whom no ill motive was established.

For these reasons, the CA disposed as follows:

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[33] *Rollo*, p. 127.

[34] *Supra* note 2.

[35] *Rollo*, pp. 44-45.

WHEREFORE, the appeal is **DISMISSED**. The March 22, 2016 Decision of the Regional Trial Court of Muntinlupa City, Branch 203 in *Criminal Case No. 10-533*, convicting accused-appellant Marlon Dominguez y Argana @ "OXO" for illegal possession of dangerous drugs, is **AFFIRMED** *in toto*.

SO ORDERED.[36]

Hence, the instant appeal.

Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Dominguez of the crime charged.

The Court's Ruling

The appeal is meritorious. The Court acquits Dominguez for failure of the prosecution to prove his guilt beyond reasonable doubt.

Dominguez focuses his appeal on the validity of his arrest and the search and seizure of the sachet of *shabu* and, consequently, the admissibility of the sachet. Notably, the CA already highlighted the fact that Dominguez raised no objection to the irregularity of his arrest before arraignment.[37] Thus, considering such and his active participation in the trial of the case, the CA ruled that he is deemed to have submitted to the jurisdiction of the RTC, thereby curing any defect in his arrest.[38]

Well settled is the rule that an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment.[39] Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is

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[36] *Id*. at 48.

[37] *Id*. at 43.

[38] *Id*.

[39] *People v. Bringcula*, G.R. No. 226400, January 24, 2018, pp. 7-8, citing *People v. Bongalon*, 425 Phil. 96 (2002).

deemed waived.[40] Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.[41]

Applying the foregoing, the Court agrees that Dominguez had already waived his objection to the validity of his arrest. However, it must be stressed that such waiver only affects the jurisdiction of the court over the person of the accused but does not carry a waiver of the admissibility of evidence, as the Court ruled in *Homar v. People*:[42]

> We agree with the respondent that the petitioner did not timely object to the irregularity of his arrest before his arraignment as required by the Rules. In addition, he actively participated in the trial of the case. As a result, the petitioner is deemed to have submitted to the jurisdiction of the trial court, thereby curing any defect in his arrest.
>
> **However, this waiver to question an illegal arrest only affects the jurisdiction of the court over his person. It is well-settled that a waiver of an illegal, warrantless arrest does not carry with it a waiver of the inadmissibility of evidence seized during an illegal warrantless arrest.**[43] (Emphasis ours)

Thus, it is now necessary for the Court to ascertain whether the warrantless search which yielded the alleged contraband was lawful.

Enshrined in the Constitution is the inviolable right of the people to be secure in their persons and properties against unreasonable searches and seizures, as defined under Section 2, Article III thereof, which reads:

> Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search

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[40] *Id*. at 8.

[41] *Id*.

[42] 768 Phil. 195 (2015).

[43] *Id*. at 209.

warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. **In other words, evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.**[44]

Nevertheless, the constitutional proscription against warrantless searches and seizures is not absolute but admits of certain exceptions, namely: (1) warrantless search incidental to a lawful arrest recognized under Section 12, Rule 126 of the Rules of Court and by prevailing jurisprudence;[45] (2) seizure of evidence in plain view;[46] (3) search of moving vehicles;[47] (4) consented warrantless search;[48] (5) customs search; (6) stop and frisk

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[44] *People v. Manago*, 793 Phil. 505, 514-515 (2016) citing *Comerciante v. People*, 764 Phil. 627, 633-634 (2015).

[45] *Caballes v. CA*, 424 Phil. 263, 277 (2002) citing *People v. Figueroa*, 319 Phil. 21, 25 (1995); *Morfe v. Mutuc, et al.*, 130 Phil. 415 (1968); *Davis v. United States*, 328 U.S. 582 (1946).

[46] *Id*., citing *Obra, et al. v. CA, et al.*, 375 Phil. 1052 (1999); *People v. Bagista*, 288 Phil. 828, 836 (1992); *Padilla v. CA, et al.*, 336 Phil. 383, 401 (1997); *People v. Lo Ho Wing, et al*., 271 Phil. 120, 128 (1991); *Coolidge v. New Hampshire*, 403 U.S. 443 (1971).

[47] *Id*., citing *People v. Escaño, et al.,* 380 Phil. 719 (2000); *Aniag, Jr. v. Comelec*, 307 Phil. 437, 448 (1994); *People v. Saycon*, 306 Phil. 359, 366 (1994); *People vs. Exala*, 293 Phil. 538 (1993); *Valmonte v. de Villa*, 258 Phil. 838 (1989); *Carroll v. United States*, 267 U.S. 132 (1925).

[48] *Id*., citing *People v. Montilla*, 349 Phil. 640, 656 (1998); *People v. Cuizon*, 326 Phil. 345 (1996); *Mustang Lumber v. CA, et al*., 327 Phil. 214 (1996); *People v. Ramos*, 294 Phil. 553, 574 (1993); *People v. Omaweng*, 288 Phil. 350, 359-360 (1992).

situations (Terry search);[49] and (7) exigent and emergency circumstances.[50]

The CA and the RTC concluded that Dominguez was caught *in flagrante delicto*, declaring that he was caught in the act of actually committing a crime or attempting to commit a crime in the presence of the apprehending officers, when he was caught holding a sachet of *shabu*. Consequently, the warrantless search was considered valid as it was deemed an incident to the lawful arrest.

For an arrest of a suspect *in flagrante delicto*, two elements must concur, namely: (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.[51] The officer's personal knowledge of the fact of the commission of an offense is absolutely required.[52] The officer himself must witness the crime.[53]

The prosecution and the defense presented different versions of the events. However, even if the Court were to believe the version of the prosecution, the instant case reveals that there could have been no lawful warrantless arrest made on Dominguez. SPO1 Parchaso's testimony on direct examination discloses as follows:

[Fiscal Rodriguez:]

Q Where in particular did your group go?
A We proceeded immediately to the place where there was report, sir at Purok Tres, Barangay Poblacion, Muntinlupa City.

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[49] *Id*., citing *People v. Solayao*, 330 Phil. 811, 818 (1996); *Posadas v. CA*, 266 Phil. 306, 312 (1990) further citing *Terry v. Ohio*, 392 U.S. 1 (1968).

[50] *Id*., citing *People v. de Gracia*, 304 Phil. 118, 133 (1994) further citing *People v. Malmstedt*, 275 Phil. 447 (1991) and *Umil, et al. v. Ramos, et al*., 265 Phil. 325, 336-337 (1990).

[51] *Comerciante v. People*, *supra* note 44 at 635.

[52] *Id*.

[53] *Id*.

Q At approximately what time did you reach that Purok Tres at Barangay Poblacion?
A 2:00 in the morning, sir.

Q Upon reaching that place, what happened?
A We separated at the area where we conducted monitoring and observation, and I entered this one small alley, sir.

Q What is the name of this alley, if you know?
A It is near Argana Street, sir, Barangay Poblacion, Muntinlupa City.

Q While in the alley, what happened?
A When I was entering or approaching the said alley, I saw a man standing at the said alley, sir.

Q And what was this man doing?
A He is not far from me, about one (1) meter, sir, and I saw him holding maliit na plastic sachet.

Q Can you describe to this Honorable Court the alley where you found this person?
A It is a small alley, sir.

Q Is this alley lighted?
A Opo.

Q What was this man doing with the plastic sachet?
A When I saw him, sir, he was wearing a red t-shirt and white short. And he was holding the transparent plastic sachet on his left hand.

Q Upon seeing this, what did you do?
A I immediately grabbed him, held him and arrested him on the same time, sir.[54] (Emphasis added)

In *People v. Racho*,[55] the Court ruled that **the determination of validity of the warrantless arrest would also determine the validity of the warrantless search that was incident to the arrest**. A determination of whether there existed probable cause to effect an arrest should therefore be determined first, thus:

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[54] TSN, dated February 12, 2013, pp. 5-6.

[55] 640 Phil. 669 (2010).

Recent jurisprudence holds that in searches incident to a lawful arrest, the arrest must precede the search; generally, the process cannot be reversed. Nevertheless, a search substantially contemporaneous with an arrest can precede the arrest if the police have probable cause to make the arrest at the outset of the search. Thus, given the factual milieu of the case, we have to determine whether the police officers had probable cause to arrest appellant. **Although probable cause eludes exact and concrete definition, it ordinarily signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged.**[56] (Emphasis ours)

The circumstances as stated above do not give rise to a reasonable suspicion that Dominguez was in possession of *shabu*. From a meter away, even with perfect vision, SPO1 Parchaso would not have been able to identify with reasonable accuracy the contents of the plastic sachet. **Dominguez' acts of standing on the street and holding a plastic sachet in his hands, are not by themselves sufficient to incite suspicion of criminal activity or to create probable cause enough to justify a warrantless arrest.** In fact, SPO1 Parchaso's testimony reveals that before the arrest was made, he only saw that Dominguez was holding a small plastic sachet. He was unable to describe what said plastic sachet contained, if any. He only mentioned that the plastic contained "*pinaghihinalaang shabu*" after he had already arrested Dominguez and subsequently confiscated said plastic sachet:

[Fiscal Rodriguez:]

Q What happened after you arrested him?
A I was able x x x [to recover] from him, in his possession a transparent plastic sachet with pinaghihinalaang shabu, sir.[57]

The present case is similar to *People v. Villareal,*[58] where the Court held that the warrantless arrest of the accused was

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[56] *Id*. at 676- 677.

[57] TSN, dated February 12, 2013, p. 6.

[58] 706 Phil. 511 (2013).

unconstitutional, as simply holding something in one's hands cannot in any way be considered as a criminal act:

> On the basis of the foregoing testimony, the Court finds it inconceivable how PO3 de Leon, even with his presumably perfect vision, would be able to identify with reasonable accuracy, from a distance of about *8 to 10 meters* and while *simultaneously driving a motorcycle*, a negligible and minuscule amount of powdery substance (0.03 gram) inside the plastic sachet allegedly held by appellant. That he had previously effected numerous arrests, all involving *shabu*, is insufficient to create a conclusion that what he *purportedly* saw in appellant's hands was indeed *shabu*.
>
> **Absent any other circumstance upon which to anchor a lawful arrest, no other overt act could be properly attributed to appellant as to rouse suspicion in the mind of PO3 de Leon that he (appellant) had just committed, was committing, or was about to commit a crime, for the acts *per se* of walking along the street and examining something in one's hands cannot in any way be considered criminal acts.** In fact, even if appellant had been exhibiting unusual or strange acts, or at the very least appeared suspicious, the same would not have been sufficient in order for PO3 de Leon to effect a *lawful* warrantless arrest under paragraph (a) of Section 5, Rule 113.
>
> Neither has it been established that the rigorous conditions set forth in paragraph (b) of Section 5, Rule 113 have been complied with, *i.e.*, that an offense had in fact just been committed and the arresting officer had *personal knowledge* of facts indicating that the appellant had committed it. The factual circumstances of the case failed to show that PO3 de Leon had personal knowledge that a crime had been *indisputably* committed by the appellant. It is not enough that PO3 de Leon had reasonable ground to believe that appellant had just committed a crime; a crime must in fact have been committed first, which does not obtain in this case.[59] (Emphasis and underscoring ours)

The Court reached the same conclusion in the case of *Comerciante v. People*:[60]

> **On the basis of such testimony, the Court finds it highly implausible that PO3 Calag, even assuming that he has perfect**

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[59] *Id.* at 519-520.

[60] 764 Phil. 627 (2015).

vision, would be able to identify with reasonable accuracy — especially from a distance of around 10 meters, and while aboard a motorcycle cruising at a speed of 30 kilometers per hour — miniscule amounts of white crystalline substance inside two (2) very small plastic sachets held by Comerciante. The Court also notes that no other overt act could be properly attributed to Comerciante as to rouse suspicion in the mind of PO3 Calag that the former had just committed, was committing, or was about to commit a crime. Verily, the acts of standing around with a companion and handing over something to the latter cannot in any way be considered criminal acts. In fact, even if Comerciante and his companion were showing "improper and unpleasant movements" as put by PO3 Calag, the same would not have been sufficient in order to effect a lawful warrantless arrest under Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure. That his reasonable suspicion bolstered by (*a*) the fact that he had seen his fellow officers arrest persons in possession of *shabu*; and (*b*) his trainings and seminars on illegal drugs when he was still assigned in the province are insufficient to create a conclusion that what he purportedly saw in Comerciante was indeed *shabu*.[61] (Emphasis and underscoring ours)

The prosecution failed to establish the conditions set forth in Section 5 (a), Rule 113[62] of the Rules of Court that: (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. As already discussed, standing on the street and holding a plastic sachet in one's hands cannot in any way be considered as criminal acts. Verily, it is not enough that the arresting officer had reasonable ground to believe that the accused had just committed a crime; a crime must, in fact, have been committed first,[63] which does not obtain in this case.

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[61] *Id.* at 638-639.

[62] Sec. 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;

[63] See *People v. Villareal*, *supra* note 59.

As regards the ruling of the CA, wherein it noted that Dominguez was caught with a sachet of *shabu* in plain view, the Court holds that the plain view doctrine is inapplicable in the case at bar. In *People v. Compacion*,[64] citing *People v. Musa*,[65] the Court explained how the plain view doctrine applies and ruled that it does not apply if it is not readily apparent to the police officers that they have evidence incriminating the accused, thus:

> The "plain view" doctrine may not, however, be used to launch unbridled searches and indiscriminate seizures nor to extend a general exploratory search made solely to find evidence of defendant's guilt. The "plain view" doctrine is usually applied where a police officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object. [*Coolidge v. New Hampshire*, 403 U.S. 443, 29 L. Ed. 2d 564 (1971)] Furthermore, the U.S. Supreme Court stated the following limitations on the application of the doctrine:
>
> > What the "plain view" cases have in common is that the police officer in each of them had a prior justification for an intrusion in the course of which he came inadvertently across a piece of evidence incriminating the accused. The doctrine serves to supplement the prior justification — whether it be a warrant for another object, hot pursuit, search incident to lawful arrest, or some other legitimate reason for being present unconnected with a search directed against the accused — and permits the warrantless seizure. **Of course, the extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the "plain view" doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.** [*Id*., 29 L. Ed. 2d 583. *See* also *Texas v. Brown*, 460 U.G. 730, 75 L. Ed. 2d 502 (1983)]

It was not even apparent to the members of the composite team whether the plants involved herein were indeed marijuana plants. After said plants were uprooted, SPO1 Linda had to conduct a field

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[64] 414 Phil. 68 (2001).

[65] 291 Phil. 623, 640 (1993).

test on said plants by using a Narcotics Drug Identification Kit to determine if the same were indeed marijuana plants. Later, Senior Inspector Villavicencio, a forensic chemist, had to conduct three (3) qualitative examinations to determine if the plants were indeed marijuana.[66]

The plain view doctrine applies when the following requisites concur: (a) the law enforcement officer in search of the evidence has a prior justification for an intrusion or is in a position from which he can view a particular area; (b) the discovery of the evidence in plain view is inadvertent; and (c) it is immediately apparent to the officer that the item he observes may be evidence of a crime, contraband, or otherwise subject to seizure.[67] The law enforcement officer must lawfully make an initial intrusion or properly be in a position from which he can particularly view the area.[68] In the course of such lawful intrusion, he came inadvertently across a piece of evidence incriminating the accused. The object must be open to eye and hand, and its discovery inadvertent.[69]

In the case at hand, while it can be said that the presence of the police officers was legitimate as they were patrolling the area and that discovery of the plastic sachet was inadvertent, it should be emphasized that, as to the third requisite, it was clearly not apparent that such plastic sachet is an evidence of a crime, a contraband, or otherwise subject to seizure. To recall, when SPO1 Parchaso saw Dominguez, he only saw that Dominguez was holding a very small plastic sachet. To the Court's mind, a very small plastic sachet is not readily apparent as evidence incriminating Dominguez, such that it can be seized without a warrant. A very small plastic sachet can contain just about anything. It could even be just that — a very small plastic sachet — and nothing more.

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[66] *People v. Compacion*, *supra* note 64 at 84.

[67] *People v. Chi Chan Liu*, 751 Phil. 146, 169 (2015).

[68] *Id*. at 169-170.

[69] *Id*. at 170.

Although laboratory results later showed that the plastic sachet taken from Dominguez indeed contained *shabu*, this cannot justify the seizure of the plastic sachet from Dominguez because at the time of the warrantless seizure, it was not readily apparent to SPO1 Parchaso that the very small plastic sachet contained anything, much less *shabu*. Thus, the circumstances of this case do not justify a seizure based on the plain view doctrine.

In sum, despite the fact that Dominguez can no longer question the validity of his arrest, it is crystal clear that the sachet of *shabu* seized from him during the warrantless search is inadmissible in evidence against him. There being no warrantless search incidental to a lawful arrest or seizure of evidence in plain view, the *shabu* purportedly seized from Dominguez is rendered inadmissible in evidence for being the proverbial fruit of the poisonous tree. As the confiscated *shabu* is the very *corpus delicti* of the crime charged, Dominguez must be acquitted and exonerated from all criminal liability.

The Court is not unaware of the drug menace that besets the country and the direct link of certain crimes to drug abuse.[70] The unrelenting drive of law enforcers against trafficking and use of illegal drugs and other substance is indeed commendable.[71] Those who engage in the illicit trade of dangerous drugs and prey on the misguided members of the society, especially the susceptible youth, must be caught and properly prosecuted.[72] Nonetheless, the Court acknowledges that this campaign against drug addiction is highly susceptible to police abuse and that there have been cases of false arrests and wrongful indictments.

The Court has recognized, in a number of cases, that law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians.[73] Thus, to the Court's mind, the allegation of Dominguez that he was a victim of

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[70] *People v. Gatlabayan*, 669 Phil. 240, 261 (2011).

[71] *Id*.

[72] *Id*.

[73] *People v. Dela Cruz*, 666 Phil. 593, 610 (2011).

extortion has the ring of truth to it. In this regard, the Court reminds the trial courts to exercise extra vigilance in trying drug cases, and directs the Philippine National Police to conduct an investigation on this incident and other similar cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

The overriding consideration is not whether the Court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt.[74] In order to convict an accused, the circumstances of the case must exclude all and every hypothesis consistent with his innocence.[75] What is required is that there be proof beyond reasonable doubt that the crime was committed and that the accused committed the crime.[76] It is only when the conscience is satisfied that the crime has indeed been committed by the person on trial that the judgment will be for conviction.[77] In light of this, Dominguez must perforce be acquitted.

As a final note, the Court reiterates that it is committed to assist the government in its campaign against illegal drugs; however, a conviction can only be obtained after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt. Otherwise, this Court is duty-bound to uphold the constitutional presumption of innocence.[78]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated May 9, 2017 of the Court of Appeals in CA-G.R. CR No. 38665 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Marlon Dominguez *y* Argana is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held

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[74] *People v. Gatlabayan*, *supra* note 70 at 260.

[75] *Id*.

[76] *Id*., citing *People v. Mangat*, 369 Phil. 347, 359 (1999).

[77] *Id*.

[78] See *id*. at 261 and *People v. Jugo*, G.R. No. 231792, January 29, 2018, pp. 9-10.

for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 240914. March 13, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALD[*] ESPEJO *y* RIZALDO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; PROCEDURE THAT POLICE OFFICERS MUST FOLLOW TO PRESERVE THE INTEGRITY OF THE CONFISCATED DRUGS USED AS EVIDENCE.— In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty. Thus, in order to obviate any unnecessary doubt on their identity, the prosecution has to show

[*] Spelled as "Reynaldo" in some parts of the CA *rollo* and records.

an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. In this regard, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.

2. ID.; ID.; ID.; FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OF THE ITEMS VOID AND INVALID AS LONG AS THE PROSECUTION SATISFACTORILY PROVE THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody of the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses. Without any justifiable explanation, which must be proven as a fact, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond

reasonable doubt. x x x In the present case, the prosecution neither recognized, much less tried to justify or explain, the buy-bust team's deviation from the procedure contained in Section 21. The police officers did not offer any justifiable reason for the absence of the required witnesses during the buy-bust operation itself, especially where, as here, they could have done so. The integrity and evidentiary value of the *corpus delicti* have thus been compromised, thus necessitating the acquittal of Espejo.

3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED; LAPSES IN THE PROCEDURE UNDERTAKEN BY THE BUST TEAM ARE AFFIRMATIVE PROOFS OF IRREGULARITY; CASE AT BAR.— The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. The Court has ruled in *People v. Zheng Bai Hui* that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [T]he elements of illegal possession of drugs were not satisfactorily proven by the prosecution. The successful prosecution of illegal possession of drugs necessitates the following facts to be proved, namely: (a) the accused was in possession of the dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of the dangerous drugs.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated February 21, 2018 of the Court of Appeals, Seventh Division (CA) in CA-G.R. CR-HC No. 08989, which affirmed the Consolidated Judgment[3] dated December 7, 2016 rendered by the Regional Trial Court, Branch 31, San Pedro City, Laguna (RTC) in Criminal Case No. 14-9583-SPL and Criminal Case No. 14-9584-SPL, finding accused-appellant Reynald Espejo *y* Rizaldo (Espejo) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

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[1] See Notice of Appeal dated March 12, 2018, *rollo*, pp. 14-15.

[2] *Rollo*, pp. 2-13. Penned by Associate Justice Manuel M. Barrios with Associate Justices Japar B. Dimaampao and Jhosep Y. Lopez, concurring.

[3] CA *rollo*, pp. 56-63. Penned by Judge Sonia T. Yu-Casano.

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

The Facts

The two separate Informations[5] filed against Espejo for violation of Sections 5 and 11, Article II of RA 9165 pertinently read:

[Criminal Case No. 14-9583-SPL (Illegal Sale of Dangerous Drugs)]

That on or about March 12, 2014, in the City of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court[,] the above-named accused without any legal authority, did then and there willfully, unlawfully and feloniously sell, pass and deliver to SPO1 Victor P. Ver, a police poseur[-]buyer, one (1) small heat-sealed plastic sachet containing MET[H]AMPHETAMINE HYDROCHLORIDE or Shabu, a dangerous [drug], weighing zero point ten (0.10) gram.

CONTRARY TO LAW.[6] (Emphasis and underscoring supplied)

[Criminal Case No. 14-9584-SPL (Illegal Possession of Dangerous Drugs)]

That on or about March 12, 2014, in the City of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court[,] accused REYNALD ESPEJO y RIZALDO @ Bansot without any legal authority[,] did then and there willfully, unlawfully and feloniously have in his possession, control and custody Methamphetamine Hydrochloride (SHABU) [,] a dangerous drug, placed in four (4) heat sealed transparent plastic sachets, with a total weight of zero point forty (0.40) gram.

CONTRARY TO LAW.[7] (Emphasis and underscoring supplied)

Upon arraignment, Espejo pleaded not guilty to both charges.[8]

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

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[5] Records, pp. 1-1A.

[6] *Id*. at 1.

[7] *Id*. at 1A.

[8] *Rollo*, p. 4.

The witnesses for the prosecution were SPO1 Victor Ver, and SPO4 Edwin Goyena. The tes[t]imony of Forensic Chemist Donna Villa Huelgas was dispensed with upon stipulation of the parties. x x x

From the prosecution's evidence, it is gathered that on 12 March 2014, at around 9:45 in the morning, operatives from the Philippine National Police (PNP) stationed at the Provincial Intelligence Branch (PIB) of the Laguna Police Provincial Office in Sta. Cruz, Laguna, received a report from a "concerned citizen" that herein accused-appellant (Reynald Espejo a.k.a. "Bansot"), was engaged in illegal drug trade in the area of Laguerta Street, Barangay San Vicente, San Pedro, Laguna.

Initially, a trusted confidential agent was dispatched to verify the report; and when the report was confirmed, SPO1 Ver relayed the information to team leader SPO4 Edwin Goyena who, in turn, communicated with their superior, P/Supt Jerry V. Protacio. Thereafter, P/Supt Protacio formed a buy-bust team, consisting of SPO1 Ver and the informant as poseur-buyers, SPO4 Goyena as back-up security, and the rest of the team as perimeter security. Incidentally, the informant described accused-appellant as sporting a mustache and was [*sic*] wearing a grey t-shirt and black shorts on that day. A ₱500.00 buy-bust money was given to SPO1 Ver which he promptly marked with his initials, "VPV" at the right upper portion. The agreed pre-arranged move to signal that the transaction has been carried out was for SPO1 Ver to scratch his head. Lastly, as part of the standard operating procedure, the team prepared the Coordination and Pre-Operation Report and sent them to the Philippine Drug Enforcement Agency (PDEA).

Around 2:00 in the afternoon later that day, the team proceeded to the target area and saw accused-appellant standing by the doorstep of a house while conversing with another person. At a certain point, they saw accused-appellant hand over to that person a plastic sachet of suspected shabu. At about 2:15 in the afternoon, PO1 Ver and the informant alighted from the vehicle. They walked towards accused-appellant who came out of the house. Accused-appellant uttered "*Ilan tol?* " SPO1 Ver replied, "*Lima tol,*" (meaning, ₱500 worth of shabu). SPO1 Ver gave the buy-bust money to accused-appellant. Accused-appellant accepted the money, and then pulled from underneath the ceiling a coin purse from which he retrieved several plastic sachets of suspected shabu. Accused-appellant gave one (1) sachet to SPO1 Ver, and then placed the buy-bust money inside the purse along with the other sachets. At this juncture, SPO1 Ver scratched his head to

signal the consummation of the transaction. SPO1 Ver held accused-appellant and introduced himself as a police officer, while the back-up team and the perimeter security rushed in. SPO1 Ver recovered the coin purse that contained four (4) other plastic sachets with the ₱500.00 buy-bust money. At the place of transaction, SPO1 Ver immediately marked all the sachets seized. Thenceforth, they brought accused-appellant and the seized items to the police station, and thereupon, prepared the Request for Laboratory Examination and a Certificate of Inventory. Likewise, photographs of the accused-appellant and the seized items were taken in the presence [of] a representative from the media. After documentation, SPO1 Ver and SPO4 Goyena personally delivered the request and the substances to the PNP Crime Laboratory at Camp Vicente Lim, Calamba City. After chemical examination, the substances were confirmed positive for *methamphetamine hydrochloride*.[9]

Version of the Defense

On the other hand, the defense presented Espejo as the sole witness and the defense's version, as summarized by the CA, is as follows:

> In his defense, accused-appellant flatly denied the charges against him, and presented a different version of the incident, asserting that on 12 March 2014, around 9:00 in the morning, he was plying his tricycle along Barangay San Vicente, San Pedro, Laguna. As he was about to convey a passenger bound for Barangay Calendola, some police officers blocked his path and ordered him to go with them because he has a standing warrant of arrest. He yielded and went with them. While on their way to the police station, the police officers asked him about certain individuals named "Baby", "Pato", and "Buko" who, however, were not known to him. Upon arrival at the station, he was brought inside a room where he saw for the first time the illegal drugs placed on a table which he was being implicated of selling and possessing.[10]

Ruling of the RTC

In the assailed Consolidated Judgment dated December 7, 2016, the RTC ruled that after a careful assessment of the

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

[10] *Id*. at 6-7.

evidence presented by the parties, it is convinced that the evidence adduced by the prosecution proves with moral certainty the presence of all the elements of the crime of Illegal Sale of Dangerous Drugs.[11] Not only had the commission of the crime been proven, the integrity of the article sold and its chain of custody from the time it was delivered to the poseur-buyer, to the time it was brought to the police station, to its very delivery to the Philippine National Police (PNP) Crime Laboratory and finally, to its submission to the RTC, have also been proven with moral certainty.[12] It further ruled that the defense of frame-up often imputed to police officers requires strong proof when offered as defense because of the presumption that public officers act in the regular performance of their official duties.[13]

It likewise ruled that the crime of Illegal Possession of Dangerous Drugs was proven with moral certainty.[14] Having been caught *in flagrante delicto* following a buy-bust operation, his subsequent arrest is valid.[15] Considering the legality of the warrantless arrest during the buy-bust operation, the subsequent warrantless search resulting in the recovery of four more plastic sachets of *shabu* from Espejo's possession is valid and the seized *shabu* is admissible in evidence.[16]

The dispositive portion of the Judgment reads:

WHEREFORE, a consolidated judgment is hereby rendered as follows:

1. In Criminal Case No. 14-9583-SPL, accused Reynald Espejo *y* Rizaldo is found GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act 9165 and he is hereby sentenced to suffer the penalty of life

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[11] CA *rollo*, p. 60.

[12] *Id*.

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

[14] *Id*. at 61.

[15] *Id*.

[16] *Id*.

imprisonment and to pay a fine of Five Hundred Thousand (₱500,000.00) Pesos without subsidiary imprisonment in case of insolvency.

The period of his preventive imprisonment should be given full credit.

2. In Criminal Case No. 14-9584-SPL, accused Reynald Espejo y Rizaldo is hereby found GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act 9165 and he is hereby sentenced to suffer imprisonment of twelve (12) years and one day as minimum to fourteen (14) years and eight months as maximum and to pay a fine of Three Hundred Thousand (₱300,000.00) pesos without subsidiary imprisonment in case of insolvency.

The period of his preventive imprisonment should be given full credit.

x x x x x x x x x

SO ORDERED.[17]

Aggrieved, Espejo appealed to the CA.

Ruling of the CA

In the assailed Decision dated February 21, 2018, the CA affirmed Espejo's conviction. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Decision dated 07 December 2016 of the Regional Trial Court, Branch 31, San Pedro City, Laguna, is **AFFIRMED**.

SO ORDERED.[18]

The CA ruled that all the elements of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs have been satisfactorily proven by the prosecution.[19] It further ruled that

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

[18] *Rollo*, p. 13.

[19] *Id.* at 8.

the absence of a Department of Justice (DOJ) Representative and Barangay Official during the inventory is of no consequence.[20] In cases involving dangerous drugs, the mandatory procedure of Section 21 of RA 9165 and its Implementing Rules and Regulations (IRR) require only substantial compliance.[21] The alleged discrepancies in the testimonies of SPO1 Victor Ver (SPO1 Ver) and SPO4 Edwin Goyena (SPO4 Goyena) as to who had actual custody of the drugs do not necessarily mean that their declarations are not credible and that their testimonies should be completely discarded as worthless.[22] Neither is the failure to present the police investigator, PO2 Jonielyn Tanael and a certain SPO1 Reposar who supposedly received the drug substances at the crime laboratory a fatal factor against the prosecution, since it has the discretion on how to present its case and the right to choose whom it wishes to present as witnesses.[23] As long as the unbroken chain of custody of the seized drugs was clearly established and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.[24]

Hence, the instant appeal.

Issue

Whether Espejo's guilt for violation of Sections 5 and 11 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious. The accused is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[25] and the fact

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[20] *Id*. at 9.

[21] *Id*. at 9-10.

[22] *Id*. at 11.

[23] *Id*.

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

[25] *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

of its existence is vital to sustain a judgment of conviction.[26] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[27] Thus, in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[28]

In this regard, Section 21, Article II of RA 9165,[29] the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media,**

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[26] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[27] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, 850 SCRA 464, 479.

[28] *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

[29] The said Section reads as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/ her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy of the same; and (3) the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.[30]

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[31] **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has sufficient time to gather and bring with them the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;[32] and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody of the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[33] It has been repeatedly

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[30] See RA 9165, Art. II, Sec. 21 (1) and (2).

[31] IRR of RA 9165, Art. II, Sec. 21 (a).

[32] *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[33] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.[34] Without any justifiable explanation, which must be proven as a fact,[35] the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[36]

The buy-bust team failed to comply with the mandatory requirements under Section 21.

In the present case, the buy-bust team failed to strictly comply with the mandatory requirements under Section 21, paragraph 1 of RA 9165.

First, none of the three required witnesses was present at the time of arrest of the accused and the seizure of the drugs. The conduct of the marking, inventory, and taking of photograph at the police station was not done in the presence of a DOJ representative and an elected barangay official — it was done only before a media representative. **Neither can it be shown from the respective testimonies of the arresting officers that reasonable efforts were exerted to contact the other required witnesses**. As testified by SPO4 Goyena:

> Q37. When you arrived at your office, at PIB, Laguna Provincial Officer [*sic*], what if any, did you do?
> A. We prepared the necessary documents like the request for laboratory examination, request for drug test, the receipt for physical inventory, and took the mug shot of the accused, sir.
>
> x x x x x x x x x
>
> **Q39. During the inventory, who were present?**
> **A. The media man, Mr. Ding Bemudez, sir.**[37] (Emphasis and underscoring supplied)

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[34] *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[35] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[36] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

[37] TSN, October 6, 2015, p. 6.

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[38] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,[39] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.
>
> The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.
>
> The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

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[38] G.R. No. 228890, April 18, 2018.

[39] 736 Phil. 749, 764 (2014).

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[40]

Second, the buy-bust team failed to offer any explanation for its failure to strictly comply with the requirements of Section 21.

It bears stressing that the prosecution has the burden of (1) proving the police officers' compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,[41]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention;** or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**[42] (Emphasis in the original and underscoring supplied)

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[40] *People v. Tomawis*, *supra* note 38, at 11-12.

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

[42] *Id*. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

None of the abovementioned circumstances was attendant in the case. The buy-bust team could have strictly complied with the requirements of Section 21 since at the time they arrested the accused, as narrated by the witnesses for the prosecution, Espejo was alone at home. Thus, there was no apparent reason for them to delay and postpone the conduct of inventory and photographing of the seized items at the police station.

Moreover, the fact that they were able to contact a media representative to be present at the police station during the physical inventory and photographing of the illegal drugs seized means that they also had sufficient time and resources to contact the other mandatory witnesses. However, they utterly failed to do so and offered no explanation regarding this matter.

In this connection, it has been repeatedly held by the Court that the practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to "witness" the inventory and photographing of the illegal drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.[43]

The saving clause does not apply to this case.

As earlier stated, following the IRR of RA 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites are present: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.**[44] If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the non-compliance with the

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[43] *People v. Musor*, G.R. No. 231843, November 7, 2018.

[44] COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, as amended by RA 10640, § 21 (1).

mandatory requirements of Section 21. In this regard, it has also been emphasized that the State bears the burden of proving the justifiable cause.[45] Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.[46]

Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* have consequently been compromised.[47] As the Court explained in *People v. Reyes*:[48]

> Under the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal. x x x[49] (Emphasis supplied)

In the present case, the prosecution neither recognized, much less tried to justify or explain, the buy-bust team's deviation from the procedure contained in Section 21. The police officers did not offer any justifiable reason for the absence of the required witnesses during the buy-bust operation itself, especially where, as here, they could have done so.

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[45] *People v. Beran*, 724 Phil. 788, 822 (2014).

[46] *People v. Reyes*, 797 Phil. 671, 690 (2016).

[47] *People v. Sumili*, 753 Phil. 342, 352 (2015).

[48] *Supra* note 46.

[49] *Id*. at 690.

The integrity and evidentiary value of the *corpus delicti* have thus been compromised, thus necessitating the acquittal of Espejo.

The presumption of innocence of the accused is superior over the presumption of regularity in performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[50] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[51]

Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[52] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[53] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[54]

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. The Court has ruled in *People v. Zheng Bai Hui*[55] that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-

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[50] CONSTITUTION, Art. III, Sec. 14, par. (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[51] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[52] *People v. Mendoza*, *supra* note 39, at 769-770.

[53] *Id*.

[54] *People v. Catalan*, 699 Phil. 603, 621 (2012).

[55] 393 Phil. 68, 133 (2000).

bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. Also, the elements of illegal possession of drugs were not satisfactorily proven by the prosecution. The successful prosecution of illegal possession of drugs necessitates the following facts to be proved, namely: (a) the accused was in possession of the dangerous drugs, (b) such possession was not authorized by law, and (c) the accused was freely and consciously aware of being in possession of the dangerous drugs.[56] For both offenses, it is crucial that the prosecution establishes the identity of the seized dangerous drugs in a way that the integrity thereof has been well-preserved from the time of seizure or confiscation from the accused until the time of presentation as evidence in court.[57] In this case, the prosecution utterly failed to prove that the integrity and evidentiary value of the seized drugs were preserved. The same breaches of procedure in the handling of the illegal drug subject of the illegal sale charge equally apply to the illegal drug subject of the illegal possession charge. Corollary, the prosecution was not able to overcome the presumption of innocence of Espejo.

Moreover, considering that the warrantless arrest of the accused was illegal, the subsequent warrantless search resulting in the recovery of four more plastic sachets of *shabu* from Espejo's possession is invalid and the seized *shabu* is inadmissible in evidence being under the law, "fruit of the poisonous tree."[58] Espejo must perforce also be acquitted of the charge of violating Section 11, RA 9165.

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[56] *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012).

[57] *Id*.

[58] *People v. Alicando*, 321 Phil. 656 (1995).

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[59]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated February 21, 2018 of the Court of Appeals, Seventh Division in CA-G.R. CR-HC No. 08989, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Reynald Espejo *y* Rizaldo** is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

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[59] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 337-338.

SECOND DIVISION

[G.R. No. 211839. March 18, 2019]

PRIVATIZATION AND MANAGEMENT OFFICE, *petitioner, vs.* **COURT OF TAX APPEALS and CITY GOVERNMENT OF TACLOBAN,** *respondents.*

SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 1125, AS AMENDED (AN ACT CREATING THE COURT OF TAX APPEALS); COURT OF TAX APPEALS (CTA); APPEAL FROM THE DECISION OF THE CITY TREASURER OF A LOCAL GOVERNMENT UNIT TO THE CTA; CTA MAY ORDER SUSPENSION OF THE COLLECTION OF TAXES, WHEN IN ITS VIEW, THE COLLECTION MAY JEOPARDIZE THE INTEREST OF THE GOVERNMENT AND/OR TAXPAYER, PROVIDED THE TAXPAYER EITHER DEPOSITS THE AMOUNT CLAIMED OR FILES A SURETY BOND FOR NOT MORE THAN DOUBLE THE AMOUNT; CASE AT BAR.— With the expansion of the jurisdiction of the CTA, it has now the power to take cognizance of cases appealed to it involving real property taxation. The foregoing provision provides for the rule that an appeal to the CTA from the decision of the City Treasurer of a Local Government Unit (as in this case) will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability, as provided by existing law. However, when, in the view of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond. It is clear from the foregoing that the CTA may order the suspension of the collection of taxes, provided that the taxpayer either: (1) deposits the amount claimed; or (2) files a surety bond for not more than double the amount. These condition precedents were required by law in order to guarantee the payment of the deficiency taxes assessed against the taxpayer, if and when the case is finally decided against the said taxpayer.

2. ID.; ID.; ID.; ID.; ID.; FILING A SURETY BOND AS A CONDITION PRECEDENT TO THE SUSPENSION OF

TAX COLLECTION IS NOT NECESSARY WHEN THE METHOD EMPLOYED BY THE TAXING AUTHORITY IN COLLECTING REALTY TAXES DUE IS NOT SANCTIONED BY LAW; CASE AT BAR.— [T]he requirement of the bond as a condition precedent to the issuance of the writ of injunction applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law for such cases provided and not when said processes are obviously in violation of the law to the extreme that they have to be suspended for jeopardizing the interests of taxpayer. This principle was echoed in the recent case of *Spouses Pacquiao v. Court of Tax Appeals*, when the Court held: From all the foregoing, it is clear that the authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond is not simply confined to cases where prescription has set in. As explained by the Court in those cases, ***whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law,*** the bond requirement under Section 11 of R.A. No. 1125 should be dispensed with. In the instant case, there was a clear showing that the method employed by the respondent City in the collection of the real property taxes contravened existing law and jurisprudence. It must be underscored that the petitioner filed the motion to suspend the collection of tax, not so much to stay the collection thereof, but actually to thwart the threat of the property being sold in public auction which may effectively divest the petitioner, the PTA and the Province of Leyte of the ownership over the property.

3. **POLITICAL LAW; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE); REAL PROPERTY TAXATION; REAL PROPERTY OWNED BY THE GOVERNMENT IS EXEMPT FROM PAYMENT OF REAL PROPERTY TAXES EXCEPT WHEN THE BENEFICIAL USE THEREOF HAS BEEN GRANTED TO A TAXABLE PERSON; CASE AT BAR.—** The petitioner recognized the fact – which was affirmed in the CTA *En Banc* Decision dated August 22, 2014, that as a government entity, it is exempt from payment of real property taxes pursuant to Section 234(a) of the 1991 Local Government Code or R.A. No. 7160. The said provision also provides that when the beneficial use of the real

property owned by the Republic or any of its political subdivision, is vested to a taxable person, the real property is subject to tax. Petitioner, together with the PTA and the Province of Leyte, had already admitted that they are co-owners of the subject property and they were leasing the same to UCI, a private entity pursuant to a Contract of Lease dated September 15, 1994. Thus, pursuant to the aforementioned Local Government Code provision and also in the case of *National Power Corporation v. Province of Quezon*, where this Court ruled: The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the 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.** But, without, however, prejudging the appealed case on the merits, UCI, the actual and beneficial user of subject property can be said to be directly liable for the real property taxes on the property owned by the government. It is a settled rule that property of public dominion, being outside the commerce of man, cannot be the subject of an auction sale, levy, encumbrance or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Under Article 420 of the Civil Code, the subject property (the LPHI) is a property of the public dominion owned by the State, through its agents and instrumentalities.

4. CIVIL LAW; PROPERTY; PROPERTY OF PUBLIC DOMINION; OUTSIDE THE COMMERCE OF MAN, THUS CANNOT BE PRIVATE SALE; CASE AT BAR.— Thus, being a property of public dominion, the subject property cannot be subject of public auction sale, notwithstanding its realty tax delinquency. This means that the respondent City has to satisfy its realty tax claims by serving the accrued realty tax assessment upon UCI, as the taxable beneficial user of the subject property and in case of UCI's non-payment, through any means other than the sale at public auction of the leased property.

APPEARANCES OF COUNSEL

City Legal Office for City Government of Tacloban.

D E C I S I O N

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

This Petition for *Certiorari* under Rule 65 of the 1997 Rules of Court assails the Resolutions of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB Case No. 901, as follows:

a) Resolution dated February 7, 2013[1] which, although it granted petitioner Privatization and Management Office's (PMO's) Motion for Suspension of Collection of Real Property Tax and Cancellation of Warrants of Levy, it however required the posting/filing of a surety bond equivalent to one and one-half of the amount sought to be collected;

b) Resolution dated March 1, 2013[2] which declared as moot the Motion for Exemption from Posting of Surety Bond filed by PMO and the Philippine Tourism Authority (PTA, now Tourism Infrastructure and Enterprise Zone Authority [TIEZA]), as the latter had already posted the required surety bond; and

c) Resolution dated January 29, 2014,[3] which denied PMO's Motion for Reconsideration.

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[1] Concurred in by Acting Presiding Justice Juanito C. Castañeda, Jr. and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia Cotangco-Manalastas; *rollo*, pp. 35-42.

[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Acting Presiding Justice Juanito C. Castañeda, Jr. and Associate Justices Lovell R. Baustista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas, concurring; *id*. at 45-46.

[3] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito

The PMO (petitioner), the Province of Leyte and the PTA are the owners of the Leyte Park Hotel, Inc. (LPHI), a real property with improvement situated within the territorial and taxing jurisdiction of private respondent City Government of Tacloban (respondent City).[4]

The facilities of LPHI were leased out to Unimaster Conglomeration, Inc. (UCI) for a monthly rental of ₱300,000.00 for a period of 12 years.[5] Meanwhile, respondent City sent several demand letters to UCI for it to pay the real property taxes of LPHI in the amount of ₱23,377,353.08.[6]

However, despite repeated demands by respondent City, the real property taxes remained unpaid. Hence, on December 15, 2004, respondent City filed a complaint for Collection of Sum of Money before the CTA Special First Division, against the LPHI and UCI. Thereafter, respondent City amended its complaint and impleaded additional defendants, namely: The Province of Leyte, the PTA and the petitioner. Petitioner filed its Answer and argued, among others, that the liability to pay real property taxes devolves on UCI pursuant to Section 234 of the Local Government Code.

After trial, the CTA Special First Division rendered a Decision[7] dated November 15, 2011 in CTA OC No. 012 holding UCI liable for the payment of the unpaid real property taxes. UCI moved to reconsider but the same was denied. Aggrieved, UCI filed a Petition for Review with the CTA *En Banc*. During the pendency of the aforesaid petition, respondent City filed a Motion for Execution Pending Appeal before the CTA Special First Division but the motion was denied. Despite the CTA denial,

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N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban, concurring; *id*. at 49-56.

[4] *Id*. at 287.

[5] *Id*. at 12.

[6] *Id*.

[7] Penned by Associate Justice Lovell R. Bautista, with Associate Justices Ernesto D. Acosta and Caesar A. Casanova, concurring; *id*. at 362-405.

respondent City still issued warrants of levy against the properties of petitioner, allegedly to place the subject properties for auction.

On December 6, 2012, petitioner filed a Motion for Suspension of Collection of Real Property Tax and Cancellation of Warrants of Levy before the CTA *En Banc*.

On February 7, 2013, the CTA *En Banc* issued the now assailed Resolution granting petitioner's Motion for Suspension of Collection of Real Property Tax and Cancellation of Warrants of Levy conditioned on its filing of a surety bond equivalent to one and one-half of the amount sought to be collected by respondent City.

On February 14, 2013, petitioner filed a Motion for Exemption from Posting of Surety Bond on the ground that national government agencies and instrumentalities, such as petitioner, are not, and should not be required to file any bond as there should be no doubt as to the solvency of the Republic of the Philippines. However, as a precautionary measure, petitioner filed on February 15, 2013 its Compliance *Ad Cautelam* and filed a Government Service Insurance System (GSIS) Surety Bond in order to ensure suspension of the collection of the real property tax being sought by the respondent City and prevent execution of the warrants of levy.

On March 1, 2013, the CTA *En Banc* issued the assailed Resolution which considered petitioner's Motion for Exemption from Posting of Surety Bond as moot by virtue of the latter's filing of the aforementioned surety bond. On April 3, 2013, petitioner filed a Motion for Reconsideration but the same was denied in another assailed Resolution dated January 29, 2014.

Dissatisfied, petitioner filed the instant petition for *certiorari* on the ground that respondent CTA committed grave abuse of discretion amounting to lack or in excess of jurisdiction in:

A. DIRECTING PETITIONER, THROUGH ITS RESOLUTION DATED FEBRUARY 7, 2013, TO POST A SURETY BOND IN ORDER TO STAY THE COLLECTION OF REAL PROPERTY TAX SOUGHT BY RESPONDENT CITY

GOVERNMENT OF TACLOBAN AND PREVENT EXECUTION ON THE WARRANTS OF LEVY[;]

B. HOLDING, IN ITS RESOLUTION DATED MARCH 1, 2013, THAT PETITIONER'S MOTION FOR EXEMPTION FROM POSTING OF SURETY BOND HAS BEEN RENDERED MOOT[; and]

C. DENYING, IN ITS RESOLUTION DATED JANUARY 29, 2014, PETITIONER'S MOTION FOR RECONSIDERATION.[8]

Central to the instant petition is the issue of whether or not petitioner, as an agency of the government, is exempt from posting a surety bond as a condition to the suspension of collection of real property tax.

Section 9 of Republic Act (R.A.) No. 9282[9] amending Section 11 of R.A. No. 1125,[10] provides as follows:

SEC. 9. Section 11 of the same Act is hereby amended to read as follows:

SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal*. x x x

x x x x x x x x x

No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture, as the case may be, shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: *Provided, however*, That when in

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[8] *Id*. at 16-17.

[9] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES, March 30, 2004.

[10] AN ACT CREATING THE COURT OF TAX APPEALS, June 16, 1954.

> the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer[,] the Court[, at] any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.
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> x x x x x x x x x

With the expansion of the jurisdiction of the CTA, it has now the power to take cognizance of cases appealed to it involving real property taxation. The foregoing provision provides for the rule that an appeal to the CTA from the decision of the City Treasurer of a Local Government Unit (as in this case) will not suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability, as provided by existing law. However, when, in the view of the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond.

It is clear from the foregoing that the CTA may order the suspension of the collection of taxes, provided that the taxpayer either: (1) deposits the amount claimed; or (2) files a surety bond for not more than double the amount.[11] These condition precedents were required by law in order to guarantee the payment of the deficiency taxes assessed against the taxpayer, if and when the case is finally decided against the said taxpayer.

Petitioner sought that it be exempted from the filing of the surety bond. Petitioner relied on the case of *The Collector of Internal Revenue v. Reyes*,[12] where the Court sustained the CTA's exercise of discretion when it did not require the taxpayer to post a surety bond despite suspending the collection of the tax.

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[11] *Tridharma Marketing Corp. v. Court of Tax Appeals*, 787 Phil. 638, 646 (2016).

[12] 100 Phil. 822 (1957).

It also relied on numerous cases[13] where this Court held that the state is not required to put up a bond because it is presumed solvent. The petitioner opined that since it is an agency of the national government, then there is no doubt as to its solvency.[14] Petitioner finally argued that its compliance with the posting of the GSIS Surety Bond did not render the case moot. A final resolution of the issue of petitioner's exemption from posting a surety bond must be finally settled.

In the said *Reyes* case, as cited by petitioner, the CTA issued the injunction on the basis of the findings that the tax to be collected has already prescribed. The CTA, however, found that it was no longer necessary for the taxpayer to file a surety bond. The Court justified it in this wise:

> It certainly would be an absurdity on the part of the Court of Tax Appeals to declare that the collection by the summary methods of distraint and levy was violative of the law, and then, on the same breath require the petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction. Let us suppose, for the sake of argument, that the Court *a quo* would have required the petitioner to post the bond in question and that the taxpayer would refuse or fail to furnish said bond, would the Court *a quo* be obliged to authorize or allow the Collector of Internal Revenue to proceed with the collection from the petitioner of the taxes due by a means it previously declared to be contrary to law?[15]

From the foregoing, the Court concluded then that the requirement of the bond as a condition precedent to the issuance of the writ of injunction applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law for such cases provided and not when said processes are obviously in violation of the

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[13] *Republic v. Garcia,* 554 Phil. 371, 376 (2007); *Republic v. Court of Appeals,* 160-A Phil. 465, 473 (1975); *Araneta v. Gatmaitan,* 101 Phil. 328, 340 (1957); and *Spouses Badillo v. Tayag,* 448 Phil. 606, 617 (2003).

[14] *Rollo*, p. 27.

[15] *The Collector of Internal Revenue v. Reyes, supra* note 12, at 829.

law to the extreme that they have to be suspended for jeopardizing the interests of taxpayer.[16]

This principle was echoed in the recent case of *Spouses Pacquiao v. Court of Tax Appeals*,[17] when the Court held:

> From all the foregoing, it is clear that the authority of the courts to issue injunctive writs to restrain the collection of tax and to dispense with the deposit of the amount claimed or the filing of the required bond is not simply confined to cases where prescription has set in. As explained by the Court in those cases, ***whenever it is determined by the courts that the method employed by the Collector of Internal Revenue in the collection of tax is not sanctioned by law,*** the bond requirement under Section 11 of R.A. No. 1125 should be dispensed with. (Emphasis and italics in the original)

In the instant case, there was a clear showing that the method employed by the respondent City in the collection of the real property taxes contravened existing law and jurisprudence. It must be underscored that the petitioner filed the motion to suspend the collection of tax, not so much to stay the collection thereof, but actually to thwart the threat of the property being sold in public auction which may effectively divest the petitioner, the PTA and the Province of Leyte of the ownership over the property.

The petitioner recognized the fact — which was affirmed in the CTA *En Banc* Decision dated August 22, 2014, that as a government entity, it is exempt from payment of real property taxes pursuant to Section 234(a) of the 1991 Local Government Code or R.A. No. 7160.[18] The said provision also provides that when the beneficial use of the real property owned by the

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[16] *Id*. at 828.

[17] 784 Phil. 220, 246 (2016).

[18] SEC. 234. *Exemptions from Real Properly Tax*. — The following are exempted from payment of the real property tax:

> (a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person[.] (Underscoring supplied)

Republic or any of its political subdivision, is vested to a taxable person, the real property is subject to tax. Petitioner, together with the PTA and the Province of Leyte, had already admitted that they are co-owners of the subject property and they were leasing the same to UCI, a private entity pursuant to a Contract of Lease dated September 15, 1994. Thus, pursuant to the aforementioned Local Government Code provision and also in the case of *National Power Corporation v. Province of Quezon*,[19] where this Court ruled:

> The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the 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.** (Emphasis and italics in the original)

But, without, however, prejudging the appealed case on the merits, UCI, the actual and beneficial user of subject property can be said to be directly liable for the real property taxes on the property owned by the government.

On the basis of the foregoing law and jurisprudence, while it is correct for the respondent City to assess UCI of the unpaid real property taxes, it is, however, a clear contravention of the law to proceed with the issuance of the warrant of levy against the subject property in order to place it for public auction. This method of collection of the deficiency of real property taxes prejudiced not UCI, the private entity who is directly charged with the payment of the tax, but the petitioner, the PTA and the Province of Leyte, the government entities who owned the land.

It is a settled rule that property of public dominion, being outside the commerce of man, cannot be the subject of an auction sale,

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[19] 610 Phil. 456, 467-468 (2009).

levy, encumbrance or disposition through public or private sale.[20] Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy.[21]

Under Article 420 of the Civil Code, the subject property (the LPHI) is a property of the public dominion owned by the State, through its agents and instrumentalities. Thus, Article 420 of the Civil Code, provides:

Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which **belong to the State**, without being for public use, and are intended for some public service or **for the development of the national wealth**. (Emphases supplied)

Thus, being a property of public dominion, the subject property cannot be subject of public auction sale, notwithstanding its realty tax delinquency. This means that the respondent City has to satisfy its realty tax claims by serving the accrued realty tax assessment upon UCI, as the taxable beneficial user of the subject property and in case of UCI's non-payment, through any means other than the sale at public auction of the leased property. The case of *Philippine Fisheries Development Authority v. Court of Appeals*[22] instructs, thus:

In sum, the Court finds that the Authority is an instrumentality of the national government, hence, it is liable to pay real property taxes assessed by the City of Iloilo on the IFPC only with respect to those portions which are leased to private entities. Notwithstanding said tax delinquency on the leased portions of the IFPC, the latter or any part thereof, being a property of public domain, cannot be sold at

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[20] *Manila International Airport Authority v. Court of Appeals,* 528 Phil. 181, 219 (2006).

[21] *Id*.

[22] 555 Phil. 661, 674 (2007).

public auction. This means that the City of Iloilo has to satisfy the tax delinquency through means other than the sale at public auction of the IFPC.

Verily, since the method employed by the respondent City in collecting the realty taxes due — through the warrant of levy and the eventual public auction of a property of public dominion — is not sanctioned by law, then it is no longer necessary for the petitioner to file a surety bond as a condition precedent to suspend the tax collection.

To repeat, the purpose of the surety bond is to ensure that the tax due will be paid if and when the case is finally decided against the taxpayer. Indeed, the Republic of the Philippines need not give this security as it is presumed to be always solvent and able to meet its obligations.[23] Thus, the petitioner, being an agent of the national government,[24] is not required to put up a bond because to do so would be to indirectly require the state to submit such bond. Since the petitioner had already filed the required surety bond with the CTA, it is just proper to order the CTA to release the same for reasons as discussed in this decision.

WHEREFORE, the Petition for *Certiorari* is **GRANTED**. The assailed Resolutions dated February 7, 2013, March 1, 2013 and January 29, 2014 of the Court of Tax Appeals *En Banc* in C.T.A. EB Case No. 901 are **SET ASIDE** insofar as it required the PMO to file a surety bond as a condition precedent in suspending the real property tax collection. Accordingly, the CTA is hereby **ORDERED** to release the GSIS Surety Bond earlier filed by the PMO.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Perlas-Bernabe, Caguioa, and *Lazaro-Javier, JJ.*, concur.

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[23] *Republic v. Garcia*, 554 Phil. 371, 377 (2007).

[24] Organized under the Department of Finance by virtue of E.O. No. 323 dated December 6, 2000.

SECOND DIVISION

[G.R. No. 213457. March 18, 2019]

THE HEIRS OF EDGARDO DEL FONSO, namely, MILA A. DEL FONSO, LOUISA DEL FONSO BACANI, CARMINA DEL FONSO, EDGARDO PAULO A. DEL FONSO, and VICTORIA DEL FONSO FRANCISCO, BEACON EQUITIES, INC., and DAGUMA AGRO-MINERALS, INC., *petitioners, vs.* **BENJAMIN T. GUINGONA, MAMERTO S. BOCANEGRA, TOMAS J. PRUDENCIO, ANTONIO ILOMIN, LEVITICO TOQUERO, ARNOLD MANAT, GENEROSO SENGA, CHRISTIAN M. MONSOD, and EPIFANIO SEDIGO, JR.,** *respondents.*

SYLLABUS

POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; MOOT AND ACADEMIC ISSUES; WHEN A CASE OR ISSUE CEASES TO PRESENT A JUSTICIABLE CONTROVERSY BY VIRTUE OF SUPERVENING EVENTS, SO THAT AN ADJUDICATION OF THE CASE OR A DECLARATION ON THE ISSUE WOULD BE OF NO PRACTICAL VALUE OR USE, THE CASE OR ISSUE IS CONSIDERED MOOT AND ACADEMIC; EXCEPTIONS; ABSENT IN CASE AT BAR.— The instant petition should be denied for having become moot and academic. In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, the Court explained: A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. **Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.** Considering that the CA had already disposed of the case which

was being awaited by the RTC in issuing the questioned deferment order, and that the RTC had also disposed of the case where the subject documents were sought to be produced, this Court finds no need to resolve the instant petition, which has been rendered moot and academic by the said supervening events. There is no need to scrutinize the actions of both the trial court and the CA relative to the issuance of the assailed deferment order. x x x [R]esolving the issue on the propriety of the RTC's deferment order would not afford the parties any substantial relief nor will it have any practical effect on the case. The Court, shall, thus, abstain from expressing its opinion in such a case where no legal relief is needed or called for. While, admittedly, the Court may pass upon issues albeit supervening events had rendered the petition moot and academic, the Court does so only when there is grave violation of the Constitution; when paramount public interest is involved; when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading review. We do not find such circumstances in this case.

APPEARANCES OF COUNSEL

Berberabe Santos & Quiñones for petitioners.
Diokno & Diokno Law Offices for respondents.
Sedigo & Associates co-counsel for respondents.

R E S O L U T 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 November 12, 2013 and Resolution[3] dated June 25, 2014 of the Court of

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

[2] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela, concurring; *id*. at 57-69.

[3] *Id*. at 71-72.

Appeals (CA) in CA-G.R. SP No. 130341, which affirmed the Order[4] dated April 2, 2013 of the Regional Trial Court (RTC) of Makati City, Branch 66 in Civil Case No. 05-739.

The Facts

The instant petition stemmed from an Amended Complaint for *Quo Warranto*, Annulment of Board Decisions, Inspection of Records, Audit, Appointment of Receiver and Damages with Application for Issuance of a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI), docketed as Civil Case No. 05-739, filed by Edgardo Del Fonso (Del Fonso), substituted by his heirs, Beacon Equities, Inc. (Beacon) (collectively, petitioners), with Maria Encarnacion Cancio, and Belina Cancio, as alleged owners of 17% of the total outstanding shares of stock in DAGUMA Agro-Minerals, Inc. (DAGUMA) against Benjamin Guingona (Guingona), Mamerto Bocanegra (Bocanegra), Tomas Prudencio, Antonio Ilomin, Christian Monsod (Monsod), Epifanio Sedigo, Jr., as directors and officers of DAGUMA, and Levitico Toquero and Arnold Manat as stockholders thereof (collectively, respondents).[5]

Briefly, the complaint was grounded upon respondents' alleged unlawful acts[6] as members of the board of directors. Respondents

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

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

[6] (1) Approval on June 16, 2005 of the Audited Financial Statements of x x x Daguma for the years 2002, 2003 and 2004 which had the effect of erroneously reflecting the conversion of [Del Fonso's] advances in the amount of ₱1.250 Million into additional equity for him at a premium (₱100,000.00 as payment of equity at par and ₱1.150 Million as paid-in surplus) despite [Del Fonso's] vehement objections against such conversion;

(2) Adoption of a resolution on June 16, 2005 implementing the application of shareholder advances as subscription payments for [DAGUMA's] increase in authorized capital stock and the acceptance of such subscription payments after the subscription deadline, contrary to the terms of subscription that were previously approved by the members of the board of directors of [DAGUMA];

(3) Adoption of a board resolution on June 16, 2005 authorizing the conversion into equities of the remaining balances of the cash advances of [Guingona] and [Bocanegra] through subscriptions to the increased authorized capital stock;

countered that petitioners have no cause of action as they are not stockholders of record of DAGUMA.[7]

On January 16, 2006, the RTC issued a WPI, enjoining respondents from any act of divestment of shares of stocks or equities of petitioners without the consent of the shareholders, the conduct of any board meeting or the conduct of any stockholders' meeting without notice to petitioners, among others.[8]

The following circumstances find more relevance to the case at bar.

Despite such WPI, respondents allegedly committed further acts which divested petitioners of their remaining shareholdings in DAGUMA. Particularly, petitioners alleged that respondents executed a Share Purchase Agreement with San Miguel Energy Corporation (SMEnergy) wherein the latter allegedly acquired one hundred percent (100%) of the outstanding capital stock of DAGUMA.[9]

This prompted petitioners to file, on May 9, 2012, a Motion for Production of Documents, praying that respondents be ordered to produce the aforecited Share Purchase Agreement, as well as all other papers, documents, and records pertinent to and/or related to the sale, transfer, and conveyance of the outstanding capital stock of DAGUMA (SMEnergy Documents).[10]

Respondents opposed the said motion, mainly arguing that petitioners' status as stockholders are still in question and as such, they are not entitled to the relief prayed for.[11]

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(4) Adoption of a board resolution on June 24, 2005 removing [Del Fonso] as president of [DAGUMA] and declaring [Monsod] as director and president thereof in a manner that was contrary to law; and

(5) Refusal to allow [Del Fonso] and [Beacon] to exercise their right to inspect the records of [DAGUMA]; *id.* at 58-59.

[7] *Id*. at 118.

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

[9] *Id*. at 60.

[10] *Id*.

[11] *Id*. at 143-145.

In its Order dated July 13, 2012, the RTC granted petitioners' motion and ordered respondents to produce the SMEnergy Documents.[12]

Respondents then filed a Motion to Vacate Order of Production of Documents dated July 13, 2012,[13] which was denied by the trial court in its Order dated September 10, 2012.[14]

Thus, respondents filed a Petition for *Certiorari* before the CA, docketed as CA-G.R. SP No. 127476, questioning the denial of respondents' Motion to Vacate Order of Production of Documents.[15]

In view of the pendency of CA-G.R. SP No. 127476, respondents filed an Urgent Motion to Defer Production of Share Purchase Agreement with the trial court, citing as ground the concept of judicial courtesy. Respondents argued that, for practical and ethical consideration, and so as not to render as moot the issue before the CA in CA-G.R. SP No. 127476, the trial court should wait for the final determination or resolution of the CA before proceeding to implement its order for production of documents.[16]

In its Order dated April 2, 2013, the RTC granted respondents' motion to defer the order to produce the SMEnergy Documents.[17]

Aggrieved, petitioners filed a Petition for *Certiorari* before the CA, docketed as CA-G.R. SP No. 130341, questioning the grant of said motion to defer.

In its assailed November 12, 2013 Decision, the CA found no grave abuse of discretion on the part of the RTC in deferring the implementation of its order to produce the SMEnergy

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[12] *Id*. at 60.

[13] *Id*. at 150-155.

[14] *Id*. at 60.

[15] *Id*. at 61.

[16] *Id.*

[17] *Id*.

Documents. The CA ruled that, indeed, judicial courtesy warrants the deferment of the production of said documents as the propriety of ordering the production was precisely the subject matter of CA-G.R. SP No. 127476. According to the CA, should the trial court continue to enforce the order directing the production of said documents, there is a strong probability that the issue pending in CA-G.R. SP No. 127476 would be rendered moot.[18]

The CA also ruled that, at any rate, the RTC is not without power to issue such deferment order citing Sections 5 and 6, Rule 135 of the Rules of Court, which basically state that every court has the power to amend and control its process and orders so as to make them conformable to law and justice.[19]

Thus, the CA disposed of the case as follows:

> **WHEREFORE**, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the instant petition for lack of merit. The Order dated April 2, 2013 that was issued by Branch 66 of the Regional Trial Court of the National Capital Judicial Region stationed in Makati City in Civil Case No. 05-739 is hereby **AFFIRMED**.
>
> **SO ORDERED.**[20]

Petitioners' motion for reconsideration was likewise denied in the CA's assailed June 25, 2014 Resolution, thus:

> **WHEREFORE**, in view of the foregoing premises, we hereby **DENY** the said motion for reconsideration.
>
> **SO ORDERED.**[21]

Hence, this petition.

Issue

The pivotal issue before this Court is whether or not the CA erred in sustaining the RTC Order deferring production of

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

[19] *Id*. at 65-67.

[20] *Id*. at 68.

[21] *Id*. at 72.

SMEnergy Documents to await the decision or resolution of the CA in CA-G.R. SP No. 127476. Petitioners pray that the deferment order be lifted and that respondents be directed to produce the said documents.

At this juncture, it is noteworthy that the RTC in Civil Case No. 05-739 had already rendered a Decision[22] dated June 16, 2016, dismissing petitioners' Amended Complaint after determination that the latter are not stockholders of DAGUMA, hence, do not have any interest in the business of DAGUMA.[23] Petitioners, however, manifested[24] that said trial court's Decision is not yet final and executory and should not affect the independent resolution of the issues submitted in the case at bar.

This Court also deems it worthy to note that the CA already rendered a Decision[25] dated July 27, 2016 in CA-G.R. SP No. 127476, upholding the denial of respondents' Motion to Vacate Order of Production of Documents. The CA ruled that the said motion was correctly disallowed as it partakes of the nature of a motion for reconsideration, which is prohibited in an intra-corporate suit and also, that it was proper for the petitioners to avail of the modes of discovery under the Rules of Court.

The Court's Ruling

The instant petition should be denied for having become moot and academic. In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*,[26] the Court explained:

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which

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[22] Penned by Presiding Judge Joselito C. Villarosa; *id*. at 1414-1427.

[23] *Id*. at 1408.

[24] *Id*. at 1371-1374.

[25] *Id*. at 1381-1407.

[26] 728 Phil. 535 (2014).

would be negated by the dismissal of the petition. **Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.**[27] (Emphasis supplied and citation omitted)

Considering that the CA had already disposed of the case which was being awaited by the RTC in issuing the questioned deferment order, and that the RTC had also disposed of the case where the subject documents were sought to be produced, this Court finds no need to resolve the instant petition, which has been rendered moot and academic by the said supervening events. There is no need to scrutinize the actions of both the trial court and the CA relative to the issuance of the assailed deferment order.

This Court cannot order the production of the SMEnergy Documents as prayed for in this petition considering that the RTC already ruled that petitioners have no legal personality to ask for the same. In ruling so, the trial court, in effect already overturned its order allowing petitioners to have a copy of and inspect the said documents. Needless to say, we cannot enforce an order which was subsequently overturned by the authority which issued it.

To be sure, this Court is not unaware that the RTC Decision is not yet final and executory by virtue of petitioners' appeal. However, petitioners' insistence on the production of the SMEnergy Documents is effectively an attack on the RTC Decision, which is proper only through an appeal thereof. To rule otherwise, would be to preempt the resolution of the issue on whether or not petitioners may legally ask for the production of such documents, which is the main issue in the appeal of the RTC Decision availed of by the petitioners.

It is clear, therefore, that resolving the issue on the propriety of the RTC's deferment order would not afford the parties any substantial relief nor will it have any practical effect on the

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[27] *Id*. at 540.

case. The Court, shall, thus, abstain from expressing its opinion in such a case where no legal relief is needed or called for.[28]

While, admittedly, the Court may pass upon issues albeit supervening events had rendered the petition moot and academic, the Court does so only when there is grave violation of the Constitution; when paramount public interest is involved; when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading review.[29] We do not find such circumstances in this case.

WHEREFORE, the instant petition is **DENIED** for being moot and academic.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Perlas-Bernabe, Caguioa*, and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 220030. March 18, 2019]

SAMEER OVERSEAS PLACEMENT AGENCY, INC., *petitioner, vs.* **JOSEFA GUTIERREZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; THE DISPOSITIVE PORTION OF A JUDGMENT, ORDER

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[28] *The Philippine Ports Authority v. Coalition of PPA Officers and Employees*, 161 Phil. 792, 802 (2015).

[29] *Id*. at 803.

OR DECISION IS WHAT DETERMINES AND DECLARES THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO A DISPUTE AS AGAINST EACH OTHER.— Fundamental is the rule that the dispositive portion of a judgment, order or decision is what determines and declares the rights and obligations of the parties to a dispute as against each other. It is the dispositive portion that must be enforced to make for a valid execution, and a judgment must be implemented according to its letter. Except in well-recognized exceptions, a final judgment, order or decision may not be validly altered, amended or modified even if it is meant to correct a perceptibly erroneous conclusion of fact or law. This, because any insertion, change or addition to the dispositive portion violates the rule on immutability of judgments.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; ILLEGAL DISMISSAL; MONETARY AWARDS; A DECISION OR RULING IN A CASE FOR ILLEGAL DISMISSAL OR UNLAWFUL TERMINATION IS ESSENTIALLY DECLARATORY OF THE RIGHTS AND OBLIGATIONS OF THE PARTIES, THE MONETARY AWARD THAT FLOWS FROM THE DECLARED STATUS IS BUT A NECESSARY AND LEGAL CONSEQUENCE OF THE SAID DECLARATION; CASE AT BAR.—** A case for illegal dismissal or unlawful termination — which is the underlying case in this petition — is one that relates purely to the status of the parties. Hence, the decision or ruling therein is essentially declaratory of the rights and obligations of the parties, and the monetary award that flows from the declared status, such as payment of separation pay and backwages, is but a necessary and legal consequence of the said declaration. A look at the dispositive portion of affirmative decisions rendered in illegal dismissal cases tells that it is always comprised of two distinct parts: *first* is the definitive finding of illegal dismissal and the incidental monetary awards sanctioned by law in such case and, *second*, is the assessment and computation of what the first part of the disposition has already established. The second part, being merely a computation of what the first part of the decision has already pronounced, may, by its nature, be re-computed. The Court takes notice that Ireland joined the European Union in January 1, 1973 and, in January 1999, became one of the Euro Area member-states that began replacing their

national currencies with the Euro. After its gradual adaptation to the new economic and monetary regime, its national currency, the Irish Pound, finally departed and ceased to be legal tender on February 9, 2002. Inasmuch as the monetary award in this case has been fixed in the Irish Pound but to be paid in its Philippine Peso equivalent, the Labor Arbiter, in issuing the subject writ of execution on July 31, 2012, has made a practical, consequential and logical call when she re-computed and converted the final Decision's money award into the prevailing currency that replaced the previous — not to say demonetized and, hence, obsolete and worthless currency, but still payable to Gutierrez in Philippine Peso equivalent. The power of the Labor Arbiter to make, at the first instance, a computation of monetary award in an illegal dismissal case is sanctioned by the NLRC Rules of Procedure. Implied from this original computation is its currency up to the finality of the decision.

APPEARANCES OF COUNSEL

Gaspar V. Tagalo for petitioner.
Aida D. Dizon for respondent.

D E C I S I O N

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

This is a Petition for Review[1] assailing the Decision[2] dated January 22, 2015 and the Resolution[3] dated August 5, 2015 of the Court of Appeals in CA-G.R. SP No. 130134.[4] The assailed Decision had dismissed petitioner Sameer Overseas Placement

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Ramon Cruz, with Associate Justices Rebecca De Guia-Salvador and Marlene Gonzales-Sison, concurring; *rollo*, pp. 36-47.

[3] Signed by the same Third Division members, except Associate Justice Rebecca De Guia-Salvador who retired in the interim and replaced by Associate Justice Remedios Salazar-Fernando; *id.* at 33-34, *rollo*, pp. 33-34.

[4] *Sameer Overseas Placement Agency, Inc. v. National Labor Relations Commission Sixth Division and Josefa Gutierrez.*

Agency, Inc.'s motion to quash the writ of execution issued in an illegal dismissal case that had long been finally decided in favor of respondent Josefa Gutierrez. The assailed Resolution denied reconsideration.

Undisputed are the facts.

In 2001, petitioner Sameer Overseas Employment Agency, Inc. (Sameer) deployed respondent Josefa Gutierrez (Gutierrez), a registered Filipino nurse, to Ireland on a two-year employment in a nursing home. The contract stipulated her salary in the Irish Pound. After merely two months, however, she was unceremoniously repatriated, urging her to file for unlawful termination. In its Decision dated February 10, 2003, the Labor Arbiter found for Gutierrez and declared Sameer[5] liable to pay the money judgment[6] as follows:

> **WHEREFORE**, premises considered, judgment is hereby rendered:
>
> 1. finding the dismissal of complainant Josefa Docuyanan Gutierrez to be illegal;
>
> 2. ordering respondents Sameer Overseas Placement Agency, Rizalina Lamzon and Irish Nursing Home Organization Limited to pay complainant jointly and solidarity, the following:
>
>   a. Salary (2 ½ mos.) 2,083.02 Pounds
>   b. Unexpired Portion (6 mos.) 6,250.02 Pounds (Payable in Philippine peso at the rate of exchange prevailing at the time of payment)
>   c. Refund of Placement Fee PHP23,000.00
>
> 3. declaring individual respondents Rizalina Lamzon to be properly impleaded; and to be likewise personally liable for this award; and

[5] Sameer was declared solidarily liable with Rizalina Lamzon and the Irish Nursing Home Organization Limited. Note that among the issues that had been raised since the execution stage was the fact that the writ of execution as well as the final decision in the illegal dismissal case omitted the corporate identifier "Inc." to identify Sameer. It argued that there had been an erroneous service of the writ as it had been directed to a wrong party. This issue, however, has already been settled by the appellate court, thus, released from the main issues in the present petition.

[6] Signed by Labor Arbiter Natividad M. Roma, *rollo*, pp. 65-66.

4. dismissing all other claims for lack of merit.

SO ORDERED.[7]

On appeal, the National Labor Relations Commission (NLRC) reversed the Labor Arbiter's Decision and denied reconsideration. Then, on *certiorari*, the Court of Appeals reinstated the judgment of the Labor Arbiter. Sameer immediately filed an appeal[8] before this Court which, however, was denied in a minute resolution[9] and in a subsequent resolution[10] on motion for reconsideration. Finally, the entry of judgment issued on October 8, 2010.[11]

On July 31, 2012, at the instance of Gutierrez,[12] the Labor Arbiter issued a Writ of Execution[13] containing a re-computation of the original monetary award and a conversion thereof into the Euro currency. The writ materially reads:

NOW, THEREFORE, you are hereby directed to proceed to the premises of respondents Sameer Overseas Placement Agency, Rizalina Lamzon and Irish Nursing Home Organization Limited, located at Rizal Tower, 4474 Singian Street corner Makati Avenue, Makati City, Metro Manila, or wherever they may be found in the Philippines, to collect the total amount of **TEN THOUSAND FOUR HUNDRED FIFTY THREE & 804/100 EUR (10,453.804 EUR)** or its Peso equivalent prevailing at the time of actual payment representing the complainant's monetary awards pursuant to the Decision dated 10 February 2003, and to deposit the same to the NLRC Cashier for disposition.

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SO ORDERED.[14]

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[7] *Id*.

[8] Via a petition for review on *certiorari* docketed as G.R. No. 188231.

[9] Dated March 8, 2010.

[10] Dated August 16, 2010.

[11] See CA Decision, *supra* note 2, at 38.

[12] Motion for the Issuance of a Writ of Execution; *rollo*, pp. 67-72.

[13] Signed by Labor Arbiter Jenneth Mapiza; *id*. at 73-78.

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

Sameer moved to recall and/or quash the writ of execution[15] believing that the Labor Arbiter, in converting the award into Euro on execution, had illegally varied the terms of the final and executory Decision in the termination case. The writ was sustained in an Order dated December 12, 2012.[16] Then, on January 18, 2013, Sameer filed with the NLRC a petition to annul[17] the December 12, 2012 Order and insisted on the nullification of the writ. The NLRC dismissed said petition in a Decision dated February 25, 2013.[18]

Upon denial of its motion for reconsideration,[19] Sameer elevated the matter to the Court of Appeals on *certiorari*.[20] The Court of Appeals dismissed the petition for lack of merit,[21] and likewise denied reconsideration.[22]

Hence, this petition.

Sameer posits that the Court of Appeals erred (a) in not finding grave abuse of discretion on the part of the Labor Arbiter when it changed the currency of the monetary award to Euro; (b) in not finding grave abuse of discretion on the part of the NLRC when the latter did not grant the petition to annul the December 12, 2012 Order; and (c) in validating the manner by which the monetary award was converted from Irish Pound to the Euro.[23]

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[15] Urgent Motion to Quash/Recall Writ of Execution dated July 31, 2012; *id*. at 79-86.

[16] *Id*. at 104-108.

[17] Under Section 1 Rule XII of the 2011 NLRC Rules; *id*. at 109-130.

[18] Penned by Presiding Commissioner Joseph Gerard Mabilog, with Commissioner Isabel G. Panganiban-Ortiguerra and Commissioner Nieves E. Vivar-De Castro, concurring; *id*. at 136-139.

[19] See Resolution dated April 30, 2013; *id*. at 151-152.

[20] *Id*. at 153-175.

[21] *Supra* note 2.

[22] *Rollo*, pp. 33-34.

[23] *Id*. at 13-15.

For her part, Josefa points out in her Comment[24] that the Euro currency had already replaced the Irish Pound in Ireland at the time the Decision in the illegal dismissal case became final and executory. She considers this change in currency as a supervening fact or event that authorized the Labor Arbiter to make modifications on the money judgment even on execution.[25]

Replying, Sameer advances the notion that a modification of the judgment is indeed allowed in exceptional circumstances but not where the modification is made in a writ of execution.[26] It reiterates the elementary rule that a writ of execution must conform to the dispositive portion of the decision, otherwise the execution is void if it is in excess of and beyond the original judgment.[27]

Verily, the focal issue to be addressed in this case is whether or not the original monetary award in the final Decision may, by the ensuing writ of execution, be legally re-computed and translated from Irish Pound to the Euro. As this Court responds in the affirmative, it hereby finds the subject writ of execution to be fully in order.

We preface the disquisition with the necessary dissection of the final judgment rendered in the unlawful termination case between Sameer and Gutierrez.

Fundamental is the rule that the dispositive portion of a judgment, order or decision is what determines and declares the rights and obligations of the parties to a dispute as against each other. It is the dispositive portion that must be enforced to make for a valid execution, and a judgment must be implemented according to its letter. Except in well-recognized exceptions, a final judgment, order or decision may not be validly altered, amended or modified even if it is meant to correct a

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[24] *Id*. at 233-246.

[25] *Id*. at 242-243.

[26] *Id*. at 249-250.

[27] *Id*. at 251.

perceptibly erroneous conclusion of fact or law. This, because any insertion, change or addition to the dispositive portion violates the rule on immutability of judgments.[28]

A case for illegal dismissal or unlawful termination — which is the underlying case in this petition — is one that relates purely to the status of the parties. Hence, the decision or ruling therein is essentially declaratory of the rights and obligations of the parties, and the monetary award that flows from the declared status, such as payment of separation pay and backwages, is but a necessary and legal consequence of the said declaration.[29] A look at the dispositive portion of affirmative decisions rendered in illegal dismissal cases tells that it is always comprised of two distinct parts: *first* is the definitive finding of illegal dismissal and the incidental monetary awards sanctioned by law in such case and, *second*, is the assessment and computation of what the first part of the disposition has already established. The second part, being merely a computation of what the first part of the decision has already pronounced, may, by its nature, be re-computed.[30]

The Court takes notice that Ireland joined the European Union in January 1, 1973[31] and, in January 1999, became one of the Euro Area member-states that began replacing their national currencies with the Euro.[32] After its gradual adaptation to the new economic and monetary regime, its national currency, the Irish Pound, finally departed and ceased to be legal tender on

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[28] See *Lim v. HMR Philippines, Inc.,* 740 Phil. 353, 367-368 (2014), citing *Session Delights Ice Cream and Fast Foods v. Court of Appeals*, 625 Phil. 612, 623-624 (2010).

[29] *Id*. at 370, citing *Session Delights Ice Cream and Fast Foods v. Court of Appeals*, *supra*.

[30] *Id*. at 371.

[31] https://europa.eu/european-union/about-eu/countries/member-countries/ireland_en#overview (visited March 11, 2019).

[32] https://ec.europa.eu/info/business-economy-euro/euro-area/what-euro-area_en; (visited March 11, 2019). https://europa.eu/european-union/about-eu/countries/member-countries/ireland_en#overview (visited March 11, 2019).

February 9, 2002.[33] Inasmuch as the monetary award in this case has been fixed in the Irish Pound but to be paid in its Philippine Peso equivalent, the Labor Arbiter, in issuing the subject writ of execution on July 31, 2012, has made a practical, consequential and logical call when she re-computed and converted the final Decision's money award into the prevailing currency that replaced the previous — not to say demonetized and, hence, obsolete and worthless currency, but still payable to Gutierrez in Philippine Peso equivalent.

The power of the Labor Arbiter to make, at the first instance, a computation of monetary award in an illegal dismissal case is sanctioned by the NLRC Rules of Procedure.[34] Implied from this original computation is its currency up to the finality of the decision.[35] Indeed, on one hand, had the case purely involved an employee's claim for a specific sum of money, the computation would carry such a continuing currency that any adjustment or change might only be on the interest that would run from the finality of the decision until full satisfaction of the judgment obligation. On the other hand, in a claim that relates to status, such as in illegal dismissal cases, what is principally implemented is the declaratory finding on the status, rights and obligations of the parties, and the monetary consequence only follows as a mere incidental component of said finding.[36]

That the Labor Arbiter has been impelled to make an allowance for the conversion of the money award to happen inspite of the demonetization of the Irish Pound, is well in accord with Republic

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[33] The Irish Pound Notes and Coins (Cessation of Legal Tender Status) Order, 2001; http://www.irishstatutebook.ie/eli/2001/si/313/made/en/print (visited March 11, 2019).

[34] Section 13, Rule VII materially states that the Labor Arbiter of origin, in cases involving monetary awards and at all events, as far as practicable, shall embody in any such decision or order the detailed and full amount awarded.

[35] *Session Delights Ice Cream and Fast Foods v. Court of Appeals*, *supra*, at 626.

[36] *Id*. at 627-628.

Act No. 8183.[37] This law authorizes obligations incurred in foreign currency to be discharged in our local money at the prevailing rate of exchange at the time of payment. In other words, because it is just and fair to preserve the real value of the foreign exchange-incurred obligation to the date of its payment,[38] it is just as much legal and logical to take into account the fact that the exchange rate at the time of execution was already measured in terms of the Euro.

At any rate, *Session Delights Ice Cream and Fast Foods v. Court of Appeals*[39] instructs that a re-computation of the monetary award is indeed part of the law that is read into the decision. The re-computation of the consequences of an illegal dismissal, to accommodate the reliefs that continue to add on until full satisfaction of the award, even upon execution of the decision does not constitute an alteration or amendment of the final decision being implemented. Indeed, the ruling on the illegality of the dismissal stands, and only the computation of the monetary consequences must adapt to changes albeit without running foul to the principle of immutability of a final judgment.[40]

With approval, we quote the observation made by the Court of Appeals on this matter:

> The Writ of Execution did not alter the essential particulars of the judgment to be executed. The original *fallo* provides that the money judgment is payable in Philippine Peso at the rate of exchange prevailing at the time of payment. To be able to convert the said money judgment from Irish Pound to Philippine Peso, it is necessary to first convert it to Euro since Irish Pound is no longer used as currency, and from Euro to Philippine Peso, which is ultimately the currency that the money judgment was made payable in the judgment

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[37] Entitled AN ACT REPEALING REPUBLIC ACT NUMBERED FIVE HUNDRED TWENTY-NINE, AS AMENDED, ENTITLED "AN ACT TO ASSURE THE UNIFORM VALUE OF PHILIPPINE COIN AND CURRENCY," issued on 11 June 1996.

[38] See *Asia World Recruitment, Inc. v. National Labor Relations Commission,* 371 Phil. 745, 753 (1999); and *C.F. Sharp & Co., Inc. v. Northwest Airlines, Inc*., 431 Phil. 11, 20 (2002).

[39] *Supra* note 28.

[40] *Id*. at 629.

sought to be executed. Hence, the writ of execution did not deviate, but is all the more in accordance with the final and executory judgment.[41]

Finally, Sameer likewise questions the validation given by the Court of Appeals to the manner by which the Labor Arbiter has come by the re-computation of the monetary award. Yet inasmuch as it thereby would have this Court look into a deeply technical matter which is best left to the sound judgment of the labor tribunal below, we decline to address this issue further. Suffice it to say that mathematical computations are painted in jurisprudence as factual determinations[42] and, thus, generally beyond the province of this Court, especially when supported by substantial evidence and affirmed by the appellate court.[43] Well-recognized exceptions[44] to this rule abound, but not one is applicable in this instant petition.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Perlas-Bernabe, Caguioa, and *Lazaro-Javier, JJ.*, concur.

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[41] *Rollo*, p. 46.

[42] *Spouses Sy v. China Banking Corp.,* 792 Phil. 101, 107 (2016), citing *National Transmission Corp. v. Alphaomega Integrated Corp.,* 740 Phil. 87 (2014).

[43] *Spouses Sy v. China Banking Corp*., *supra*.

[44] *Id*. at 107-108, citing *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212-213 (2005). The noted exceptions are: When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; When the inference made is manifestly mistaken, absurd or impossible; Where there is a grave abuse of discretion; When the judgment is based on a misapprehension of facts; When the findings of fact are conflicting; 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; When the findings are contrary to those of the trial court; When the findings of fact are conclusions without citation of specific evidence on which they are based; When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

SECOND DIVISION

[G.R. No. 226722. March 18, 2019]

FREYSSINET FILIPINAS CORPORATION (now FREYFIL CORPORATION), ERIC A. CRUZ, GAUDENCIO S. REYES, and CARLOTA R. SATORRE, *petitioners, vs.* **AMADO R. LAPUZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; 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.—** To justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. 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. It has also been held that grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REGULAR EMPLOYMENT; WHEN PRESENT; REGULAR EMPLOYEES ARE ENTITLED TO SECURITY OF TENURE AND MAY ONLY BE DISMISSED FOR JUST OR AUTHORIZED CAUSES; CASE AT BAR.—** Under Article 295 of the Labor Code, **regular employment** exists when the employee is: (a) engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer; or (b) a casual employee

whose activities are not usually necessary or desirable in the employer's usual business or trade, and has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed. x x x Even on the assumption that respondent was a project employee, the Court has held that an employment ceases to be co-terminous with specific projects when the employee is continuously rehired due to the demands of employer's business and re-engaged for many more projects without interruption. As aptly pointed out in the case of *Maraguinot, Jr. v. NLRC*, once a **project or work pool employee** has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary, and indispensable to the usual business or trade of the employer, **then the employee must be deemed a regular employee**. Indeed, while length of time is not the controlling test for project employment, it is nonetheless vital in determining if the employee was hired for a specific undertaking or tasked to perform functions that are vital, necessary, and indispensable to the usual business or trade of the employer. Considering that the function of a warehouse supervisor is no doubt vital, necessary, and desirable to the construction business of petitioners, and it has been sufficiently shown that respondent's work as such for the latter's various projects without interruption since 2007 is necessary and desirable to petitioners' construction business, the CA properly deemed respondent to be a regular employee. To reiterate, where the employment of project employees is extended long after the supposed project has been finished, the employees are removed from the scope of project employees and are considered regular employees. As a regular employee, respondent is entitled to security of tenure and may only be dismissed for just or authorized causes. Thus, not having been dismissed for a valid and legal cause, the CA was correct in declaring respondent to have been illegally dismissed.

3. ID.; ID.; PROJECT EMPLOYMENT; ELEMENTS.— [A]n employee is said to be under a **project employment** when he is hired under a contract which specifies that the employment will last only for a ***specific project*** or undertaking the ***completion or termination of which is determined*** at the time of his engagement. Thus, for an employee to be considered project-based, it is incumbent upon the employer to prove that: ***(a)*** the employee was assigned to carry out a specific project or

undertaking; and **(*b*)** the duration and scope of which were specified at the time the employee was engaged for such project. When a project employee is assigned to a project or phase thereof which begins and ends at determined or determinable times, his services may be lawfully terminated at the completion of such project or a phase thereof.

4. ID.; ID.; ID.; PROJECT EMPLOYMENT IS NOT ESTABLISHED IF THE PARTICULAR JOB OR UNDERTAKING IS WITHIN THE REGULAR OR USUAL BUSINESS OF THE EMPLOYER COMPANY AND IT IS NOT IDENTIFIABLY DISTINCT OR SEPARATE FROM THE OTHER UNDERTAKINGS OF THE COMPANY SUCH THAT THERE IS CLEARLY A CONSTANT NECESSITY FOR THE PERFORMANCE OF THE TASK IN QUESTION; CASE AT BAR.— Notably, in *GMA Network, Inc. v. Pabriga*, the Court pointed out that if the particular job or undertaking is within the regular or usual business of the employer company and it is not identifiably distinct or separate from the other undertakings of the company such that there is clearly a constant necessity for the performance of the task in question, said job or undertaking should not be considered a project. In this case, respondent was supposedly engaged by FFC as warehouse supervisor for its various projects, namely: (*a*) Texas Instruments project in Pampanga from April 11, 2007 to September 2008; (*b*) Robinson's Place project in Dumaguete City from September 12, 2008 until February 26, 2010; (*c*) FFC's Calumpit Plant project from March 7, 2010 until April 4, 2011; and (*d*) Wharton Parksuite project from April 22, 2011 until December 31, 2011. However, ***for the first three (3) projects***, petitioners failed to show that respondent was hired on a project basis and that he was informed of the duration and scope of his work. In fact, no employment contracts for the said projects were presented to substantiate their claim. While the absence of a written contract does not *per se* grant regular status to respondent, it is nonetheless evidence that he was informed of the duration and scope of his work and his status as project employee. In addition, no termination reports for each completed projects were shown to have been submitted by petitioners to the DOLE as mandated under Section 2 (2.2) (e) of Department Order No. 19-93 and, in fact, it was only during respondent's last assignment at the Wharton Parksuite project that they complied with the directive. It bears stressing that the failure

of an employer to file a termination report with the DOLE every time a project or a phase thereof is completed indicates that the workers hired were not project employees. In *Tomas Lao Construction v. NLRC*, the Court ruled that "[t]he report of termination is one of the indicators of project employment."

5. MERCANTILE LAW; CORPORATION CODE; PIERCING THE VEIL OF CORPORATE FICTION; MERE OWNERSHIP BY A SINGLE STOCKHOLDER OR BY ANOTHER CORPORATION OF ALL OR NEARLY ALL OF THE CAPITAL STOCK OF A CORPORATION IS NOT OF ITSELF SUFFICIENT GROUND FOR DISREGARDING THE SEPARATE CORPORATE PERSONALITY; IT MUST BE SHOWN THAT THE SEPARATE AND DISTINCT PERSONALITIES OF THE CORPORATIONS ARE SET UP TO JUSTIFY A WRONG, PROTECT FRAUD, OR PERPETRATE A DECEPTION; CASE AT BAR.— [T]he Court takes exception to the CA's finding that respondent's employment with petitioners started in 1977 based on its flawed finding that FF Interior and FFC are one and the same company. In so ruling, the CA upheld the assertion that FF Interior, FPTSPI/ Filsystem, and FFC merely changed their names and that all companies are managed and owned by the same people. However, the CA's conclusion is belied by the records which reveal that FFC originated from then Freyssinet (Davao) Inc., that was registered on February 28, 1994 before the SEC and issued SEC Registration No. ASO94-001909, and thereafter re-named to FFC in 2002, and subsequently, to Frey-Fil Corporation in 2011. On the other hand, FPTSPI is shown to have been registered under SEC Registration No. ASO94-002261, while Filsystems Tower 1, Inc. is registered under SEC Registration No. ASO94-00011538. Clearly, having been issued separate certificates of registration, the FFC, FPTSPI, and Filsystems Tower 1, Inc., are by law deemed to be separate and distinct corporate personalities. Moreover, it is well settled that the mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality. Neither is the existence of interlocking directors, corporate officers, and shareholders enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations. It must be shown that the separate and distinct personalities of the corporations are set up to justify

a wrong, protect fraud, or perpetrate a deception. Hence, the wrongdoing must be clearly and convincingly established by substantial evidence; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application. Verily, no such evidence was submitted by respondent in this respect.

6. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; SECURITY OF TENURE; WHEN A REGULAR EMPLOYEE IS TERMINATED WITHOUT A VALID CAUSE, AWARDS OF BACKWAGES AND SEPARATION PAY IN LIEU OF REINSTATEMENT IS PROPER; CASE AT BAR.— [S]ince there was no basis for the CA to disregard the separate juridical personality of FFC under the doctrine of piercing the corporate veil, and considering further that respondent was deemed a regular employee of FFC having been consistently hired as warehouse supervisor since April 11, 2007, and terminated without a valid cause on January 5, 2012, the awards of backwages and separation pay in lieu of reinstatement are in accord with Article 294 of the Labor Code.

7. MERCANTILE LAW; CORPORATION CODE; PIERCING THE VEIL OF CORPORATE FICTION; LIABILITY OF CORPORATE OFFICERS FOR CORPORATE OBLIGATIONS; REQUISITES; ABSENT IN CASE AT BAR.— As to the liability of the impleaded corporate officers, the Court equally finds error on the part of the CA in holding them jointly and severally liable to respondent. Case law states that to hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith. Here, the twin requirements of allegation and proof of bad faith necessary to hold the impleaded corporate officers liable for the monetary awards are clearly lacking.

8. CIVIL LAW; DAMAGES; AWARD OF MORAL AND EXEMPLARY DAMAGES; NOT PROPER WHEN THERE IS NO EVIDENCE THAT DISMISSAL OF THE EMPLOYEE WAS ATTENDED WITH BAD FAITH OR WAS DONE OPPRESSIVELY.— [W]ith respect to the award

of moral and exemplary damages, it is worthy to point out that moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs, or public policy, while exemplary damages may be awarded if the dismissal was effected in a wanton, oppressive or malevolent manner. Apart from respondent's bare allegations, no evidence was presented to prove that his dismissal was attended with bad faith or was done oppressively.

APPEARANCES OF COUNSEL

Melito A. Vergara III for petitioners.
Nenita Mahinay for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated April 20, 2016 and the Resolution[3] dated August 23, 2016 of the Court of Appeals (CA) in CA-G.R. SP. No. 136935, which reversed and set aside the Resolutions dated April 30, 2014[4] and June 25, 2014[5] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 04-000894-14 and instead, reinstated the Decision[6] dated January 26, 2014 of the Labor Arbiter (LA) in NLRC Case No. RAB III-01-18500-12 declaring that respondent Amado R. Lapuz (respondent) was a regular employee and that his dismissal was illegal.

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[1] *Rollo*, pp. 23-40.

[2] *Id*. at 45-54. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Ramon R. Garcia and Jhosep Y. Lopez, concurring.

[3] *Id*. at 56-57.

[4] *Id*. at 136-143. Penned by Commissioner Pablo C. Espiritu, Jr. with Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog III, concurring.

[5] CA *rollo*, pp. 41-42.

[6] *Rollo*, pp. 103-111. Penned by Labor Arbiter Reynaldo V. Abdon.

The Facts

Respondent Amado R. Lapuz (respondent) worked as warehouse supervisor for petitioner Freyssinet Filipinas Corporation (FFC), now Frey-Fil Corporation, a domestic corporation engaged in the business of general construction, pre-stressed, post-tensioning, among others.[7] Respondent claimed that he commenced work for FFC since 1977 under the latter's previous company names, particularly: (*a*) FF Interior from 1977 to 1982, (*b*) Freyssinet Post Tensioning System Philippines, Inc. (FPTSPI) or Filsystem from 1982 to 1999, and (*c*) FFC from 2006[8] to 2012.[9] Except for FPTSPI which was owned by one Philip Cruz, the remaining firms were allegedly owned and operated by petitioner Eric A. Cruz (Cruz).[10] Respondent was assigned at the different projects of FFC, the last of which was at the Wharton Parksuite Project in Binondo, Manila.[11]

Sometime in December 2011, respondent averred that he was verbally informed of his termination from work by the project manager, respondent Gaudencio S. Reyes (Reyes), when he was told "*Hoy umalis ka na dyan*" and no longer allowed to perform his work and enter the premises.[12] This notwithstanding, respondent continued to report at the project site until he received a notice[13] of termination dated January 5, 2012 and directed to secure his clearance[14] from the HRD Department, which he complied. Believing to have been dismissed without substantive

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[7] *Id*. at 60.

[8] "2000" in some parts of the records. See CA and LA Decisions; *id*. at 45 and 103, respectively.

[9] See *id*. at 45, 103, and 137.

[10] See *id*. at 78. The CA Decision and the NLRC Resolution stated that FF Interior, FPTSPI, and FFC were owned by Cruz.

[11] *Id*. at 46 and 137.

[12] See *id*. at 90 and 104.

[13] *Id*. at 94.

[14] *Id*. at 95.

and procedural due process,[15] respondent filed a complaint[16] for illegal dismissal with prayer for reinstatement and payment of attorney's fees, against FFC, Cruz, Reyes, and one Carlota R. Satorre (petitioners) before the NLRC, docketed as NLRC Case No. RAB III 01-18500-12.

For their part, petitioners asserted that respondent started working as warehouse supervisor for FFC only on April 11, 2007 under a project employment contract for its Texas Instruments project located in Pampanga, which lasted until September 2008. Thereafter, respondent was rehired on a per project basis, for the following: (*a*) Robinson's Place project in Dumaguete City from September 12, 2008 until February 26, 2010; (*b*) FFC's Calumpit Plant project from March 7, 2010 until April 4, 2011; and (*c*) Wharton Parksuite project from April 22, 2011 until the termination of his contract on December 31, 2011.[17] In support thereof, FFC submitted copies of respondent's project employment contracts at his last assignment in Wharton Parksuite which showed that his services were engaged intermittently for a fixed period of one (1) or three (3) months only.[18] They further contended that respondent's termination was also reported[19] to the Department of Labor and Employment (DOLE) in accordance with Section 2.2 of

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[15] See *Sinumpaang Salaysay* dated April 2, 2012; *id*. at 89-91. See also *id*. at 104.

[16] See Amended Complaint dated February 29, 2012; *id*. at 58-59.

[17] See *id*. at 61.

[18] *Id*. at 66-73. The various periods of employment covering respondent's Project Employment Contract at Wharton Park Suite are as follows:

a. **July 1, 2010** to August 31, 2010
b. September 1, 2010 to September 30, 2010
c. October 1, 2010 to **October 31, 2010**
d. **January 16, 2011** to February 28, 2011
e. March 1, 2011 to **March 31, 2011**
f. **June 1, 2011** to June 30, 2011
g. July 1, 2011 to September 30, 2011
h. October 1, 2011 to **December 31, 2011**.

[19] See Establishment Employment Report; *id*. at 74-75.

Department Order No. 19, Series of 1993 (D.O. No. 19-93).[20] Thus, they maintained that respondent was not illegally dismissed as his project employment contract merely expired.[21] They further averred that the corporate officers should not be held liable in view of the separate personality of the corporation from its officers and absent showing of bad faith on their part.[22]

The LA Ruling

In a Decision[23] dated January 26, 2014, the LA declared respondent to be a regular employee of FFC and as such, was dismissed without just or authorized cause. The LA ruled that petitioners' failure to adduce proof of the filing of termination reports with the DOLE every time a project or phase was completed is an indication that respondent was not a project employee. Moreover, the LA noted that respondent has been employed as warehouse supervisor for FFC since 1977, and that in such capacity, performed tasks that were usually necessary or desirable in the usual business of the company.[24] Accordingly, the LA ordered petitioners to jointly and severally pay respondent separation pay equivalent to one month pay for every year of service since 1977 up to 2012 in the sum of ₱610,500.00, with full backwages reckoned from his dismissal; moral and exemplary damages in the amount ₱50,000.00 each; and ten percent (10%) attorney's fees for having been compelled to litigate.[25]

Dissatisfied, petitioners appealed[26] to the NLRC.

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[20] Entitled "GUIDELINES GOVERNING THE EMPLOYMENT OF WORKERS IN THE CONSTRUCTION INDUSTRY" dated April 1, 1993.

[21] See *rollo*, p. 63.

[22] See *id.* at 63-64.

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

[24] See *id*. at 107-110.

[25] See *id*. at 111.

[26] See Notice of Appeal with Memorandum on Appeal dated March 7, 2014; *id*. at 114-123.

The NLRC Ruling

In a Resolution[27] dated April 30, 2014, the NLRC reversed and set aside the LA's decision, holding that respondent was a project employee whose services ended upon completion of a specific project. It pointed out that FFC was primarily engaged in the construction industry whose workers are hired for specific phases of work in the project site, and that respondent was made aware of the nature of his employment and the duration thereof. It held that respondent's engagement as project employee was further manifested by his identification card, clearance, project employment contracts, and establishment termination report to the DOLE. Since respondent's most recent project contract had already ended, he cannot be said to have been illegally dismissed and thus, was not entitled to backwages, separation pay and other benefits. Finally, it found no basis to award damages there being no showing that petitioners acted in bad faith in terminating respondents, as well as attorney's fees.[28]

Respondent's motion for reconsideration[29] was denied in a Resolution[30] dated June 25, 2014. Aggrieved, respondent elevated the matter to the CA via a petition for *certiorari*.[31]

The CA Ruling

In a Decision[32] dated April 20, 2016, the CA reversed and set aside the NLRC ruling and instead, reinstated the LA ruling,[33] finding respondent to be a regular employee of FFC as early as 1977. It did not give credence to petitioners' claim that FF

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[27] *Id*. at 136-143.

[28] See *id*. at 140-142.

[29] Dated May 30, 2014. *Id*. at 144-151.

[30] CA *rollo*, pp. 41-42.

[31] *Rollo*, pp. 152-179.

[32] *Id*. at 45-54.

[33] See *id*. at 53.

Interior, FPTSPI, and Filsystems were separate and distinct corporations from FFC, noting that the said corporations were ran by the same people and that the same merely evolved into different names from its establishment in 1972 until its present name as FFC. The CA agreed with the findings of the LA that petitioners' failure to religiously report the termination of respondent's employment contracts established that the latter was a regular employee, and that the employment contracts were a mere after-thought in order to escape from their legal obligation attached to regular employment.[34]

Petitioners' motion for reconsideration[35] was denied in a Resolution[36] dated August 23, 2016; hence, the instant petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in finding grave abuse of discretion on the part of the NLRC.

The Court's Ruling

The petition is partly impressed with merit.

I.

To justify the grant of the extraordinary remedy of *certiorari*, petitioners must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. 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.[37] It has also been held that grave abuse

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[34] See *id*. at 47-53.

[35] See Entry of Appearance with Motion for Reconsideration (to the Decision dated 20 April 2016) dated May 17, 2016; *id*. at 182-192.

[36] *Id*. at 56-57.

[37] *Bahia Shipping Services, Inc. v. Hipe, Jr.*, 746 Phil. 955, 965-966 (2014).

of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence.[38]

Tested against these considerations, the Court finds that the CA committed no reversible error in granting respondent's *certiorari* petition *insofar as it ruled that respondent was a regular — and not a project — employee*.

Under Article 295[39] of the Labor Code, **regular employment** exists when the employee is: (*a*) engaged to perform activities that are usually necessary or desirable in the usual business or trade of the employer; or (*b*) a casual employee whose activities are not usually necessary or desirable in the employer's usual business or trade, and has rendered at least one year of service, whether continuous or broken, with respect to the activity in which he is employed.

On the other hand, an employee is said to be under a **project employment** when he is hired under a contract which specifies that the employment will last only for a ***specific project*** or undertaking the ***completion or termination of which is determined*** at the time of his engagement.[40] Thus, for an employee to be considered project-based, it is incumbent upon the employer to prove that: **(*a*)** the employee was assigned to carry out a specific project or undertaking; and **(*b*)** the duration and scope of which were specified at the time the employee was engaged for such project.[41] When a project employee is assigned to a project or phase thereof which begins and ends at determined or determinable times, his services may be lawfully terminated at the completion of such project or a phase thereof.[42]

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[38] *Tagolino v. House of Representatives Electoral Tribunal*, 706 Phil. 534, 558 (2013).

[39] Formerly Article 280. As renumbered pursuant to Department Advisory No. 07, series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[40] See Article 295 (280) of the Labor Code.

[41] *Dacles v. Millenium Erectors Corporation*, 763 Phil. 550, 558 (2015).

[42] See *Felipe v. Danilo Divina Tamayo Konstract, Inc. (DDTKI)*, 795 Phil. 891, 899 (2016). See also *Gadia v. Sykes Asia, Inc*., 752 Phil. 413,

Notably, in *GMA Network, Inc. v. Pabriga*,[43] the Court pointed out that if the particular job or undertaking is within the regular or usual business of the employer company and it is not identifiably distinct or separate from the other undertakings of the company such that there is clearly a constant necessity for the performance of the task in question, said job or undertaking should not be considered a project.[44]

In this case, respondent was supposedly engaged by FFC as warehouse supervisor for its various projects, namely: (*a*) Texas Instruments project in Pampanga from April 11, 2007 to September 2008; (*b*) Robinson's Place project in Dumaguete City from September 12, 2008 until February 26, 2010; (*c*) FFC's Calumpit Plant project from March 7, 2010 until April 4, 2011; and (*d*) Wharton Parksuite project from April 22, 2011 until December 31, 2011. However, ***for the first three (3) projects***, petitioners failed to show that respondent was hired on a project basis and that he was informed of the duration and scope of his work. In fact, no employment contracts for the said projects were presented to substantiate their claim. While the absence of a written contract does not *per se* grant regular status to respondent, it is nonetheless evidence that he was informed of the duration and scope of his work and his status as project employee.[45]

In addition, no termination reports for each completed projects were shown to have been submitted by petitioners to the DOLE as mandated under Section 2 (2.2) (e)[46] of Department Order

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421 (2015), citing *Omni Hauling Services, Inc. v. Bon*, 742 Phil. 335, 343-344 (2014).

[43] *GMA Network, Inc. v. Pabriga*, 722 Phil. 161 (2013).

[44] *Id*. at 173.

[45] See *Omni Hauling Services, Inc. v. Bon*, *supra* note 42, at 344.

[46] Section 2. EMPLOYMENT STATUS

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2.2 Indicators of project employment. — Either one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee.

No. 19-93 and, in fact, it was only during respondent's last assignment at the Wharton Parksuite project that they complied with the directive. It bears stressing that the failure of an employer to file a termination report with the DOLE every time a project or a phase thereof is completed indicates that the workers hired were not project employees. In *Tomas Lao Construction v. NLRC*,[47] the Court ruled that "[t]he report of termination is one of the indicators of project employment."[48]

While petitioners did submit respondent's project employment contracts for the Wharton Parksuite project, which contracts in fact, specified the covered project and duration thereof, the Court finds that the same are still insufficient to prove his status as a project employee. A perusal of the subject contracts readily reveals that respondent was repeatedly and successively re-hired as warehouse supervisor for the Wharton Parksuite project eight (8) times for the following periods, to wit: (*a*) July 1, 2010 to August 31, 2010, (*b*) September 1, 2010 to September 30, 2010, (*c*) October 1, 2010 to October 31, 2010, (*d*) January 16, 2011 to February 28, 2011, (*e*) March 1, 2011 to March 31, 2011, (*f*) June 1, 2011 to June 30, 2011, (*g*) July 1, 2011 to September 30, 2011, and (*h*) October 1, 2011 to December 31, 2011. These notwithstanding, petitioners, however, failed to show that respondent's services were needed only for the period contracted and that the particular phase or undertaking for which he has been hired has been completed to warrant the termination of his employment. On the contrary, respondent's successive re-hiring in order to perform the same kind of work for the

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(e) **The termination of his employment in the particular project/ undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions.**

x x x x x x x x x

(Emphasis supplied)

[47] 344 Phil. 268 (1997).

[48] *Id*. at 282.

same project, contract after contract — most of which were for a duration of one (1) month only — reasonably shows that respondent's project employment contracts were merely used by petitioners to circumvent the law on tenurial security. Settled is the rule that when periods have been imposed to preclude the acquisition of tenurial security by the employee, they should be struck down as contrary to public morals, good customs or public order.[49]

Even on the assumption that respondent was a project employee, the Court has held that an employment ceases to be co-terminous with specific projects when the employee is continuously rehired due to the demands of employer's business and re-engaged for many more projects without interruption.[50] As aptly pointed out in the case of *Maraguinot, Jr. v. NLRC*,[51] once a **project or work pool employee** has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary, and indispensable to the usual business or trade of the employer, **then the employee must be deemed a regular employee**.[52] Indeed, while length of time is not the controlling test for project employment, it is nonetheless vital in determining if the employee was hired for a specific undertaking or tasked to perform functions that are vital, necessary, and indispensable to the usual business or trade of the employer.[53]

Considering that the function of a warehouse supervisor is no doubt vital, necessary, and desirable to the construction business of petitioners, and it has been sufficiently shown that respondent's work as such for the latter's various projects without

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[49] *Id*. at 282-283.

[50] See *id*. at 279. See also *Liganza v. RBL Shipyard Corporation*, 535 Phil. 662, 672 (2006).

[51] 348 Phil. 580 (1998).

[52] *Id*. at 606.

[53] *Integrated Contractor and Plumbing Works, Inc. v. NLRC*, 503 Phil. 875, 883 (2005).

interruption since 2007 is necessary and desirable to petitioners' construction business, the CA properly deemed respondent to be a regular employee. To reiterate, where the employment of project employees is extended long after the supposed project has been finished, the employees are removed from the scope of project employees and are considered regular employees.[54]

As a regular employee, respondent is entitled to security of tenure and may only be dismissed for just or authorized causes. Thus, not having been dismissed for a valid and legal cause, the CA was correct in declaring respondent to have been illegally dismissed.

II.

However, the Court takes exception to the CA's finding that respondent's employment with petitioners started in 1977 based on its flawed finding that FF Interior and FFC are one and the same company.

In so ruling, the CA upheld the assertion that FF Interior, FPTSPI/Filsystem, and FFC merely changed their names and that all companies are managed and owned by the same people. However, the CA's conclusion is belied by the records which reveal that FFC originated from then Freyssinet (Davao) Inc.,[55] that was registered on February 28, 1994 before the SEC and issued SEC Registration No. ASO94-001909,[56] and thereafter re-named to FFC[57] in 2002, and subsequently, to Frey-Fil Corporation in 2011.[58] On the other hand, FPTSPI is shown to have been registered under SEC Registration No. ASO94-002261,[59] while Filsystems Tower 1, Inc. is registered under

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[54] *PNOC-Energy Development Corporation v. National Labor Relations Commission*, 549 Phil. 733, 746 (2007).

[55] See *rollo*, pp. 205-216.

[56] See *id*. at 193-204.

[57] See *id*. at 205-206.

[58] See *id*. at 217.

[59] See *id*. at 229-234.

SEC Registration No. ASO94-00011538.[60] Clearly, having been issued separate certificates of registration, the FFC, FPTSPI, and Filsystems Tower 1, Inc., are by law deemed to be separate and distinct corporate personalities.

Moreover, it is well settled that the mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[61] Neither is the existence of interlocking directors, corporate officers, and shareholders enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.[62] It must be shown that the separate and distinct personalities of the corporations are set up to justify a wrong, protect fraud, or perpetrate a deception.[63] Hence, the wrongdoing must be clearly and convincingly established by substantial evidence; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.[64] Verily, no such evidence was submitted by respondent in this respect.

In addition, no less than respondent admitted that his employment with FPTSPI ceased in 1999 and that he was hired anew by FFC only in 2006.[65] While respondent declared that he was employed by FFC on July 11, 2006 in his complaint,[66] no evidence was presented to substantiate the same. On the other hand, respondent did not deny FFC's claim that he was

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[60] See *id*. at 235-244.

[61] *Zambrano v. Philippine Carpet Manufacturing Corporation*, G.R. No. 224099, June 21, 2017, 828 SCRA 144, 166; citation omitted.

[62] *Philippine National Bank v. Hydro Resources Contractors Corporation*, 706 Phil. 297, 313 (2013).

[63] See *Kukan International Corporation v. Reyes*, 646 Phil. 210, 243 (2010).

[64] *Philippine National Bank v. Andrada Electric & Engineering Company*, 430 Phil. 882, 894-895 (2002).

[65] See *rollo*, p. 78.

[66] *Id*. at 58.

hired as warehouse supervisor by the latter in 2007 for its Texas Instruments project in Pampanga.[67] Under the circumstances, the Court is inclined to believe that respondent was hired by FFC only on April 11, 2007 — and not on July 11, 2006 as claimed by him.

Thus, since there was no basis for the CA to disregard the separate juridical personality of FFC under the doctrine of piercing the corporate veil, and considering further that respondent was deemed a regular employee of FFC having been consistently hired as warehouse supervisor since April 11, 2007, and terminated without a valid cause on January 5, 2012, the awards of backwages and separation pay in lieu of reinstatement[68] are in accord with Article 294[69] of the Labor Code.

As to the liability of the impleaded corporate officers, the Court equally finds error on the part of the CA in holding them jointly and severally liable to respondent. Case law states that to hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) it must be alleged in the complaint that the director or officer assented to patently unlawful acts of the corporation or that the officer was guilty of gross negligence or bad faith; and (2) there must be proof that the officer acted in bad faith.[70] Here, the twin requirements of allegation and proof of bad faith necessary to hold the impleaded corporate officers liable for the monetary awards are clearly lacking.

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[67] See respondent's Petition for *Certiorari*; *id*. at 166.

[68] See LA Decision; *id.* at 111.

[69] Article 294, formerly Article 279, of the Labor Code provides:

> Article 294. [279] **Security of Tenure**. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[70] *Dimson v. Chua*, 801 Phil. 778, 791 (2016).

Finally, with respect to the award of moral and exemplary damages, it is worthy to point out that moral damages are recoverable where the dismissal of the employee was attended by bad faith or fraud or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs, or public policy, while exemplary damages may be awarded if the dismissal was effected in a wanton, oppressive or malevolent manner.[71] Apart from respondent's bare allegations, no evidence was presented to prove that his dismissal was attended with bad faith or was done oppressively.

Except for the foregoing modifications, the CA Decision, which ordered the reinstatement of the LA ruling, stands.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated April 20, 2016 and the Resolution dated August 23, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 136935 are hereby **AFFIRMED** with **MODIFICATIONS**, as follows:

(*a*) petitioner Freyssinet Filipinas Corporation (now Frey-Fil Corporation) is ordered to pay respondent Amado R. Lapuz his separation pay equivalent to one (1) month pay per year of service reckoned from April 11, 2007 up to the finality of this Decision;

(*b*) the corporate officers, petitioners Eric A. Cruz, Gaudencio S. Reyes, and Carlota R. Satorre, are absolved from liability; and

(*c*) the award of moral and exemplary damages are ordered deleted for lack of basis.

The rest of the CA decision stands.

SO ORDERED.

Carpio[*] *(Chairperson), Caguioa, Reyes, J. Jr.*, and *Lazaro-Javier, JJ.*, concur.

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[71] *Pasos v. Philippine National Construction Corporation*, 713 Phil. 416, 437 (2013).

[*] Designated Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

SPECIAL SECOND DIVISION

[G.R. No. 229943. March 18, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGAR ROBLES, WILFREDO ROBLES, ROLANDO ROBLES *alias* "Bebot," DANTE ARON (Deceased), DANILO ROBLES *alias* "Toto," JOSE ROBLES (Deceased),** *accused*; **EDGAR ROBLES and WILFREDO ROBLES,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; CRIMINAL LIABILITY, HOW EXTINGUISHED; UNDER PREVAILING LAW AND JURISPRUDENCE, CRIMINAL LIABILITY IS TOTALLY EXTINGUISHED BY THE DEATH, PRIOR TO FINAL CONVICTION, OF THE ACCUSED; CASE AT BAR.— Under prevailing law and jurisprudence, Edgar's death prior to his final conviction by the Court renders dismissible the criminal cases against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused, x x x Thus, upon Edgar's death prior to his final conviction, the criminal action against him is extinguished. Consequently, the civil action instituted therein for the recovery of the civil liability *ex delicto* as to him is *ipso facto* extinguished, grounded as it is on the criminal action.

2. ID.; ID.; ID.; WHEN VICTIM'S HEIRS MAY FILE A SEPARATE CIVIL ACTION AGAINST THE ESTATE OF THE ACCUSED; CASE AT BAR.— However, it is well to clarify that Edgar's civil liability in connection with his acts against the victim may be based on sources other than delicts; in which case, the victim's heirs may file a separate civil action against Edgar's estate, as may be warranted by law and procedural rules.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Christian C. Peliña for accused-appellants.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

In a Resolution[1] dated November 19, 2018, the Court adopted the Decision[2] dated November 29, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01430 finding accused-appellants Edgar Robles (Edgar) and Wilfredo Robles (accused-appellants) guilty beyond reasonable doubt of the crime of Murder, the pertinent portion of which reads:

WHEREFORE, the Court **ADOPTS** the findings of fact and conclusions of law in the November 29, 2016 Decision of the CA in CA-G.R.HC No. 01430 and **AFFIRMS with MODIFICATION** said Decision finding accused-appellants Edgar Robles and Wilfredo Robles **GUILTY** beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code. Accordingly, they are each sentenced to suffer the penalty of *reclusion perpetua,* and to solidarily pay the heirs of [Dan Elvie] Sioco the following amounts: (*a*) ₱75,000.00 as civil indemnity; (*b*) ₱75,000.00 as moral damages; (*c*) ₱75,000.00 as exemplary damages; and (*d*) ₱50,000.00 as temperate damages. Moreover, all monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until full payment.[3]

However, before an Entry of Judgment could be issued in this case, the Court received a Notice of Death[4] dated January

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[1] *Rollo,* pp. 61-62. Signed by Division Clerk of Court Maria Lourdes C. Perfecto.

[2] *Id.* at 3-15. Penned by Associate Justice Edgardo T. Lloren with Associate Justices Rafael Antonio M. Santos and Ruben Reynaldo G. Roxas, concurring.

[3] *Id*. at 61.

[4] *Id*. at 63.

4, 2019 from accused-appellants' counsel informing the Court of Edgar's death on December 15, 2018, as evidenced by the Certificate of Death[5] attached thereto.

As will be explained hereunder, there is a need to modify the Court's Resolution dated November 19, 2018 dismissing the criminal case insofar as Edgar is concerned.

Under prevailing law and jurisprudence, Edgar's death prior to his final conviction by the Court renders dismissible the criminal cases against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused, to wit:

> Article 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
>
> x x x x x x x x x

In *People v. Culas,*[6] the Court thoroughly explained the effects of the death of an accused pending appeal on his liabilities, as follows:

> From this lengthy disquisition, we summarize our ruling herein:
>
> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability[,] as well as the civil liability[,] based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.,* civil liability *ex delicto* in *senso strictiore*."
>
> 2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source

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

[6] G.R. No. 211166, June 5, 2017, 825 SCRA 552.

of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law
b) Contracts
c) Quasi-contracts
d) x x x
e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure[,] as amended. This separate civil action may be enforced either against the executor/ administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with [the] provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[7]

Thus, upon Edgar's death prior to his final conviction, the criminal action against him is extinguished. Consequently, the civil action instituted therein for the recovery of the civil liability *ex delicto* as to him is *ipso facto* extinguished, grounded as it is on the criminal action. However, it is well to clarify that Edgar's civil liability in connection with his acts against the victim may be based on sources other than delicts; in which case, the victim's heirs may file a separate civil action against Edgar's estate, as may be warranted by law and procedural rules.[8]

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[7] *Id*. at 554-555; citations omitted.

[8] See *id*. at 556; citations omitted.

WHEREFORE, the Court resolves to: *(a)* **MODIFY** the Court's Resolution dated November 19, 2018 in connection with this case, **DISMISSING** Criminal Case No. 1690-LS before the Regional Trial Court of Surallah, South Cotabato, Branch 26 as against accused-appellant Edgar Robles by reason of his supervening death prior to his final conviction; and *(b)* **DECLARE** this case **CLOSED** and **TERMINATED** as to him.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 232989. March 18, 2019]

RUFINA S. JORGE, *petitioner, vs.* **ALBERTO C. MARCELO, JOEL SAN PASCUAL, ROMEO SALEN, CELSO SANTOS, HIGINO DALANGIN, JR., EDUARDO A. GARCIA, JULIUS FRONDA, ROGELIO VERGARA, LARRY P. TORRES, RODEL L. ZAMORA, ALEXANDER F. SUERTE, EDISIO G. CASEBO, FERNANDO ENORME, NOEL ALMAZAN, REGINO CRUZ, RONALD ALLAM, LOLITO DIZON, CECERON S. PENA, JR., RENATO M. ZONIO, ROBERTO F. LAYUSON, CRISTOSI S. ALBOR, ROGER TIBURCIO, and THE NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION),** *respondents.*

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[*] Designated Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; 2004 RULES ON NOTARIAL PRACTICE; A NOTARY PUBLIC MAY BE EXCUSED FROM REQUIRING THE PRESENTATION OF COMPETENT EVIDENCE OF IDENTITY IF THE SIGNATORY BEFORE HIM IS PERSONALLY KNOWN TO HIM; EXPLAINED.— The rule that the signatory to an instrument or document must present his/her identification card issued by an official agency, bearing his/her photograph and signature, has exceptions. In *Coca-Cola Bottlers Phils., Inc. v. Dela Cruz, et al.,* the presentation of a Community Tax Certificate *(CTC)* in lieu of other competent evidence of identity was allowed because a glitch in the evidence of the affiant's identity should not defeat his petition and may be overlooked in the interest of substantial justice, taking into account the merits of the case. Also, similar to Rufina's case, a notary public may be excused from requiring the presentation of competent evidence of identity if the signatory before him is personally known to him. In *Jandoquile v. Atty Revilla, Jr.,* it was held: x x x If the notary public knows the affiants personally, he need not require them to show their valid identification cards. This rule is supported by the definition of a "jurat" under Section 6, Rule II of the 2004 Rules on Notarial Practice. A "jurat" refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is personally known to the notary public **or** identified by the notary public through competent evidence of identity; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document. x x x. In legal hermeneutics, *"or"* is a disjunctive term that expresses an alternative or gives a choice of one among two or more things. The word signifies disassociation and independence of one thing from another thing in an enumeration. "[The] phrase 'personally known' contemplates the notary public's personal knowledge of the signatory's personal circumstances independent and irrespective of any representations made by the signatory immediately before and/or during the time of the notarization. It entails awareness, understanding, or knowledge of the signatory's identity and circumstances gained through firsthand observation or experience which therefore serve as guarantee

of the signatory's identity and thus eliminate the need for the verification process of documentary identification." The *jurat* or affirmation or oath, or acknowledgment must contain a statement that the affiant is personally known to the notary public; it cannot be assumed. Here, the notarial certificate of the Verification and Certification Against Forum Shopping that was attached to Rufina's petition for *certiorari* filed before the CA stated that she is personally known to the notary public. The fact that it contained no details of her competent evidence of identity is inconsequential simply because its presentation may be excused or dispensed with. If it is not required for the affiant to show competent evidence of identity in case he/she is personally known to the notary public, with more reason that it is unnecessary to state the details of such competent evidence of identity in the notarial certificate.

2. **LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC); 2015 AMENDMENTS TO THE NLRC RULES; POSTING OF A BOND IS NECESSARY TO SUSPEND THE EXECUTION PROCEEDINGS; FAILURE TO POST A BOND RESULTS IN THE CONTINUATION OF THE EXECUTION PROCEEDINGS, BUT IT DOES NOT MAKE THE THIRD PARTY CLAIM AUTOMATICALLY DEFECTIVE OR SUBJECT TO OUTRIGHT DENIAL/DISMISSAL; THE THIRD PARTY CLAIM IS DEEMED PROPERLY FILED AND MUST BE RESOLVED ON THE BASIS OF ITS SUBSTANTIVE MERITS.—** The 2015 amendments to the NLRC Rules shall govern Rufina's Third Party Claim because it was yet to be resolved by the labor arbiter at the time. Procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in rules of procedure. In contrast with the 2012 version, the amended provision does not require the posting of a cash or surety bond when a Third Party Claim is filed. However, posting of a bond is necessary to suspend the execution proceedings. Failure to post a bond merely results in the continuation of the execution proceedings; it does not make the Third Party Claim automatically defective or subject to outright denial/dismissal. The Third Party Claim stands unaffected; it is deemed properly filed and must be resolved on the basis of its substantive merits. In this case, Rufina pleaded, among others, to "[suspend] x x x execution proceedings with

respect to the Property subject of [the] Third Party Claim," but she did not post the required cash or surety bond until Labor Arbiter Santos promulgated his June 16, 2016 Order. As a result, the subject property was sold at public auction in favor of private respondents. Instead of denying outright Rufina's Third Party Claim, what the NLRC should have done was to rule on the merits of her other prayers. Specifically, it should have determined if she is indeed the sole owner of the subject property and, if found to be true, released said property by lifting the levy on execution.

3. CIVIL LAW; LAND REGISTRATION; TRANSFER CERTIFICATE OF TITLE; THE PHRASE "MARRIED TO" WRITTEN AFTER THE WIFE'S NAME IN THE CERTIFICATE OF TITLE DOES NOT NECESSARILY PROVE OR INDICATE THAT THE LAND IS A CONJUGAL PROPERTY, BUT THE PHRASE IS MERELY DESCRIPTIVE OF HER CIVIL STATUS AS THE REGISTERED OWNER. — The Court agrees with Rufina's contention that the phrase *"married to Romeo J. Jorge*" written after her name in TCT No. N-45328 is merely descriptive of her civil status as the registered owner. It does not necessarily prove or indicate that the land is a conjugal property of Rufina and Romeo or that they co-own it. It is not a proof that the property was acquired during the marriage. The only import of the title is that Rufina is the owner of the property, the same having been registered in her name alone, and that she is married to Romeo. Before the presumption of conjugal nature of property can apply, it must first be established that the property was in fact acquired during the marriage. Proof of acquisition during the coverture is a condition *sine qua non* for the operation of the presumption in favor of conjugal partnership. The party who asserts this presumption must first prove said time element. The presumption does not operate when there is no showing as to when the property alleged to be conjugal was acquired. If there is no showing as to when the property in question was acquired, the fact that the title is in the name of the wife alone is determinative of its nature as paraphernal, *i.e.,* belonging exclusively to said spouse. Notably, acquisition of title and registration thereof are two different acts. It is well settled that registration under the Torrens title system does not confer or vest title but merely confirms one already existing.

APPEARANCES OF COUNSEL

De Leon Law Office for petitioner.
Legal Advocates For Worker's Interest for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves a Petition for Review on *Certiorari* (with Urgent Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction) assailing the March 2, 2017[1] and June 23, 2017[2] Resolutions of the Court of Appeals *(CA)* in CA-G.R. SP No. 149666, which affirmed the August 26, 2016[3] and November 21, 2016[4] Resolutions of the National Labor Relations Commission *(NLRC)* denying the Petition for Extraordinary Remedies (with Urgent Prayer for TRO and/or WPI) filed by petitioner Rufina S. Jorge *(Rufina)* under Rule XII of the 2011 NLRC Rules of Procedure, as amended *(NLRC Rules)*.

The present controversy arose from the cases for illegal dismissal, non-payment of service incentive leave pay and 13th month pay, and claims for payment of separation pay, damages and attorney's fees filed against R. Jorgensons Swine Multiplier Corporation and Romeo J. Jorge by private respondents Alberto C. Marcelo, Joel San Pascual, Romeo Salen, Celso Santos, Higino Dalangin, Jr., Eduardo A. Garcia, Julius Fronda, Rogelio Vergara, Larry P. Torres, Rodel L. Zamora, Alexander F. Suerte, Edisio G. Casebo, Fernando Enorme, Noel Almazan, Regino Cruz, Ronald Allam, Lolito Dizon, Ceceron S. Pena, Jr., Renato M. Zonio, Roberto F. Ayuson, Cristosi S. Albor, and Roger Tiburcio.

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[1] Penned by Associate Justice Marlene B. Gonzales-Sison, with Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting, concurring; *rollo,* pp. 10-11; CA *rollo,* pp. 98-99.

[2] *Rollo,* pp. 21-24; CA *rollo,* pp. 139-142.

[3] *Id.* at 104-111; *Id.* at 24-31.

[4] *Id.* at 120-124; *Id.* at 40-44.

On August 31, 2010, Executive Labor Arbiter Generoso V. Santos *(Labor Arbiter Santos)* rendered a Decision[5] in favor of private respondents, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered, dismissing the complaint for illegal dismissal. However, respondents are jointly and severally ordered to pay the complainants as follows:
>
> 1. Their separation pay computed at one month salary or at least one-half month salary for every year of service whichever is higher, a fraction of six months to be considered as one year;
> 2. Nominal damages of Php50,000.00 for each and every complainant[;] [and]
> 3. Attorney's fees equivalent to ten percent (10%) of the total monetary award.
>
> The attached computation of the foregoing monetary award is hereby adapted as Annex "A" and made an integral part of this Decision.
>
> SO ORDERED.[6]

Pursuant to the Decision, a Writ of Execution and an Alias Writ of Execution were issued on May 2, 2011 and February 5, 2015, respectively, commanding the sheriff to collect the sum of ₱2,513,820.77 as monetary award and ₱251,382.07 as attorney's fees.[7] Relative thereto, Rufina filed a Third Party Claim on June 29, 2015. She alleged as follows:

> x x x x x x x x x
>
> 2. In this case, Claimant is the sole registered owner of a real property covered by Transfer Certificate of Title No. N-45328 issued by the Register of Deeds of Rizal (the "Property"). x x x.
>
> 3. During a routine inspection of the title of the Property, Claimant discovered that the Property had been subject to a Notice of Levy on Execution in this case.
>
> 4. Claimant is not a party, much less a losing party in this case.

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[5] *Id.* at 56-67; *Id.* at 45-56.

[6] *Id.* at 67; *Id.* at 56.

[7] *Id.* at 68-71; *Id.* at 57-60.

5. On the face of the title alone, it can be seen that the Property is registered solely to Claimant. This fact alone should have alerted the Sheriff to refrain from levying on execution on the said Property.

6. It appears that the Sheriff in this case levied on the Property because the registered owner indicated on the title was described as being "married to Romeo J. Jorge", a losing party in this case.

7. It is well-settled, however, that the phrase "married to" appearing in certificates of title is merely descriptive of the marital status of the person indicated therein *[Heirs of Jugalbot vs. Court of Appeals,* G.R. No. 170346, 12 March 2007]. The clear import is that the Claimant is the sole owner of the property, the same having been registered in her name alone, and the phrase "married to Romeo J. Jorge" was merely descriptive of her civil status. Levy on the Property, therefore, is improper and should be lifted.

8. Upon discovering the said levy, Claimant engaged undersigned counsel to know more about this case. Undersigned counsel thereafter proceeded to this Honorable Office to review the case files.

9. Upon reviewing the case files, undersigned counsel noted that the latest entry on record appears to be an Alias Writ of Execution. **There was no return or report from the Sheriff.** As such, there was no information as to when and where the notice of execution sale was published. Claimant, therefore, could not determine with certainty as to how much time she has to file a Third Party Claim.

10. In fact, there was no notice of execution sale on file. It was only upon verbal discussion with the Sheriff that undersigned counsel learned that he already executed such notice.

11. Upon his request, undersigned counsel was furnished by the Sheriff with a copy of a "Notice of Sale/Levy on Execution of Real Property." Upon examination, however, **the said notice did not indicate when the execution sale is scheduled to take place. The space provided for the date of execution sale was left blank. This is highly irregular considering that the very purpose of a notice of execution sale is precisely to give notice as to when the execution sale is supposed to take place.**

12. It is also noted that in the said notice, spaces provided for the name of the newspaper and the publication dates were also left blank. Claimant, therefore, could not verify which newspaper such notice was published, let alone the dates when such notice was published.

13. Claimant does not have sufficient liquidity to post a cash bond. As such, Claimant endeavored to post a surety bond for her Third Party Claim. She encountered, however, extreme difficulty in complying with the requirements of the bond companies. Without any certainty as to the deadline for her Third Party Claim, Claimant was constrained to file this Third Party Claim without any surety bond in the meantime.

14. The cash deposit of Twenty Thousand Pesos (PhP20,000.00) for the payment of the republication of notice of auction sale has been posted upon the filing of this Third Party Claim, together with the payment of the prevailing filing fee.

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed that an Order be issued:

1. suspending and cancelling execution proceedings with respect to the Property subject of this Third Party Claim;
2. upholding and recognizing Third Party Claimant's ownership of the Property;
3. lifting and removing the levy on execution over the Property; and
4. releasing the said Property from levy on execution in this case.

Third Party Claimant also prays for such further or other reliefs as may be just and equitable under the circumstances.[8]

In their Comment with Motion to Dismiss,[9] private respondents countered that Rufina failed to strictly observe the requirements of Section 11, Rule XI of the NLRC Rules. According to them, the Third Party Claim was (1) not filed within the mandatory five-day period from the last day of posting or publication of the notice of execution sale; (2) not accompanied by a bond equivalent to the amount of the claim or judgment award; and (3) not accompanied with proof of payment of the corresponding filing fee. They also contended that Rufina's bare assertion that she is the sole owner of the Property would not suffice due to the presumption of conjugal ownership during the existence of a marriage.

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[8] *Id.* at 72-74; *Id.* at 61-63. (Emphasis in the original)

[9] *Id.* at 82-86; *Id.* at 71-75.

On June 16, 2016, Labor Arbiter Santos ordered the dismissal of the Third Party Claim and directed the sheriff to proceed with the auction of the subject property after the republication of notice of auction sale.[10] He opined:

> Rufina failed to adduce sufficient evidence to establish that the levied property exclusively belongs to her for this Office to deviate to the pronouncement of the Supreme Court in the case of Dewara vs. Lamela, G.R. No. 179010, April 11, 2015, where it was ruled that 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 wife. That registration in the name of the husband or wife alone does not destroy this presumption x x x Moreover, the presumption of conjugal ownership even when the manner in which the property was acquired does not appear. The use of the conjugal funds is not an essential requirement for the presumption to arise.
>
> The title to the property clearly shows that the same was acquired during the time of marriage, hence, the presumption under the law and the above jurisprudence, that it belongs to the conjugal partnership.[11]

To set aside the Order, Rufina filed before the NLRC a Petition for Extraordinary Remedies[12] (with Urgent Prayer for TRO and/or WPI) under Rule XII of the NLRC Rules, arguing that: (1) the case of *Dewara* is not applicable because there is no evidence on record that the subject property was acquired during her marriage with Romeo Jorge; (2) the burden of proof is on private respondents to show that the subject property was acquired during the marriage; (3) consistent with *Salas, Jr. v. Aguila,*[13] her certificate of title is generally a conclusive evidence of ownership and that the phrase *"married to*" is merely descriptive of her civil status as the registered owner; and (4) the Order would cause injustice if not rectified since (a) she was not a respondent in the labor case; (b) she was not served with summons in the

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[10] *Id.* at 87-89; *Id.* at 76-78.

[11] *Id.* at 88-89; *Id.* at 77-78.

[12] *Id.* at 90-103; *Id.* at 79-92.

[13] 718 Phil. 274, 283 (2013).

case; (c) she was not given an opportunity to file any pleadings relative thereto; and (d) she was not furnished with a copy of the labor arbiter's decision and had no opportunity to appeal it.

On August 26, 2016, the NLRC denied the petition for lack of merit. It was ruled that the Third Party Claim was procedurally flawed, thus, warranting its outright dismissal. In violation of Section 14(c), Rule XI of the NLRC Rules, Rufina "merely kept silent and did not address the defect of non-submission of the requisite cash/surety bond until the issuance of the assailed Order dated June 16, 2016." Rufina moved for reconsideration,[14] but it was denied on November 21, 2016.

Meantime, on November 3, 2016, the subject property covered by TCT No. N-45328, with an area of 2,444 square meters, was sold at public auction in favor of private respondents.[15]

Rufina elevated the case to the CA via petition for *certiorari*.[16] It was dismissed on March 2, 2017 due to procedural defects, to wit:

1. The complete postal addresses of private respondents are not alleged in violation of Section 3(a), Rule 46 in relation to Rule 65 of the Rules;

2. Jurat of the Verification and Certification of Non-Forum Shopping is defective there being no competent proof of affiant's identity as required under 09-8-13 SC Resolution dated February 19, 2008;

3. The date of issue of Atty. Mark Anthony De Leon's PTR Number is not updated for the current year, in contravention of the Notarial law.[17]

A motion for reconsideration[18] was filed, but it was denied. The June 23, 2017 Resolution disposed:

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[14] *Rollo,* pp. 113-119; CA *rollo,* pp. 32-38.

[15] *Id.* at 149-150; *Id.* at 93-94.

[16] *Id.* at 125-146; *Id.* at 3-22.

[17] *Id.* at 10-11; *Id.* at 98-99.

[18] *Id.* at 12-19; *Id.* at 107-115.

A perusal of the motion for reconsideration reveals that *whilst* the petitioner has sufficiently explained and/or cured the defects of her petition stated in Numbers 1 and 3, she *failed* to cure and/or sufficiently explained the defect mentioned in Number 2. *Section 2 of the 2004 Rules on Notarial Practice lists the act to which an affirmation or* oath refers x x x.

x x x x x x x x x

In here, petitioner's mere declaration that she is "personally known to the notary public (Atty. Mark Anthony De Leon)" does not exempt her in not presenting a competent evidence of identity as required by the 2004 Rules on Notarial [Practice]. Petitioner did not explain how Atty. De Leon have known her or how she and Atty. De Leon personally knew each other. *Without which,* the declaration alone of petitioner is inconsequential, hence, We **cannot assume** that petitioner was *indeed* personally known to Atty. De Leon.

Besides, contrary to the contention of petitioner, Rule II, Sec. 12 of the *2004 Rules on Notarial Practice* requires a party to the instrument to present competent evidence of identity. x x x.

x x x x x x x x x

Hence, even if the Notarial Rules do not require the details of the competent evidence of identity to be indicated in the notarized document, the affiant, herein petitioner, is still required to present a competent evidence of her identity. In not attaching or presenting a copy of one of the enumerated identification cards or documents above listed in the subject motion for reconsideration, the **defect** in the oath of petitioner **remains.** Accordingly, notwithstanding that the petitioner has sufficiently explained and/or cured the other defects of her petition in the subject **motion for reconsideration,** We *still* find it to be ***insufficient in form*** and ***dismissible.*** Accordingly, We ***cannot*** reconsider Our assailed Resolution.[19]

In her petition before Us, Rufina counters that Section 12,[20] Rule II of the Notarial Rules only defines competent evidence

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[19] *Id.* at 22-23; *Id.* at 140-141.

[20] 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, such as

of identity and does not require that it be presented in all affirmation or oath and *jurat.* Under Sections 2(b)[21] and 6(b),[22] Rule II, affirmation or oath and *jurat* can be done even if there is no competent evidence of identity as long as the signatory is personally known to the notary public. It is also argued that she should not be held responsible for explaining the declaration of personal knowledge because it was a statement of the notary public, not her or her counsel, and that the order to explain as to how the notary public and the signatory of the instrument or document personally knew each other finds no basis under the Notarial Rules. Moreover, Rufina contends that in her case there is nothing in the Notarial Rules which requires the details of competent evidence of identity to be indicated on the notarized document. Even so, the failure to record such details does not automatically mean that the competent evidence of identity was

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but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, *Barangay* certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

[21] SEC. 2. *Affirmation or Oath.* — The term "Affirmation" or "Oath" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) avows under penalty of law to the whole truth of the contents of the instrument or document.

[22] SEC. 6. *Jurat.* – "Jurat" refers to an act in which an individual on a single occasion:

not presented to the notary public as it is possible that it was in fact submitted but the notary public did not make it appear as such. Rufina asserts that the failure to indicate the details of the competent evidence of identity pertains to the notary public; hence, she should not be penalized by way of dismissal of her petition.

We agree.

The rule that the signatory to an instrument or document must present his/her identification card issued by an official agency, bearing his/her photograph and signature, has exceptions.[23] In *Coca-Cola Bottlers Phils., Inc. v. Dela Cruz, et al.,*[24] the presentation of a Community Tax Certificate *(CTC)* in lieu of other competent evidence of identity was allowed because a glitch in the evidence of the affiant's identity should not defeat his petition and may be overlooked in the interest of substantial justice, taking into account the merits of the case.

Also, similar to Rufina's case, a notary public may be excused from requiring the presentation of competent evidence of identity if the signatory before him is personally known to him.[25] In *Jandoquile v. Atty Revilla, Jr.,*[26] it was held:

x x x If the notary public knows the affiants personally, he need not require them to show their valid identification cards. This rule

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(a) appears in person before the notary public and presents an instrument or document;

(b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;

(c) signs the instrument or document in the presence of the notary; and

(d) takes an oath or affirmation before the notary public as to such document.

[23] See *Victoriano v. Dominguez,* G.R. No. 214794, July 23, 2018.

[24] 622 Phil. 886, 899-900 (2009), as cited in *Victoriano v. Dominguez,* G.R. No. 214794, July 23, 2018.

[25] See *Heir of Unite v. Guzman,* A.C. No. 12062, July 2, 2018 (2nd Division Resolution).

[26] 708 Phil. 337 (2013).

is supported by the definition of a "jurat" under Section 6, Rule II of the 2004 Rules on Notarial Practice. A "jurat" refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is personally known to the notary public **or** identified by the notary public through competent evidence of identity; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document. x x x.[27]

In legal hermeneutics, *"or"* is a disjunctive term that expresses an alternative or gives a choice of one among two or more things.[28] The word signifies disassociation and independence of one thing from another thing in an enumeration.[29] "[The] phrase 'personally known' contemplates the notary public's personal knowledge of the signatory's personal circumstances independent and irrespective of any representations made by the signatory immediately before and/or during the time of the notarization. It entails awareness, understanding, or knowledge of the signatory's identity and circumstances gained through firsthand observation or experience which therefore serve as guarantee of the signatory's identity and thus eliminate the need for the verification process of documentary identification."[30] The *jurat* or affirmation or oath, or acknowledgment must contain a statement that the affiant is personally known to the notary public; it cannot be assumed.[31]

Here, the notarial certificate of the Verification and Certification Against Forum Shopping that was attached to

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[27] *Jandoquile v. Atty. Revilla, Jr., supra,* at 341. See also *Victoriano v. Dominguez, supra* note 23, and *Reyes v. Glaucoma Research Foundation, Inc., et al.,* 760 Phil. 779, 786 (2015).

[28] See *Reyes v. Glaucoma Research Foundation, Inc., et al., supra,* at 787.

[29] *Reyes v. Glaucoma Research Foundation, Inc., et al., supra* note 27, at 787.

[30] *Heir of Unite v. Guzman, supra* note 25.

[31] See *Kilosbayan Foundation, et al. v. Judge Janolo, Jr., et al.,* 640 Phil. 33, 46 (2010), as cited in *William Go Que Construction v. Court of Appeals, et al.,* 785 Phil. 117, 129 (2016).

Rufina's petition for *certiorari* filed before the CA stated that she is personally known to the notary public.[32] The fact that it contained no details of her competent evidence of identity is inconsequential simply because its presentation may be excused or dispensed with. If it is not required for the affiant to show competent evidence of identity in case he/she is personally known to the notary public, with more reason that it is unnecessary to state the details of such competent evidence of identity in the notarial certificate.

The foregoing considered, the CA should have decided the Petition for *Certiorari* based on its merits. It should have determined whether or not the NLRC committed grave abuse of discretion in denying the Petition for Extraordinary Remedies, which assailed the June 16, 2016 Order of Labor Arbiter Santos. A plain reading of the 2011 NLRC Rules of Procedure, as amended, would reveal that the NLRC gravely abused its discretion in dismissing outright the petition due to Rufina's failure to post a cash or surety bond.

When Rufina filed a Third Party Claim on June 29, 2015, Rule XI of the 2011 NLRC Rules of Procedure, as amended by NLRC *En Banc* Resolution No. 11-12 dated November 16, 2012, mandated:

> Section 14. *Third Party Claim.* — a) If the property levied is Claimed by any person other than the losing party, such person may file a third party claim not later than five (5) days from the last day of posting or publication of the notice of execution sale, otherwise the claim shall be forever barred. Such third party claim must comply with the following requirements:
>
> (1) An affidavit stating title to property or right to the possession thereof with supporting evidence;
>
> (2) Posting of a cash or surety bond equivalent to the amount of the claim or judgment award and in accordance with Section 6 of Rule VI;
>
> (3) In case of real property, posting of a refundable cash deposit of twenty thousand pesos (₱20,000) for the payment of republication of notice of auction sale; and

[32] CA *rollo,* pp. 21-22.

(4) Payment of prevailing filing fee.

b) Where filed — The third party claim shall be filed with the Commission or Labor Arbiter where the execution proceeding is pending, with proof of service of copies thereof to the Sheriff and the prevailing party.

c) Effect of Filing. — The filing of a third party claim that has complied with the requirements set forth under paragraph (a) of this Section shall automatically suspend the proceedings with respect to the execution of the properties subject of the third party claim.

Upon approval of the bond, the Labor Arbiter shall issue an order releasing the levied property or a part thereof subject of the claim unless the prevailing party posts a counter bond in an amount not less than the value of the levied property.

The Labor Arbiter may require the posting of additional bond upon showing by the other party that the bond is insufficient.

d.) Proceedings. — The propriety of the third party claim. shall be resolved within ten (10) working days from submission of the claim for resolution. The decision of the Labor Arbiter is not appealable but may be elevated to the Commission and resolved in accordance with Rule XII hereof. Pending resolution thereof, execution shall proceed against all other properties not subject of the third party claim.

Prior to the promulgation of the June 16, 2016 Order of Labor Arbiter Santos, Section 14, Rule XI of the 2011 NLRC Rules was further modified by NLRC *En Banc* Resolution No. 14-15 dated September 16, 2015. It provided:

SECTION 14. *Third Party Claim.* — (a) If the property levied is claimed by any person other than the losing party, such person may file a third party claim not later than five (5) days from the last day of posting or publication of the notice of execution sale, otherwise the claim shall be forever barred. Such third party claim must comply with the following requirements:

(1) An affidavit stating title to property or right to the possession thereof and the property's fair market value with supporting evidence;
(2) Payment of prevailing filing fee; and,
(3) In case the subject matter of the third party claim is a real

property, posting of a refundable cash deposit of Twenty Thousand Pesos (₱20,000) for the payment of republication of notice of auction sale.

(b) *Where Filed.* — The third party claim shall be filed with the Commission or Labor Arbiter where the execution proceeding is pending, with proof of service of copies thereof to the Sheriff and the prevailing party.

(c) *Effect of filing and posting of bond.* — The filing of a third party claim shall not suspend the execution proceedings with respect to the property subject of the third party claim, unless the third party claimant posts a cash or surety bond equivalent to the value of the levied property or judgment award, whichever is lower, and in accordance with Section 6 of Rule VI.[33] The cash or surety bond shall be in lieu of the property subject of the third party claim.

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[33] Section 6 of Rule VI of the 2011 NLRC Rules, as amended by the NLRC *En Banc* Resolution No. 14-15 states:

> Section 6. *Bond.* — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in the amount to the monetary award, exclusive of damages and attorney's fees.
>
> In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission and shall be accompanied by original or certified true copies of the following:
>
> (a) a joint declaration under oath by the employer, his/her counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case;
> (b) an indemnity agreement between the employer-appellant and bonding company;
> (c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security; and
> (d) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.
>
> The Commission through the Chairman may on justifiable grounds blacklist an accredited bonding company.
>
> A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or

The cash or surety bond shall be valid and effective from the date of deposit or posting, until the third party claim is finally decided; resolved or terminated. This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the third party claimant and the bonding company.

The Labor Arbiter may require the posting of additional bond upon showing by the other party that the bond is insufficient.

Upon approval of the bond, the Labor Arbiter shall issue an order releasing the levied property or a part thereof subject of the claim.

(d) *Proceedings.* — The propriety of the third party claim shall be resolved within ten (10) working days from submission of the claim for resolution. The decision of the Labor Arbiter is not appealable but may be elevated to the Commission and resolved in accordance with Rule XII hereof.

In the event that the resolution of the third party claim is elevated to the Commission, the release of the bond shall be suspended. Pending resolution thereof, execution shall proceed against all other properties not subject of the third party claim.

If the third party claim is denied with finality, the bond shall be made answerable in lieu of the property subject of the third party claim.

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terminated, or the award satisfied. This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.

The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

The 2015 amendments to the NLRC Rules shall govern Rufina's Third Party Claim because it was yet to be resolved by the labor arbiter at the time. Procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in rules of procedure.[34] In contrast with the 2012 version, the amended provision does not require the posting of a cash or surety bond when a Third Party Claim is filed. However, posting of a bond is necessary to suspend the execution proceedings. Failure to post a bond merely results in the continuation of the execution proceedings; it does not make the Third Party Claim automatically defective or subject to outright denial/dismissal. The Third Party Claim stands unaffected; it is deemed properly filed and must be resolved on the basis of its substantive merits.

In this case, Rufina pleaded, among others, to "[suspend] x x x execution proceedings with respect to the Property subject of [the] Third Party Claim," but she did not post the required cash or surety bond until Labor Arbiter Santos promulgated his June 16, 2016 Order. As a result, the subject property was sold at public auction in favor of private respondents. Instead of denying outright Rufina's Third Party Claim, what the NLRC should have done was to rule on the merits of her other prayers. Specifically, it should have determined if she is indeed the sole owner of the subject property and, if found to be true, released said property by lifting the levy on execution.

The Court agrees with Rufina's contention that the phrase "*married to Romeo J. Jorge*" written after her name in TCT No. N-45328 is merely descriptive of her civil status as the registered owner.[35] It does not necessarily prove or indicate

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[34] *Sumiran v. Spouses Damaso,* 613 Phil. 72, 78-79 (2009) and *NAPOCOR v. Spouses Laohoo, et al.,* 611 Phil. 194, 212 (2009).

[35] See *Uy v. Spouses Lacsamana,* 767 Phil. 501, 517 (2015); *Ventura, Jr. v. Spouse Abuda,* 720 Phil. 575, 583 (2013); *Salas, Jr. v. Aguila,* 718 Phil. 274, 283 (2013); *Dela Peña, et al. v. Avila, et al.,* 681 Phil. 553, 564 (2012); *Agtarap v. Agtarap, et al.,* 666 Phil. 452, 472 (2011); *Heirs of Nicolas Jugalbot v. Court of Appeals,* 547 Phil. 113, 122 (2007); *Metropolitan Bank and Trust Company v. Tan,* 538 Phil. 873, 882 (2006); *Ruiz v. Court of*

that the land is a conjugal property of Rufina and Romeo or that they co-own it.[36] It is not a proof that the property was acquired during the marriage.[37] The only import of the title is that Rufina is the owner of the property, the same having been registered in her name alone, and that she is married to Romeo.[38] Before the presumption of conjugal nature of property can apply, it must first be established that the property was in fact acquired during the marriage. Proof of acquisition during the coverture is a condition *sine qua non* for the operation of the presumption in favor of conjugal partnership.[39] The party who asserts this presumption must first prove said time element.[40] The presumption does not operate when there is no showing as to when the property alleged to be conjugal was acquired.[41] If there is no showing as to when the property in question was acquired, the fact that the title is in the name of the wife alone is determinative of its nature as paraphernal, *i.e.,* belonging exclusively to said spouse.[42] Notably, acquisition of title and registration thereof are two different acts.[43] It is well settled that registration under the Torrens

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Appeals, 449 Phil. 419, 431 (2003); *Francisco v. CA,* 359 Phil. 519, 529 (1998); and *Magallon v. Hon. Montejo,* 230 Phil. 366, 377 (1986).

[36] *Ventura, Jr. v. Spouses Abuda, supra; Agtarap v. Agtarap, et al., supra; Metropolitan Bank and Trust Company v. Tan, supra,* at 881; *Ruiz v. Court of Appeals, supra;*and *Magallon v. Hon. Montejo*, *supra.*

[37] *Heirs of Nicolas Jugalbot v. Court of Appeals,* 547 Phil. 113, 122 (2007); *Metropolitan Bank and Trust Company v. Tan, supra* note 35; and *Ruiz v. Court of Appeals, supra* note 35.

[38] *Ruiz v. Court of Appeals, supra* note 35, at 432.

[39] See *Dela Peña, et al. v. Avila, et al., supra* note 35, at 563; *Metropolitan Bank and Trust Company v. Tan, supra* note 35; *Ruiz v. Court of Appeals, supra* note 35; and *Francisco v. Court of Appeals, supra* note 35.

[40] *Dela Peña, et al. v. Avila, et al., supra* note 35, at 563, citing *Francisco v. Court of Appeals, supra* note 35, at 526.

[41] *Id.*

[42] *Id.* at 565, citing *Ruiz v. Court of Appeals, supra* note 35, at 431-432.

[43] *Metropolitan Bank and Trust Company v. Tan, supra* note 35; *Ruiz v. Court of Appeals, supra* note 35; and *Francisco v. Court of Appeals, supra* note 35.

title system does not confer or vest title but merely confirms one already existing.[44]

In the interest of justice and fair play, We remand this case to the NLRC to rule on the unresolved factual issue. Private respondents are given one last opportunity to show *when* the property alleged to be conjugal was acquired. Proof that the subject property was acquired during the marriage of Rufina and Romeo must be presented. There must be evidence from which the actual date of acquisition of the realty can be ascertained. It is not necessary to prove that the subject property was acquired with funds of the partnership.[45]

WHEREFORE, the petition is **GRANTED**. The March 2, 2017 and June 23, 2017 Resolutions of the Court of Appeals in CA-G.R. SP No. 149666, which affirmed the August 26, 2016 and November 21, 2016 Resolutions of the National Labor Relations Commission denying the Petition for Extraordinary Remedies (with Urgent Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction) filed by petitioner Rufina S. Jorge under Rule XII of the 2011 NLRC Rules of Procedure, as amended, are **REVERSED AND ASIDE**. The case is **REMANDED** to the NLRC to determine with reasonable dispatch the ownership of the real property covered by Transfer Certificate of Title No. N-45328.

SO ORDERED.

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

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[44] *Ventura, Jr. v. Spouse Abuda, supra* note 35, at 583-584 and *Francisco v. Court of Appeals, supra* note 35.

[45] *Dela Peña, et al. v. Avila, et al., supra* note 35, at 563.

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

SECOND DIVISION

[G.R. No. 234501. March 18, 2019]

MERCANTILE INSURANCE CO., INC., *petitioner, vs.* **SARA YI, also known as SARAH YI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; EFFECT OF FOREIGN JUDGMENTS OR FINAL ORDERS; A JUDGMENT OR FINAL ORDER OF A FOREIGN TRIBUNAL CREATES A RIGHT OF ACTION AND ITS NON-SATISFACTION IS THE CAUSE OF ACTION BY WHICH A SUIT CAN BE BROUGHT UPON FOR ITS ENFORCEMENT; WHAT IS INDISPENSABLE IN AN ACTION FOR THE ENFORCEMENT OF A FOREIGN JUDGMENT IS THE PRESENTATION OF THE FOREIGN JUDGMENT ITSELF AS IT COMPRISES BOTH THE EVIDENCE AND THE DERIVATION OF THE CAUSE OF ACTION; CASE AT BAR.— Certainly, the Philippine legal system has long ago accepted into its jurisprudence and procedural rules the viability of an action for enforcement of foreign judgment, as well as the requisites for such valid enforcement, as derived from internationally accepted doctrines. In our jurisdiction, a judgment or final order of a foreign tribunal creates a right of action, and its non-satisfaction is the cause of action by which a suit can be brought upon for its enforcement. Section 48, Rule 39 of the Rules of Court explicitly provides for the conditions for the recognition and enforcement of a foreign judgment. x x x The causes of action arising from the enforcement of foreign judgment and that arising from the allegations that gave rise to said foreign judgment differs, such that the former stems from the foreign judgment itself, whereas the latter stems from the right in favor of the plaintiff and its violation by the defendant's act or omission. The evidence to be presented likewise differs what is indispensable in an action for the enforcement of a foreign judgment is the presentation of the foreign judgment itself as it comprises both the evidence and the derivation of the cause of action. Further, the above-cited rule provides that a foreign judgment against a person, *i.e.*, an

action *in personam*, as in this case, is merely a presumptive evidence of rights between the parties. Such judgment may be attacked by proving lack of jurisdiction, lack of notice to the party, collusion, fraud, or clear mistake of fact or law. Thus, contrary to MIC's position, the burden is upon MIC to prove its allegations against the validity of the foreign judgment sought to be enforced.

2. ID.; EVIDENCE; PROOF OF RECORDS OF OFFICIAL ACTS OF A SOVEREIGN AUTHORITY; EXCEPTION; CASE AT BAR.— Section 24, Rule 132 of the Rules of Court provides that the records of the official acts of a sovereign authority may be evidenced by an official publication thereof or by a copy attested by its legal custodian, his deputy, and accompanied with a certificate that such officer has a custody, in case the record is not kept in the Philippines. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. An exception to this rule, however, is recognized in the cases of *Willamette Iron & Steel Works v. Muzzal*, and *Manufacturers Hanover Trust Co. v. Guerrero*, wherein we emphatically ruled that the testimony under oath of an attorney-at-law of a foreign state, who quoted verbatim the applicable law and who stated that the same was in force at the time the obligations were contracted, was sufficient evidence to establish the existence of said law. In *Manufacturers Hanover Trust*, we stated that it is necessary to state the specific law on which the claim was based. In this case, Atty. Robert G. Dyer (Atty. Dyer), member of the bar of the State of California for more than 30 years, testified as to the applicable law related to summons. In detail, he stated the exact pertinent provision under the California Code of Civil Procedure, to wit: Section 415.40 A summons may be served on a person outside this state in any manner provided by this article or by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt. Service of a summons by this form of mail is deemed complete on the 10th day after such mailing. Indeed, pursuant to the above-proven law in the State of California, the service of summons by mail to MIC, an entity outside its state, was

valid. As such law was sufficiently alleged and proven, it is beyond the province of this Court's authority to pass upon the issue as to the factual circumstances relating to the proper service of summons upon MIC in the case before the State of California.

3. ID.; ACTIONS; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTIES; NECESSARY TO BE IMPLEADED SO THAT A FULL RESOLUTION OF THE CASE CAN BE OBTAINED; CASE AT BAR.— Our rules provide that an indispensable party is a party-in-interest without whom no final determination can be had of an action. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties' that his legal presence as a party to the proceeding is an absolute necessity. In his absence, there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable. Alternatively put, it is necessary that an indispensable party must be impleaded so that a full resolution of the case can be obtained. Here, it is apparent that the Chuns are not indispensable parties, whose inclusion is determinative of the final outcome of the case. Their legal presence will not render the resolution of the action incomplete and ineffective for there was a final judgment already rendered by the foreign court. As previously mentioned, what our courts will do is to recognize the foreign judgment **as a fact** and enforce the same as such foreign judgment creates a right of action in favor of Yi. Relevantly, MIC's failure to satisfy the terms of the foreign judgment engenders a cause of action as to Yi, who becomes clothed with requisite interest to institute an action for enforcement.

APPEARANCES OF COUNSEL

Divina Law for petitioner.
The Bengzon Law Firm for respondent.

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 May 19, 2017 and the Resolution[2] dated August 25, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 102408, reversing the ruling of the Regional Trial Court (RTC) of Manila, Branch 36 which dismissed the case of revival of judgment filed by respondent Sara Yi (Yi).

Relevant Antecedents

FAM MART Co., Inc. (FAM MART), owned and operated by Young C. Chun and Young H. Chun, (the Chuns) was secured by an insurance policy issued by petitioner Mercantile Insurance Company, Inc. (MIC), through its California surplus lines broker, Great Republic Insurance Agency (GRI), under policy number MIC 001007.[3]

On February 14, 1991,[4] Yi was involved in an accident while within the premises of FAM MART, a business establishment located at El Cajon, California, United States of America.[5] As a result of which, her right little finger was severed.[6]

FAM MART notified MIC of the accident in November 1991. A memorandum from the latter, acknowledging that there is a valid policy in favor of FAM MART and that a contract existed between FAM MART and MIC, was issued.[7]

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[1] Penned by Associate Justice Leoncia R. Dimagiba, with Associate Justices Ramon R. Garcia and Renato C. Francisco, concurring; *rollo*, pp. 51-59.

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

[3] *Id*. at 97.

[4] Also referred to as "February 14, 1992" in some parts of the *rollo*.

[5] *Rollo*, pp. 157-158.

[6] *Supra* note 3.

[7] *Id*.

On March 16, 1992, Yi filed a personal injury action (Civil Case No. 649705)[8] against the Chuns. Upon service of summons, FAM MART tendered the claim to its insurer, MIC.[9]

Initially, MIC, through counsel, defended FAM MART in said personal injury action without any reservation of rights.[10] However, sometime in August 1992, it withdrew its representation.[11]

On October 14, 1993, the Superior Court of the State of California for the County of San Diego (Superior Court of California) issued a judgment in favor of Yi. The dispositive portion of which reads:

> WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that judgment be entered for Plaintiff against Defendants, Fam Mart Co., Inc., Young C. Chun and Young H. Chun, in the amount of $350,000.00.[12]

On November 2, 1993, Yi, together with the Chuns, filed a complaint for breach of insurance contract, breach of covenant of good faith and fair dealing, fraud and negligent misrepresentation and negligence (Civil Case No. 670417) against MIC. However, despite service of summons, MIC did not file any pleading. Hence, a Judgment by Default[13] was issued by the Superior Court of California on September 22, 1995, thus:

> IT IS HEREBY ORDERED, ADJUDGED AND DECREED:
>
> That Plaintiffs shall have judgment in their favor and against Defendants MIC and GRI, and each of them, jointly and severally, for compensatory damages in the sum of THREE HUNDRED FIFTY THOUSAND DOLLARS ($350,000.00), with interest thereon at the

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[8] *Id*. at 84.

[9] *Id*. at 52.

[10] *Id*. at 98.

[11] *Id*. at 158.

[12] *Id*. at 90.

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

rate of 10 percent per annum from October 14, 1993 to September 8, 1995 in the amount of SIXTY[-]SIX THOUSAND FIVE HUNDRED FORTY[-]SEVEN DOLLARS and SIXTY[-]SIX CENTS ($66,547.66).

That, in addition, Plaintiff YOUNG C. CHUN shall have judgment in his favor and against Defendants MIC and GRI, and each of them, jointly and severally, for general damages for emotional distress arising out of Defendant MIC and GRI's breach of the covenant of good faith and fair dealing for failure to defend and indemnify Plaintiff YOUNG C. CHUN in the underlying action in the amount of ONE HUNDRED THOUSAND DOLLARS ($100,000[.00]).

That, in addition, Plaintiff YOUNG H. CHUN shall have judgment in his favor and against Defendants MIC and GRI, and each of them, jointly and severally, for general damages for emotional distress arising out of Defendant[s] MIC and GRI's breach of the covenant of good faith and fair dealing for failure to defend and indemnify Plaintiff YOUNG H. CHUN in the underlying action in the amount of ONE HUNDRED THOUSAND DOLLARS ($100,000[.00]).

That, in addition, Plaintiffs shall recover from Defendant, MIC the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000[.00]) as punitive damages.

That, in addition, Plaintiffs shall recover from Defendants, MIC and GRI, and each of them, jointly and severally, reasonable attorney's fees as damages in the amount of EIGHT THOUSAND DOLLARS ($8,000[.00]).

That, in addition, Plaintiffs shall recover from Defendants, MIC and GRI, and each of them, jointly and severally, premiums paid in the amount of TWO THOUSAND ONE DOLLARS and THIRTY[-] FIVE CENTS ($2,001.35).[14]

Said Judgment became final and executory as no appeal was filed by any of the parties. On September 21, 2005, a Notice of Renewal of Judgment[15] was issued by the Superior Court of California allowing Yi to enforce the Judgment for an additional period of 10 years from the date of Application for Renewal of

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[14] *Id*. at 105-106.

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

Judgment was filed.[16] Per Attachment to the Renewal of Judgment,[17] the adjusted amount inclusive of interest owed by MIC to Yi and the Chuns amounted to $1,552,664.67.

As Yi was not able to enforce the Judgment in California, she filed an action for enforcement of judgment before the RTC.

MIC filed an Answer, denying the claims of Yi and its alleged liability. It averred that it has no privity of contract with Yi and FAM MART as it was not aware of any case of such nature considering that its operations are within the Philippines.[18]

The RTC, in a Decision[19] dated September 30, 2013, dismissed the case for lack of merit. In sum, the RTC maintained that Yi was not able to prove her claim because the insurance policy was not presented in evidence and that it has no jurisdiction over MIC as the latter was not properly served with summons. The dispositive portion reads:

> Based on the foregoing, the Court in:
>
> 1. Case No. 649705, the execution with respect to said judgment is denied because Sara Yi had compromised with the defendant the award in said judgment, thus[,] making it appear that there was satisfaction of judgment with respect to foreign judgment in Case No. 649705. Likewise, the defendant is not within the jurisdiction of the Philippines and was not served with Summons as the court has no jurisdiction over foreign entity with no resident agent in the Philippines.
> 2. With respect to Civil Case No. 670417, the plaintiff was not able to prove with sufficient evidence that she is entitled to her claim. She was not able to show even the existence of the insurer policy which can be the basis of the liability/ies of the defendant and how defendant had been related to its sub-agent or insurance companies abroad in relation to

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[16] *Id*. at 54.

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

[18] *Id*. at 159.

[19] *Id*. at 157-161.

> the company and officers involved in such transaction. Failure to show such chain of transaction among the parties alleged [sic] insurance companies; its relationship with defendant company and her entitlement to the claims allegedly covered by a policy emanating from the defendant and/or its officers agents is fatal to her claims. (Failure of the plaintiff to show her insurable interest and how is the defendant liable to her). She was not even able to identify the policy that covers her insurable interests.

Judgment by default in foreign country was rendered because allegedly defendant Mercantile Insurance Company did not appear in the United States. The defendant appeared before this Court and denies any participation with respect to the claim of Ms. Sara Yi. Moreover, the defendant denied doing business in foreign land. The plaintiff was not able to controvert such negative assertion of the defendant with evidence. The plaintiff was not able to prove with sufficient evidence that can be said to sustain preponderance of evidence where she claims to be entitled to the relief prayed for or that she is entitled to what she is claiming for in Civil Case No. 670417 because the policy that covers the liability was not [shown,] hence the case is dismissed for lack of merit.

Furnish parties and counsel copies of this decision at their last known addresses.

SO ORDERED.[20]

Yi filed an appeal *via* Rule 44 of the Rules of Court before the CA.

In a Decision[21] dated May 19, 2017, the CA reversed and set aside the ruling of the RTC and ordered MIC to pay the amount adjudged in the judgment rendered by the Superior Court of California. The CA maintained that in an action to enforce a foreign judgment, the matter left for proof is the foreign judgment itself. Thus, it is not imperative on the part of Yi to provide proof of the insurance policy and her insurable interest. The *fallo* thereof reads:

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[20] *Id*. at 160-161.

[21] *Supra* note 1.

WHEREFORE, the instant petition for review is **GRANTED**. The Decision of the Regional Trial Court of Manila, Branch 36 ("RTC") dismissing the case for lack of merit in Civil Case No. 06-116386 is hereby **REVERSED** and **SET ASIDE**. **MERCANTILE INSURANCE COMPANY, INC.** is **ORDERED** to pay **SARA YI**, also known as **SARAH YI**, the amounts adjudged in the judgment rendered by the Superior Court of the State of California in Case No. 670417.

SO ORDERED.[22]

A Motion for Reconsideration filed by MCI was denied in a Resolution[23] dated August 25, 2017, *viz*.:

IN VIEW WHEREOF, the instant motion for reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[24]

The Issue

Summarily, the issue in this case is whether or not the judgment issued by the Superior Court of California may be enforced in our jurisdiction.

The Court's Ruling

Generally, in the absence of a special compact, no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country; however, the rules of comity, utility and convenience of nations have established a usage among civilized states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious under certain conditions that may vary in different countries.[25]

Certainly, the Philippine legal system has long ago accepted into its jurisprudence and procedural rules the viability of an action for enforcement of foreign judgment, as well as the

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

[23] *Supra* note 2.

[24] *Id*.

[25] *Philippine Alumni Wheels, Inc. v. Fasgi Enterprises, Inc*., 396 Phil. 893, 908-909 (2000).

requisites for such valid enforcement, as derived from internationally accepted doctrines.[26]

In our jurisdiction, a judgment or final order of a foreign tribunal creates a right of action, and its non-satisfaction is the cause of action by which a suit can be brought upon for its enforcement.[27]

Section 48, Rule 39 of the Rules of Court explicitly provides for the conditions for the recognition and enforcement of a foreign judgment, to wit:

> SEC. 48. *Effect of foreign judgments or final orders.* — The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:
>
> (a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing; and
>
> (b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.
>
> In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

The causes of action arising from the enforcement of foreign judgment and that arising from the allegations that gave rise to said foreign judgment differs, such that the former stems from the foreign judgment itself, whereas the latter stems from the right in favor of the plaintiff and its violation by the defendant's act or omission. The evidence to be presented likewise differs. The case of *Mijares v. Rañada*[28] illustrates in this wise:

> There are distinctions, nuanced but discernible, between the cause of action arising from the enforcement of a foreign judgment, and that arising from the facts or allegations that occasioned the foreign

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[26] *St. Aviation Services Co., Pte., Ltd. v. Grand International Airways, Inc.*, 535 Phil. 757, 762 (2006).

[27] *Bank of the Philippine Islands Securities Corporation v. Guevara*, 755 Phil. 434, 456 (2015).

[28] 495 Phil. 372, 385-386 (2005).

judgment. They may pertain to the same set of facts, but there is an essential difference in the right-duty correlatives that are sought to be vindicated. For example, in a complaint for damages against a tortfeasor, the cause of action emanates from the violation of the right of the complainant through the act or omission of the respondent. On the other hand, in a complaint for the enforcement of a foreign judgment awarding damages from the same tortfeasor, for the violation of the same right through the same manner of action, the cause of action derives not from the tortious act but from the foreign judgment itself.

More importantly, the matters for proof are different. Using the above example, the complainant will have to establish before the court the tortious act or omission committed by the tortfeasor, who in turn is allowed to rebut these factual allegations or prove extenuating circumstances. Extensive litigation is thus conducted on the facts, and from there the right to and amount of damages are assessed. **On the other hand, in an action to enforce a foreign judgment, the matter left for proof is the foreign judgment itself, and not the facts from which it prescinds.**

Guided by the foregoing, what is indispensable in an action for the enforcement of a foreign judgment is the presentation of the foreign judgment itself as it comprises both the evidence and the derivation of the cause of action. Further, the above-cited rule provides that a foreign judgment against a person, *i.e.*, an action *in personam*, as in this case, is merely a presumptive evidence of rights between the parties. Such judgment may be attacked by proving lack of jurisdiction, lack of notice to the party, collusion, fraud, or clear mistake of fact or law.[29] Thus, contrary to MIC's position, the burden is upon MIC to prove its allegations against the validity of the foreign judgment sought to be enforced.

In disputing the foreign judgment, MIC argues that there was want of notice to it as there was no proper service of summons in the trial before the California court.

On this note, we highlight that matters of remedy and procedure such as those relating to the service of process upon a defendant

[29] RULES OF COURT, Rule 39, Section 48.

are governed by the *lex fori* or the internal law of the forum,[30] which is the State of California in this case. This Court is well aware that foreign laws are not a matter of judicial notice. Like any other fact, they must be alleged and proven.[31]

Section 24, Rule 132 of the Rules of Court provides that the records of the official acts of a sovereign authority may be evidenced by an official publication thereof or by a copy attested by its legal custodian, his deputy, and accompanied with a certificate that such officer has a custody, in case the record is not kept in the Philippines. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

An exception to this rule, however, is recognized in the cases of *Willamette Iron & Steel Works v. Muzzal*,[32] and *Manufacturers Hanover Trust Co. v. Guerrero*,[33] wherein we emphatically ruled that the testimony under oath of an attorney-at-law of a foreign state, who quoted verbatim the applicable law and who stated that the same was in force at the time the obligations were contracted, was sufficient evidence to establish the existence of said law. In *Manufacturers Hanover Trust*, we stated that it is necessary to state the specific law on which the claim was based.

In this case, Atty. Robert G. Dyer (Atty. Dyer), member of the bar of the State of California for more than 30 years, testified as to the applicable law related to summons. In detail, he stated the exact pertinent provision under the California Code of Civil Procedure, to wit:

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[30] *Id*.

[31] *Manufacturers Hanover Trust Co. v. Guerrero*, 445 Phil. 770, 777 (2003).

[32] 61 Phil. 471 (1935).

[33] *Supra* note 31.

Section 415.40 A summons may be served on a person outside this state in any manner provided by this article or by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt. Service of a summons by this form of mail is deemed complete on the 10th day after such mailing.

Indeed, pursuant to the above-proven law in the State of California, the service of summons by mail to MIC, an entity outside its state, was valid. As such law was sufficiently alleged and proven, it is beyond the province of this Court's authority to pass upon the issue as to the factual circumstances relating to the proper service of summons upon MIC in the case before the State of California.

It is also significant to note that MIC impeaches the credibility of Atty. Dyer as an expert witness for the first time on appeal. Before the RTC and the CA, MIC merely raised the argument that Atty. Dyer failed to specifically cite the law of the State of California with respect to service of summons.

MIC also contends that failure of Yi to implead the Chuns, who are indispensable parties, renders all actions of the court null and void.

We find that Yi need not implead her co-plaintiffs so as to be afforded the relief prayed for.

As aforementioned, the main consideration in an action for enforcement of a foreign judgment is to put such judgment into force. Verily, direct involvement or being the subject of the foreign judgment is sufficient to clothe a party with the requisite interest to institute an action before our courts for the recognition of the foreign judgment.[34]

Our rules provide that an indispensable party is a party-in-interest without whom no final determination can be had of an action.[35] The party's interest in the subject matter of the suit

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[34] *Corpuz v. Sto. Tomas*, 642 Phil. 420, 432 (2010).

[35] RULES OF COURT, Rule 3, Section 7.

and in the relief sought are so inextricably intertwined with the other parties' that his legal presence as a party to the proceeding is an absolute necessity. In his absence, there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable.[36] Alternatively put, it is necessary that an indispensable party must be impleaded so that a full resolution of the case can be obtained.

Here, it is apparent that the Chuns are not indispensable parties, whose inclusion is determinative of the final outcome of the case. Their legal presence will not render the resolution of the action incomplete and ineffective for there was a final judgment already rendered by the foreign court. As previously mentioned, what our courts will do is to recognize the foreign judgment **as a fact**[37] and enforce the same as such foreign judgment creates a right of action in favor of Yi. Relevantly, MIC's failure to satisfy the terms of the foreign judgment engenders a cause of action as to Yi, who becomes clothed with requisite interest to institute an action for enforcement.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. Accordingly, the Decision dated May 19, 2017 and the Resolution dated August 25, 2017 of the Court of Appeals in CA-G.R. CV No. 102408 are **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Perlas-Bernabe, Caguioa, and *Lazaro-Javier, JJ.*, concur.

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[36] *Divinagracia v. Parilla*, 755 Phil. 783, 789 (2015).

[37] *Supra* note 34, at 433-434.

FIRST DIVISION

[G.R. No. 237802. March 18, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MACMAC BANGCOLA *y* MAKI,** *defendant-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — To sustain a conviction for the offense of illegal sale of dangerous drugs, the necessary elements are: (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. It is essential that a transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of the *corpus delicti*. The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself and its offer as evidence. On the other hand, to successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (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 drug. Apart from showing the presence of the above-cited elements, it is of utmost importance to likewise establish with moral certainty the identity of the confiscated drug. To remove any doubt or uncertainty on the identity and integrity of the seized drug, it is imperative to show that the substance illegally possessed and sold by the accused is the same substance offered and identified in court. This requirement is known as the chain of custody rule under R.A. No. 9165 created to safeguard doubts concerning the identity of the seized drugs.

2. ID.; ID.; CHAIN OF CUSTODY RULE; FOR OFFENSES COMMITTED BEFORE JULY 23, 2014, FOUR WITNESSES WERE REQUIRED TO BE PRESENT DURING THE INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUGS. — 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. x x x The chain of custody rule was further expounded under Sec. 21 (a), Art. II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165: x x x Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory of, and photograph, the seized drugs in the presence of (a) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (b) a representative from the media (c) a representative from the DOJ, and (d) an elected public official. These four witnesses must all sign the copies of the inventory and obtain a copy thereof. It is worthy to note that R.A. No. 10640, which amended Sec. 21 of R.A. No. 9165 and became effective on July 23, 2014, requires only three witnesses to be present during the inventory and taking of photographs of the seized evidence, x x x In the instant case, since the offenses charged were committed on June 20, 2014, the provisions of Sec. 21 of R.A. No. 9165 and its IRR shall apply. Thus, the four witnesses mandated by law to be present during the inventory and taking of photographs must be complied with.

3. ID.; ID.; ID.; ID.; SAVING CLAUSE IN CASE OF NON-COMPLIANCE; WHEN APPLICABLE. — In this case, no representative from the DOJ was present at the time of the physical inventory, marking, and taking of photographs of the evidence seized from appellant at the barangay hall. x x x Nevertheless, there is a saving clause under the IRR of R.A. 9165 in case of non-compliance with the chain of custody rule. This saving clause, however, applies only **(1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved**. x x x As a rule, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. x x x [T]he requirement of having the required witnesses to be physically present not only during the inventory of the seized evidence but also at the time or near the place of apprehension, is indispensable.

4. ID.; ID.; ID.; THE LINKS IN THE CHAIN OF CUSTODY MUST BE PROPERLY ESTABLISHED. — Aside from the proper justification regarding the lack of witnesses in the inventory and photography of the seized items, it is also required that the prosecution prove the preservation of the integrity and evidentiary value of the confiscated items. To establish this, the proper chain of custody of the seized items must be shown. x x x In *People v. Kamad* and *People v. Dahil, et al.*, the Court enumerated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *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 by the forensic chemist to the court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal seeking to reverse and set aside the January 3, 2018 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 09030. The CA affirmed the January 26, 2017 Consolidated Decision[2] of the Regional Trial Court of Marikina City, Branch 193 (*RTC*) in Criminal Case Nos. 2014-4356-D-MK and 2014-4357-D-MK, finding Macmac Bangcola *y* Maki

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[1] *Rollo*, pp. 2-21; penned by Associate Justice Ramon R. Garcia with Associate Justices Myra V. Garcia-Fernandez and Henri Jean Paul B. Inting, concurring.

[2] CA *rollo*, pp. 43-58; penned by Judge Alice C. Gutierrez.

(*appellant*) guilty beyond reasonable doubt of the crimes of illegal sale and possession of dangerous drugs under Sections 5 and 11, Article II of Republic Act (*R.A.*) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The Antecedents

In an Amended Information filed before the RTC, appellant and one Salim Lala Pimba (*Pimba*) were charged with the crime of illegal sale of dangerous drugs, in violation of Sec. 5, Art. II of R.A. No. 9165. The accusatory portion of the amended information states:

CRIMINAL CASE NO. 2014-4356 D-MK

That on or about the 20th day of June 2014, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, without being authorized by law, did then and there willfully, unlawfully and knowingly sell and deliver to PO3 Deogracias Basang, a poseur buyer, one (1) heat[-]sealed small transparent plastic sachet containing 0.20 gram[s] of white crystalline substance which gave positive result to the tests for Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[3]

In a separate information, appellant was also charged with the crime of illegal possession of dangerous drugs, in violation of Sec. 11, Art. II of R.A. No. 9165. The accusatory portion of the information states:

CRIMINAL CASE NO. 2014-4357-D-MK

That on or about the 20th day of June 2014, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and knowingly have in his possession, direct custody and control of thirteen (13) heat[-]sealed transparent plastic sachets containing methamphetamine hydrochloride, a dangerous drug in violation of the above-cited law.

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[3] Records, p. 59.

CONTRARY TO LAW.[4]

Upon his arraignment on August 7, 2014,[5] appellant pleaded not guilty to the crimes charged while his co-accused, Pimba, remained at large. Thereafter, trial ensued.

The prosecution presented Senior Police Officer I Deogracias Basang (*SPO1 Basang*). The testimony of Police Chief Inspector Margarita M. Libres (*PCI Libres*), the forensic chemist, was dispensed with after both parties stipulated on the existence of the request for laboratory examination, the receipt of the drug specimens, and the physical science report she prepared.[6]

Version of the Prosecution

On June 20, 2014, a confidential informant reported to the Station Anti-Illegal Drugs, Office of the Marikina City Police Station, that appellant was engaged in illegal drug activities at Barangay Tumana, Marikina City. A buy-bust team was then formed consisting of Police Inspector Jerry Flores (*P/Insp. Flores*) as the team leader, SPO1 Basang as the poseur-buyer, and several other police officers as back-up operatives. SPO1 Basang was given two (2) pieces of marked Five Hundred Peso (₱500.00) bills to be used as buy-bust money. The pre-arranged signal was the lighting of a cigarette upon consummation of the sale.[7]

On even date, at about 10:30 in the evening, the buy-bust team and the confidential informant proceeded to the target area. While the rest of the buy-bust team hid and positioned themselves, SPO1 Basang and the confidential informant entered an alley where they saw two (2) men. The confidential informant then introduced SPO1 Basang to appellant while Pimba introduced himself as "Salim." Pimba asked SPO1 Basang how much he would purchase to which he replied "₱1,000.00." Pimba

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[4] *Id*. at 23.

[5] *Id*. at 49.

[6] *Id*. at 68.

[7] *Rollo*, p. 5.

told appellant "*Mac, ikaw na ang magbigay*" while handing him a red body bag. SPO1 Basang gave the two marked ₱500.00 bills to appellant. Appellant then brought out a brown-striped pouch and took out therefrom one small plastic sachet, which he handed to SPO1 Basang and said "*Pare, ito yung halagang isang libo*." At that moment, SPO1 Basang lit a cigarette, which prompted the buy-bust team to rush towards the crime scene. SPO1 Basang introduced himself as a police officer, grabbed appellant's right arm, and arrested appellant. Pimba, however, managed to escape. The red body bag, the brown-striped pouch, the buy-bust money, and other cash in his possession, amounting to ₱1,990.00, were confiscated from appellant. Thirteen (13) more small plastic sachets containing white crystalline substance were found in the possession of appellant. SPO1 Basang marked the plastic sachet purchased from appellant with "MB-BUYBUST 6/20/14" in the latter's presence.[8]

Thereafter, P/Insp. Flores decided to continue the inventory and marking of the other pieces of evidence at the Barangay Hall of Tumana because it was dark at the alley where appellant was arrested and appellant's relatives were already causing a commotion at the time.[9]

City Councilor Ronnie Acuña (*Acuña*) and Cesar Barquilla (*Barquilla*) of Remate tabloid newspaper were present during the inventory, marking, and photograph-taking of evidence at the barangay hall. The thirteen (13) plastic sachets were marked as "MB-1 6/20/14" to "MB-13 6/20/14." The Inventory of Evidence[10] of the seized items was signed by Acuña and Barquilla while appellant refused to sign the same. The Chain of Custody Form[11] was then prepared by SPO1 Basang.[12]

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[8] *Id*. at 6.

[9] *Id*.

[10] Records, p. 12.

[11] *Id*. at 11.

[12] CA *rollo*, p. 48.

Appellant was thereafter brought to the police station. A request for laboratory examination by the PNP Crime Laboratory was prepared by P/Insp. Flores to determine the presence of any form of dangerous drugs in the seized items. SPO1 Basang turned over the pieces of evidence to PCI Libres for the purpose of forensic examination.[13]

In her Report[14] dated June 21, 2014, PCI Libres confirmed that the small plastic sachet marked "MB-BUYBUST 6/20/14," which weighed 0.20 gram, was positive for methamphetamine hydrochloride or *shabu*. The thirteen (13) small plastic sachets additionally found in the possession of appellant and marked as "MB-1 6/20/14" to "MB-13 6/20/14", with a total weight of 34.12 grams, were also found positive for methamphetamine hydrochloride.

Version of the Defense

The defense presented appellant as its sole witness. He testified that, around 10 or 11 o'clock in the evening of June 20, 2014, he was sitting alone at the end of the bridge of Barangay Tumana, Marikina City. Suddenly, two police officers approached him and verified his identity. Appellant was then ordered to board a vehicle and was taken to a vacant lot where several drug paraphernalia were shown to him. Afterwards, appellant was brought to the barangay hall and the police station. The police officers told him that he would be imprisoned despite not having committed any offense. On cross-examination, appellant denied that he was with Pimba at the time of his arrest and that there were items recovered from him.[15]

The RTC Ruling

In its January 26, 2017 Consolidated Decision, the RTC found appellant guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs. In Criminal Case No. 2014-

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[13] *Rollo*, p. 7.

[14] Records, p. 8; Physical Science Report No. MCSO-D-060-14.

[15] *Rollo*, p. 7.

4356-D-MK, appellant was sentenced to suffer the penalty of life imprisonment and ordered to pay a fine of ₱500,000.00. In Criminal Case No. 2014-4357-D-MK, appellant was sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years, and ordered to pay a fine of ₱300,000.00.[16]

The RTC ruled that there was satisfactory compliance with the requirements of the law on the proper chain of custody of dangerous drugs. Although the confiscated drugs were not inventoried, marked, and photographed at the place where appellant was arrested, the prosecution gave a valid justification for the same, such that the place was not well-lit and the relatives of appellant were starting to cause a commotion at the time. The RTC held that the marking of the confiscated drugs at the barangay hall did not affect the integrity and evidentiary value of the seized items. The RTC also underscored that appellant's defense of denial was unsubstantiated by clear and convincing evidence, hence, deserved no credence at all.[17]

Aggrieved, appellant appealed to the CA.

The CA Ruling

In its January 3, 2018 Decision, the CA affirmed appellant's conviction. It ruled that the prosecution was able to establish all the elements of illegal sale and possession of dangerous drugs. It gave full credence to SPO1 Basang's positive identification of appellant and his narration of the buy-bust operation, more so because it was supported by physical evidence on record, such as PCI Libres' forensic examination report. It ruled that there was no break in the chain of custody of the confiscated drugs, notwithstanding the absence of a representative from the Department of Justice (*DOJ*) at the time the evidence were being inventoried, marked, and photographed. It held that such absence did not affect the preservation of the integrity and evidentiary value of the seized items, as in the case of

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[16] CA *rollo*, p. 57.

[17] *Id*. at 50-56.

People v. Agulay.[18] It noted, however, that the prosecution's failure to indicate the quantity of the confiscated drugs in the information for illegal possession of dangerous drugs entailed the imposition of the minimum penalty corresponding to possession of *shabu*, which was essentially the same as the penalty imposed by the RTC.

Appellant then appealed before the Court.

In an April 16, 2018 Resolution,[19] the Court required the parties to submit their respective supplemental briefs, if they so desired. In its June 26, 2018 Manifestation and Motion,[20] the Office of the Solicitor General (*OSG*) manifested that it would no longer file a supplemental brief to avoid a repetition of arguments considering that the guilt of appellant has been exhaustively discussed in its appellee's brief filed before the CA. In its June 27, 2018 Manifestation in lieu of Supplemental Brief,[21] appellant averred that he would no longer file a supplemental brief considering that he had thoroughly discussed the assigned errors in his appellant's brief.[22]

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[18] 588 Phil. 247, 273-274 (2008). In this case, the Court ruled: "[T]he defense contends there is a clear doubt on whether the specimens examined by the chemist and eventually presented in court were the same specimens recovered from accused-appellant. The prosecution's failure to submit in evidence the required physical inventory and photograph of the evidence confiscated pursuant to Section 21, Article II of Republic Act No. 9165 will not discharge accused-appellant from his crime. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. In *People v. Del Monte*, this Court held that what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In the instant case, we find the integrity of the drugs seized intact, and there is no doubt that the three sachets of drugs seized from accused-appellant were the same ones examined for chemical analysis, and that the crystalline substance contained therein was later on determined to be positive for methylamphetamine hydrochloride (*shabu*)."

[19] *Rollo*, pp. 28-29.

[20] *Id*. at 35-37.

[21] *Id*. at 30-32.

[22] *Id*. at 30.

Issue

WHETHER THE GUILT OF APPELLANT FOR THE CRIMES CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In his Appellant's Brief[23] before the CA, appellant reiterates that the element of consideration was lacking since the ₱500.00 bills were not marked or subjected to ultraviolet power-dusting; that the lack of signature on the sachets allegedly confiscated from appellant cast reasonable doubt on the source and handling of the evidence; that the chain of custody rule was not complied with due to the absence of a DOJ representative during the inventory of evidence; that there was lack of sufficient evidence to prove that Acuña was indeed an incumbent councilor and Barquilla was a mediaman from Remate tabloid newspaper; and that the chain of custody was broken because of the prosecution's failure to identify the investigator who prepared the requests for laboratory examination of the sachets and drug testing of appellant.[24]

In its Appellee's Brief[25] before the CA, the OSG urges the court to affirm the challenged decision of the RTC. The OSG countered that, notwithstanding the lack of marking and dusting of the ₱500.00 bills and the lack of signature on the sachets of the confiscated drugs from appellant, SPO1 Basang's categorical testimony — that the bills were used as the buy-bust money and that the sachets presented in court were the same ones confiscated from appellant — is sufficient. It also insists that the chain of custody rule was complied with albeit admitting that such compliance was not done strictly and perfectly in accordance with the requirements of the law. It opined that the inventory, marking, and photograph-taking of evidence at the barangay hall was justified given the poor lighting conditions

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[23] CA *rollo*, pp. 24-41.

[24] *Id*. at 33-40.

[25] *Id*. at 64-87.

at the place of arrest and because appellant's relatives were already causing a commotion.[26]

The Court's Ruling

The appeal is meritorious.

In every criminal prosecution, the Constitution affords the accused presumption of innocence until his or her guilt for the crime charged is proven beyond reasonable doubt.[27] The prosecution bears the burden of overcoming this presumption and proving the liability of the accused by presenting evidence which shows that all the elements of the crime charged are present.[28]

To sustain a conviction for the offense of illegal sale of dangerous drugs, the necessary elements are: (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.[29] It is essential that a transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of the *corpus delicti*.[30] The *corpus delicti* in cases involving dangerous drugs is the presentation of the dangerous drug itself and its offer as evidence.

On the other hand, to successfully prosecute a case of illegal possession of dangerous drugs, the following elements must be established: (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 drug.[31]

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[26] *Id*. at 74-85.

[27] CONSTITUTION (1987), Art. III, Sec. 14, par. (2).

[28] See *People v. Garcia*, 599 Phil. 416, 426 (2009).

[29] *People v. Roble*, 663 Phil. 147, 157 (2011).

[30] *Id*.

[31] *People v. Climaco*, 687 Phil. 593, 603 (2012), citing *People v. Alcuizar*, 662 Phil. 794, 808 (2011).

Apart from showing the presence of the above-cited elements, it is of utmost importance to likewise establish with moral certainty the identity of the confiscated drug.[32] To remove any doubt or uncertainty on the identity and integrity of the seized drug, it is imperative to show that the substance illegally possessed and sold by the accused is the same substance offered and identified in court.[33] This requirement is known as the chain of custody rule under R.A. No. 9165 created to safeguard doubts concerning the identity of the seized drugs.[34]

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.[35] Under Sec. 21 of R.A. No. 9165:

(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.[36]

The chain of custody rule was further expounded under Sec. 21 (a), Art. II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165:

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/

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[32] *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

[33] See *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, 627 SCRA 308.

[34] *Supra* note 31; citing *Mallillin v. People*, 576 Phil. 576 (2008).

[35] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

[36] R.A. No. 9165, Sec. 21 (1).

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 [.]

Sec. 21 of R.A. No. 9165 requires the apprehending team, after seizure and confiscation, to immediately conduct a physical inventory of, and photograph, the seized drugs in the presence of (a) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (b) a representative from the media (c) a representative from the DOJ, and (d) an elected public official. These four witnesses must all sign the copies of the inventory and obtain a copy thereof.

It is worthy to note that R.A. No. 10640,[37] which amended Sec. 21 of R.A. No. 9165 and became effective on July 23, 2014,[38] requires only three witnesses to be present during the inventory and taking of photographs of the seized evidence, namely: a) the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, (b) an elected public official, and (c) a representative of the National Prosecution Service or the media.

In the instant case, since the offenses charged were committed on June 20, 2014, the provisions of Sec. 21 of R.A. No. 9165 and its IRR shall apply. Thus, the four witnesses mandated by

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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."

[38] OCA Circular No. 77-2015.

law to be present during the inventory and taking of photographs must be complied with.

The apprehending team's failure to strictly comply with Sec. 21 of R.A. No. 9165 is fatal to the prosecution's case.

In this case, no representative from the DOJ was present at the time of the physical inventory, marking, and taking of photographs of the evidence seized from appellant at the barangay hall. SPO1 Basang testified that only Acuña and Barquilla, together with appellant and other police operatives, were present at the time of its marking at the Barangay Hall of Tumana.

CROSS-EXAMINATION

Atty. Galit:

x x x x x x x x x

Q: Mr. Witness, you said that you conducted an inventory of evidence in the Barangay Hall, who were present while you were conducting the inventory of evidence?

A: Councilor Ronnie Acuña, [m]edia [representative, the suspect, myself, and other fellow operatives, Sir.[39]

Nevertheless, there is a saving clause under the IRR of R.A. 9165 in case of non-compliance with the chain of custody rule. This saving clause, however, applies only **(1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved**. The prosecution, thus, loses the benefit of invoking the presumption of regularity and bears the burden of proving — with moral certainty — that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.[40]

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[39] TSN, June 16, 2016, p. 23.

[40] *People v. Carlit*, G.R. No. 227309, August 16, 2017, citing *People v. Cayas*, G.R. No. 206888, July 4, 2016, 789 Phil. 70, 80 (2016).

In this case, however, **the prosecution offered no justification as to the absence of a representative from the DOJ**. The prosecution did not even recognize their procedural lapses or give any justifiable explanation on why the apprehending team did not conduct the inventory, marking, and taking of photographs of the seized evidence in the presence of a DOJ representative.

As a rule, strict compliance with the prescribed procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[41] The presence of the four witnesses mandated by Sec. 21, Art. II of R.A. No. 9165 safeguards the accused from any unlawful tampering of the evidence against him.

Moreover, in the case at bar, the inventory, marking, and taking of photographs of the confiscated items were not conducted immediately at the place of arrest but at the Barangay Hall of Tumana. SPO1 Basang explained that their team leader decided to conduct the inventory at the barangay due to the dark lighting conditions at the place of arrest and because appellant's relatives were causing a commotion at the time.

The IRR of R.A. No. 9165 enumerates alternative places for conducting the inventory of the seized evidence, that is, at the nearest police station or nearest office of the apprehending officer/team. However, the requirement of having the required witnesses to be physically present not only during the inventory of the seized evidence but also at the time or near the place of apprehension, is indispensable. In *People v. Tomawis*,[42] the Court elucidated on the rationale of the law in mandating the presence of the required witnesses at the time or near the place of apprehension:

> x x x. The reason is simple, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time

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[41] *Supra* note 33.

[42] G.R. No. 228890, April 18, 2018.

of seizure and confiscation that would insulate against the police practice of planting evidence.[43]

Here, SPO1 Basang testified that Acuña and Barquilla were present only at the barangay hall, where the other pieces of evidence confiscated from appellant were inventoried, marked, and photographed. They were mere witnesses to the inventory of the seized items. They had no knowledge whether the items seized were in fact confiscated from appellant or even any prior knowledge on the buy-bust operation conducted by the team of P/Insp. Flores and SPO1 Basang.

The practice of police operatives of not bringing to the intended place of arrest the witnesses required by law does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. They must not merely be called to witness the inventory, marking, and taking of photographs of the confiscated evidence.[44]

Consequently, the signatures of Acuña and Barquilla on the inventory form are rendered useless. The intent of the provisions of the law — to ensure the prevention and elimination of any possibility of tampering, alteration, or substitution, as well as the presentation in court of the drug that was confiscated at the time of apprehension of the accused[45] — was not carried out in the instant case. Indeed, it is as if there were no witnesses to the inventory and marking of the evidence against the accused, which is a total disregard of the requirements of Sec. 21, Art. II of R.A. No. 9165.

The links in the chain of custody were not properly established by the prosecution.

Aside from the proper justification regarding the lack of witnesses in the inventory and photography of the seized items,

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[43] *Id*.

[44] *Id*.

[45] *People v. Nepomuceno*, G.R. No. 216062, September 19, 2018.

it is also required that the prosecution prove the preservation of the integrity and evidentiary value of the confiscated items. To establish this, the proper chain of custody of the seized items must be shown. The Court explained in *Mallillin v. People*[46] how the chain of custody or movement of the seized evidence should be maintained and why this must be shown by evidence, *viz*:

> 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.[47]

In *People v. Kamad*[48] and *People v. Dahil, et al.*,[49] the Court enumerated the links that the prosecution must establish in the chain of custody in a buy-bust situation to be as follows: *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 by the forensic chemist to the court.

In the case at bench, aside from non-compliance with the mandatory rules in inventory and photography of the seized items,

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[46] *Supra* note 34.

[47] *Id*. at 587.

[48] 624 Phil. 289, 304 (2010).

[49] 750 Phil. 212, 225 (2015).

the Court finds that the second, third, and fourth links in the chain of custody were not clearly established by the prosecution.

Second link

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer.[50] The investigating officer shall conduct the proper investigation and prepare the necessary documents for the proper transfer of the evidence to the police crime laboratory for testing.[51] Thus, the investigating officer's possession of the seized drugs must be documented and established.

Here, the name of the investigator was neither identified nor mentioned by the prosecution. Glaringly, the Chain of Custody Form[52] did not reflect the investigating officer's name and signature. However, SPO1 Basang testified that there was an alleged investigator in the case, to wit:

> DIRECT EXAMINATION
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> ACP Songco
>
> x x x x x x x x x
>
> Q: What did you do next, if any Mr. Witness, after you prepared the Chain of Custody Form?
>
> A: Our Investigator prepared a request for laboratory examination on the seized evidence and a request for drug test on the arrested person to the PNP Crime Laboratory for the evidence I recovered from the person I arrested.[53]

Upon review of the records, it was P/Insp. Flores who prepared the requests for laboratory examination. *Ergo*, SPO1 Basang was possibly referring to P/Insp. Flores as the investigator of the case. However, the Court cannot correctly determine whether

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[50] *Id*. at 235.

[51] *Id*.

[52] Records, p. 11.

[53] TSN, June 16, 2016, p. 14.

there was an actual turnover of the seized items by SPO1 Basang to P/Insp. Flores as the investigating officer when the latter conducted his investigation. The Court is thus forced to resort to guesswork as to the handling of the seized evidence. It is improbable for an investigator in a drug-related case to effectively and properly perform his work, and to accomplish the necessary documents for the transfer of evidence, without having custody of the seized items.[54]

Assuming that P/Insp. Flores did take possession of the seized drug as the investigating officer, then it is highly contrary and fatal to SPO1 Basang's testimony that he kept the seized items from the time of appellant's arrest until the turnover of the said items to the forensic chemist. As held in *People v. Remigio*,[55] the apprehending officer's act of keeping the seized evidence until its transfer to the forensic chemist and his failure to transfer the seized evidence to the investigating officer are considered breaks in the chain of custody. In any case, it is clear that the second link, which is the turnover by the apprehending officer of the illegal drugs to the investigating officer, was entirely lacking and the prosecution did not even bother to explain its deficiency.

Third Link

The third link in the chain of custody is the delivery by the investigating officer of the illegal drug to the forensic chemist. Once the seized drugs arrive at the forensic laboratory, it will be the laboratory technician who will test and verify the nature of the substance.[56]

In this case, SPO1 Basang testified that he was the one who personally delivered the seized items to PCI Libres. However, the evidence presented by the prosecution does not actually identify who received the drug from SPO1 Basang. In the request for laboratory examination, there was no name indicated therein

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[54] *Supra* note 49 at 235.

[55] 700 Phil. 452 (2012).

[56] *Supra* note 49 at 236.

as to who received the confiscated drugs from SPO1 Basang.[57] There was likewise an absence of description as to the condition of the seized drugs when PCI Libres received it, or the way it was handled while the drugs were in her possession. The prosecution could have presented PCI Libres to clarify who actually received the seized drugs in the forensic laboratory but it failed to do so. This leaves the Court to conclude that there are serious doubts on the integrity and evidentiary value of the seized evidence against the appellant in the third link.

In *People v. Beran*,[58] there was also an irregularity in the third link. The police officer, who both served as apprehending and investigating officer, claimed that he personally took the drug to the laboratory for testing, but there was no showing of who received the drug from him. The records therein also showed that he submitted the sachet to the laboratory for testing only on the following day, without explaining how he preserved his exclusive custody thereof overnight. All those facts cast serious doubt that the integrity and evidentiary value of the seized item were not fatally compromised. Hence, the accused therein was acquitted.

Fourth Link

The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case.[59] In this case, there was no testimonial or documentary evidence on how PCI Libres kept the seized items while it was in her custody until it was presented in court. PCI Libres did not testify in court but the parties entered into general stipulations of her testimony. The stipulations are replete of information regarding the condition of the seized item while in her custody or that there was no opportunity for someone not in the chain to have possession thereof. The prosecution could have presented the forensic chemist in order to testify on the safekeeping of the drugs but, again, failed to do so.

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[57] Records, p. 7.

[58] *People v. Beran*, 724 Phil. 788 (2014).

[59] *Supra* note 49 at 237.

Similarly, in *People v. Gutierrez*,[60] there were also inadequate stipulations as to the testimony of the forensic chemist. In said case, no explanation was given regarding the chemist's custody in the interim — from the time it was turned over by the investigator for laboratory examination. The records also failed to show what happened to the allegedly seized *shabu* between the turnover by the chemist to the investigator and its presentation in court. Thus, since no precautions were taken to ensure that there was no change in the condition of the object and no opportunity for someone not in the chain to have possession thereof, the accused therein was acquitted.

Further, the entire procedure of the chain of custody was not even discussed by SPO1 Basang, the arresting officer, in his affidavits of arrest. In *People v. Lim*,[61] the Court declared that 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 be enforced as a mandatory policy with regard to 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.

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

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[60] 614 Phil. 285 (2009).

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

probable cause in accordance with Section 5, Rule 112, Rules of Court.[62]

In view of the foregoing, the Court concludes that there was no proper inventory, marking, and taking of photographs of the seized items. Moreover, the prosecution gravely failed to establish all the links in the chain of custody to establish the integrity and evidentiary value of the seized items. Given the procedural lapses, serious uncertainty hangs over the identification of the *corpus delicti* which the prosecution introduced into evidence. In effect, the prosecution failed to fully prove the elements of the crime charged, creating a reasonable doubt on the criminal liability of the accused.[63]

WHEREFORE, the appeal is **GRANTED**. The January 3, 2018 Decision of the Court of Appeals in CA-G.R. CR-HC No. 09030 is hereby **REVERSED** and **SET ASIDE** for failure of the prosecution to prove beyond reasonable doubt the guilt of Macmac Bangcola *y* Maki. He is hereby **ACQUITTED** of the crimes charged against him and ordered immediately **RELEASED** from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is **ORDERED** to implement this Decision and to inform this Court of the date of the actual release from confinement of Macmac Bangcola *y* Maki within five (5) days from receipt hereof.

SO ORDERED.

Del Castillo[*] *(Acting Chairperson), Jardeleza*, and *Carandang, JJ.*, concur.

Bersamin, C.J., on official business.

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[62] *Id*.

[63] *Supra* note 16.

[*] Per Special Order No. 2645 dated March 15, 2019.

SPECIAL SECOND DIVISION

[G.R. No. 238748. March 18, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGAR GALLARDO *y* BARRIOS,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; TOTAL EXTINCTION OF CRIMINAL LIABILITY; DEATH OF THE ACCUSED PENDING APPEAL OF HIS CONVICTION EXTINGUISHES HIS CRIMINAL LIABILITY, AS WELL AS THE CIVIL LIABILITY, BASED SOLELY THEREON; CASE AT BAR.— Under prevailing law and jurisprudence, Gallardo's death prior to his final conviction by the Court renders dismissible the criminal cases against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused. x x x In *People v. Culas*, the Court thoroughly explained the effects of the death of an accused pending appeal on his liabilities. x x x Thus, upon Gallardo's death prior to his final conviction, the criminal actions against him are extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil actions instituted therein for the recovery of the civil liability *ex delicto* are *ipso facto* extinguished, grounded as they are on the criminal actions. However, it is well to clarify that Gallardo's civil liability in connection with his acts against the victim may be based on sources other than delicts; in which case, the victim may file a separate civil action against Gallardo's estate, as may be warranted by law and procedural rules.

APPEARANCES OF COUNSEL

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

RESOLUTION

PERLAS-BERNABE, *J.*:

In a Resolution[1] dated November 19, 2018, the Court affirmed the Decision[2] dated July 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07547 finding accused-appellant Edgar Gallardo *y* Barrios (Gallardo) guilty beyond reasonable doubt of three (3) counts of the crime of Qualified Rape, the pertinent portion of which reads:

> **WHEREFORE**, the Court **ADOPTS** the findings of fact and conclusions of law in the July 17, 2017 Decision of the CA in CA-G.R. CR-HC No. 07547 and **AFFIRMS** said Decision finding accused-appellant Edgar Gallardo *y* Barrios **GUILTY** beyond reasonable doubt of the crime of Qualified Rape, defined and penalized under Article 266-A, in relation to Article 266-B of the Revised Penal Code. Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole for each count, and to pay AAA the following amounts: (*a*) ₱100,000.00 as civil indemnity; (*b*) ₱100,000.00 as moral damages; and (*c*) ₱100,000.00 as exemplary damages. Moreover, all monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until full payment.[3]

Aggrieved, Gallardo filed a Motion for Reconsideration.[4] However, during the pendency of such motion, the Court received a letter[5] dated February 20, 2019 from the Bureau of Corrections informing the Court of Gallardo's death on February 19, 2019 at the New Bilibid Prison Hospital, Muntinlupa City, as evidenced

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[1] *Rollo*, pp. 47-48. Signed by Division Clerk of Court Maria Lourdes C. Perfecto.

[2] *Id*. at 2-24. Penned by Associate Justice Carmelita Salandanan Manahan with Associate Justices Elihu A. Ybañez and Socorro B. Inting, concurring.

[3] *Id*. at 47.

[4] Dated February 13, 2019. *Id*. at 49-57.

[5] *Id*. at 60. Signed by Chief of Inmate Documents and Processing Division C/Supt. Marites D. Luceño.

by the Notice[6] dated February 19, 2019 issued by the said hospital attached thereto.

As will be explained hereunder, there is a need to reconsider and set aside said Resolution dated November 19, 2018 and enter a new one dismissing the criminal cases against Gallardo.

Under prevailing law and jurisprudence, Gallardo's death prior to his final conviction by the Court renders dismissible the criminal cases against him. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused, to wit:

> Article 89. *How criminal liability is totally extinguished*. — Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
>
> x x x x x x x x x

In *People v. Culas*,[7] the Court thoroughly explained the effects of the death of an accused pending appeal on his liabilities, as follows:

> From this lengthy disquisition, we summarize our ruling herein:
>
> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability[,] as well as the civil liability[,] based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
>
> 2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

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[6] *Id*. at 61. Signed by Medical Officer III Benevito A. Fontanilla, M.D.

[7] G.R. No. 211166, June 5, 2017, 825 SCRA 552.

a) Law

b) Contracts

c) Quasi-contracts

d) x x x

e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure[,] as amended. This separate civil action may be enforced either against the executor/ administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[8]

Thus, upon Gallardo's death prior to his final conviction, the criminal actions against him are extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil actions instituted therein for the recovery of the civil liability *ex delicto* are *ipso facto* extinguished, grounded as they are on the criminal actions. However, it is well to clarify that Gallardo's civil liability in connection with his acts against the victim may be based on sources other than delicts; in which case, the victim may file a separate civil action against Gallardo's estate, as may be warranted by law and procedural rules.[9]

WHEREFORE, the Court resolves to: (*a*) **SET ASIDE** the Court's Resolution dated November 19, 2018 in connection

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[8] *Id*. at 554-555, citing *People v. Layag*, 797 Phil. 386, 390-391 (2016).

[9] See *id*. at 556; citations omitted.

with this case; (*b*) **DISMISS** Criminal Case Nos. 10-0420, 10-0421, and 10-0422 before the Regional Trial Court of Las Piñas City, Branch 254 by reason of the death of accused-appellant Edgar Gallardo *y* Barrios; and (*c*) **DECLARE** this case **CLOSED** and **TERMINATED**. No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 238815. March 18, 2019]

RAQUIL-ALI M. LUCMAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN 2ND DIVISION,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATION OF SECTION 3 (c); ELEMENTS.— [T]he elements of x x x [violation of Section 3 (c) of RA 3019] are as follows: (1) the offender is a public officer; (2) he has secured or obtained, or would secure or obtain, for a person any government permit or license; (3) he directly or indirectly requested or received from said person any gift, present or other pecuniary or material benefit for himself or for another; and (4) he requested or received the gift, present or other pecuniary or material benefit in consideration for help given or to be given.

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[*] Designated Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

2. ID.; ID.; ID.; PENALTY IN CASE AT BAR.— As regards the proper penalty to be imposed on Lucman, Section 9 (a) of RA 3019, as amended, states that the prescribed penalties for a violation of the said crime includes, *inter alia*, imprisonment for a period of six (6) years and one (1) month to fifteen (15) years and perpetual disqualification from public office. Taking into consideration the provision of the Indeterminate Sentence Law, which states that "in imposing a prison sentence for an offense punished by acts of the Philippine Legislature, otherwise than by the Revised Penal Code, the court shall order the accused to be imprisoned for a minimum term, which shall not be less than the minimum term of imprisonment provided by law for the offense, and for a maximum term which shall not exceed the maximum fixed [by] law," the Court deems it proper to modify Lucman's sentence to imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to nine (9) years, as maximum, with perpetual disqualification to hold public office.

APPEARANCES OF COUNSEL

Sugui & Sugui Law Offices for petitioner.
Office of the Special Prosecutor for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 9, 2018 and the Resolution[3] dated April 23, 2018 of the *Sandiganbayan* (SB) in Crim. Case No. SB-13-CRM-0595, which found petitioner Raquil-Ali M. Lucman (Lucman) guilty beyond reasonable doubt of violation of Section

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[1] *Rollo*, pp. 5-30.

[2] *Id*. at 31-39. Penned by Associate Justice Lorifel L. Pahimna with Chairperson Oscar C. Herrera, Jr. and Associate Justice Michael Frederick L. Musngi, concurring.

[3] *Id*. at 41-43.

3 (c) of Republic Act No. (RA) 3019,[4] entitled the "Anti-Graft and Corrupt Practices Act."

The Facts

The instant case stemmed from an Information[5] charging Lucman of violation of Section 3 (c) of RA 3019, the accusatory portion of which states:

> On 8 September 2009 to 16 October 2009, or sometime prior or subsequent thereto in General Santos City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, RACQUIL-ALI M. LUCMAN, a public officer being then the OIC-Regional Executive Director of the Department of Environment and Natural Resources, Region XII, committing the offense in relation to and in abuse of his office, did then and there [willfully], unlawfully, and criminally request for himself the amount of Two Million Five Hundred Thousand Pesos (₱2,500,000.00) from Sergio Balolong, Aladin Saydala, and Hadji Abdulwahid D. Bualan, and actually receive the amount of One Million Five Hundred Thousand Pesos (₱1,500,000.00) from the said parties, in consideration for the assistance of accused Lucman in the investigation, processing, and approval of the aforementioned parties' application over two (2) parcels of alienable and disposable public lands located at Brgys. Olympog and Tambler, General Santos City.
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> CONTRARY TO LAW.[6]

The prosecution alleged that sometime in August 2009, private complainants Hadji Abdulwahid D. Bualan (Bualan), Sergio Balolong (Balolong), and Aladin Saydala (Saydala; collectively, private complainants) went to the office of Lucman, then the Officer-in-Charge (OIC)-Regional Executive Director (RED) of the Department of Environment and Natural Resources (DENR), Region XII, to discuss with the latter their intended applications for the issuance of Free Patent title. During the said meeting, Lucman allegedly demanded Two Million Five

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[4] (August 17, 1960).

[5] Not attached to the *rollo*.

[6] See *rollo*, pp. 31-32.

Hundred Thousand Pesos (₱2,500,000.00) from them as consideration for the grant of their applications. Private complainants acceded but asked to pay in installments.[7] Subsequently, on September 4, 2009, Bualan applied for Free Patents on behalf of Balolong and Saydala before the Community Environment and Natural Resources Office (CENRO) of General Santos City. On September 8, 2009, Lucman called up Bualan and demanded Five Hundred Thousand Pesos (₱500,000.00) as part of their agreement, as the former needed the money for his trip to Manila. Complying with Lucman's demand, Bualan proceeded to Tambler International Airport where he gave Five Hundred Thousand Pesos (₱500,000.00) to Lucman's driver for which the latter signed a cash voucher.[8] Thereafter, Bualan regularly followed up their applications with Lucman, but the latter told him to wait for two (2) to three (3) months for approval.[9] On October 16, 2009, Lucman again called up Bualan and told him to go to the house of Balolong for the payment of One Million Pesos (₱1,000,000.00). Thereat, Balolong allegedly issued a check worth One Million Pesos (₱1,000,000.00) for which Lucman signed a check voucher.[10] However, despite the payment of a total of One Million Five Hundred Thousand Pesos (₱1,500,000.00), their applications remained pending. Thus, private complainants filed a joint complaint before the Office of the City Prosecutor of General Santos City.[11]

Pleading "not guilty" to the charge,[12] Lucman denied demanding and receiving money from private complainants for and in consideration of the approval of their Free Patent applications. He claimed that Bualan merely wanted to destroy his honor and integrity.[13] He further claimed that Bualan's testimony cannot

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[7] See *id*. at 33-34.

[8] See *id*. at 34.

[9] See *id*.

[10] See *id*.

[11] See *id*. at 34-35.

[12] *Id*. at 32.

[13] See *id*. at 35.

be given any weight since it was not corroborated either by other witnesses or by supporting documents.[14]

The SB Ruling

In a Decision[15] dated March 9, 2018, the SB found Lucman guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for a period of six (6) years and one (1) month with perpetual disqualification to hold public office.[16]

The SB found that the prosecution had established all the elements for violation of Section 3 (c) of RA 3019, considering that: (*a*) Lucman was the OIC-RED of the DENR, Region XII at the time of the commission of the offense; (*b*) as the OIC-RED, he had authority to grant applications for Free Patent, such as the ones applied for by private complainants; (*c*) he demanded Two Million Five Hundred Thousand Pesos (₱2,500,000.00) and actually received One Million Five Hundred Thousand Pesos (₱1,500,000.00) from private complainants; and (*d*) the amount was for and in consideration of the grant of such applications.[17]

Aggrieved, Lucman moved for reconsideration,[18] which was, however, denied in a Resolution[19] dated April 23, 2018; hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the SB correctly convicted Lucman for the crime of violation of Section 3 (c) of RA 3019.

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[14] *Id*. at 16.

[15] *Id*. at 31-39.

[16] See *id*. at 38.

[17] See *id*. at 35-36.

[18] See motion for reconsideration dated March 19, 2018; *id*. at 45-58.

[19] *Id*. at 41-43.

The Court's Ruling

The petition is without merit.

Section 3 (c) of RA 3019 states:

> Section 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> x x x x x x x x x
>
> (c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

As may be gleaned from above, the elements of the crime charged are as follows: (1) the offender is a public officer; (2) he has secured or obtained, or would secure or obtain, for a person any government permit or license; (3) he directly or indirectly requested or received from said person any gift, present or other pecuniary or material benefit for himself or for another; and (4) he requested or received the gift, present or other pecuniary or material benefit in consideration for help given or to be given.[20]

After a judicious review of the case, the Court is convinced that the SB correctly convicted Lucman for violating Section 3 (c) of RA 3019. It is undisputed that Lucman was a public officer at the time the offense was committed, then being the OIC-RED of the DENR, Region XII. As the OIC-RED, he had the authority to grant applications for Free Patents, such as the ones filed by private complainants.[21] It was likewise established through the testimony of Bualan and the evidence on record

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[20] *Mendoza-Ong v. Sandiganbayan*, 460 Phil. 311, 318 (2003); and *Tecson v. Sandiganbayan*, 376 Phil. 191, 201 (1999).

[21] See *rollo*, pp. 35-36.

that Lucman demanded Two Million Five Hundred Thousand Pesos (₱2,500,000.00) and actually received One Million Five Hundred Thousand Pesos (₱1,500,000.00)[22] from private complainants, and that these amounts were for and in consideration of the grant of their applications.[23]

In view of the foregoing, the Court finds no reason to overturn the SB's findings, as there is no showing that it overlooked, misunderstood, or misapplied the surrounding facts and circumstances of this case, and considering further the fact that it was in the best position to assess and determine the credibility of the parties' witnesses.[24] As such, Lucman's conviction for violation of Section 3 (c) of RA 3019 must stand.

As regards the proper penalty to be imposed on Lucman, Section 9 (a)[25] of RA 3019, as amended,[26] states that the prescribed penalties for a violation of the said crime includes, *inter alia*, imprisonment for a period of six (6) years and one (1) month to fifteen (15) years and perpetual disqualification from public office. Taking into consideration the provision of the Indeterminate Sentence Law,[27] which states that "in imposing

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[22] See *id*. at 34.

[23] See *id*. at 36.

[24] See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018; citing *Peralta v. People*, G.R. No. 221991, August 30, 2017, 838 SCRA 350, 360.

[25] Section 9. *Penalties for violations*. — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

x x x x x x x x x

[26] *Batas Pambansa Blg.* 195, entitled "AN ACT AMENDING SECTIONS EIGHT, NINE, TEN, ELEVEN, AND THIRTEEN OF REPUBLIC ACT NUMBERED THIRTY HUNDRED AND NINETEEN, OTHERWISE KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT" (March 16, 1982).

[27] Act No. 4103, entitled "AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES

a prison sentence for an offense punished by acts of the Philippine Legislature, otherwise than by the Revised Penal Code, the court shall order the accused to be imprisoned for a minimum term, which shall not be less than the minimum term of imprisonment provided by law for the offense, and for a maximum term which shall not exceed the maximum fixed by law,"[28] the Court deems it proper to modify Lucman's sentence to imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to nine (9) years, as maximum, with perpetual disqualification to hold public office.

WHEREFORE, the petition is **DENIED**. The Decision dated March 9, 2018 and the Resolution dated April 23, 2018 of the *Sandiganbayan* in Crim. Case No. SB-13-CRM-0595 are hereby **AFFIRMED with MODIFICATION**. Petitioner Raquil-Ali M. Lucman is found **GUILTY** beyond reasonable doubt of the crime of violation of Section 3 (c) of Republic Act No. 3019 or the "Anti-Graft and Corrupt Practices Act," and accordingly, sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to nine (9) years, as maximum, with perpetual disqualification from public office.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson), Caguioa, Reyes, J. Jr.* and *Lazaro-Javier, JJ.,* concur.

BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES" (December 5, 1933).

[28] See Act No. 4103, Section 1.

[*] Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

SECOND DIVISION

[G.R. No. 240676. March 18, 2019]

JIMMY LIM PALACIOS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE RIGHT TO PRELIMINARY INVESTIGATION IS SUBSTANTIVE, NOT MERELY FORMAL OR TECHNICAL.— Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. The rationale of preliminary investigation is to "protect the accused from the inconvenience, expense[,] and burden of defending himself in a formal trial unless the reasonable probability of his guilt shall have been first ascertained in a fairly summary proceeding by a competent officer." Section 1, Rule 112 of the Rules of Court requires the conduct of a preliminary investigation before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to fine. x x x It bears to stress that the right to preliminary investigation is *substantive*, not merely formal or technical. As such, to deny petitioner's motion for reinvestigation on the basis of the provisions of A.M. No. 11-6-10-SC would be to deprive him of the full measure of his right to due process on purely procedural grounds. Thus, the courts *a quo* should allow petitioner to be accorded the right to submit counter-affidavits and evidence in a preliminary investigation for, after all, "the fiscal is not called by the Rules of Court to wait in ambush; the role of a fiscal is not mainly to prosecute but essentially to do justice to every man and to assist the court in dispensing that justice."

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; COMPONENTS; PROCEDURAL DUE PROCESS; THE ESSENCE THEREOF IS EMBODIED IN THE BASIC REQUIREMENT OF

NOTICE AND A REAL OPPORTUNITY TO BE HEARD, AND NON-OBSERVANCE OF THESE RIGHTS WILL INVALIDATE THE PROCEEDINGS.— Due process is comprised of two (2) components – substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal. The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. "Non-observance of these rights will invalidate the proceedings. Individuals are entitled to be notified of any pending case affecting their interests, and upon notice, they may claim the right to appear therein and present their side and to refute the position of the opposing parties."

3. REMEDIAL LAW; ACTIONS; SERVICE OF NOTICE; WHEN SERVICE OF NOTICE IS AN ISSUE, THE RULE IS THAT THE PERSON ALLEGING THAT THE NOTICE IS SERVED MUST PROVE THE FACT OF SERVICE.— The Court has punctiliously examined the available records of this case and found no showing that indeed, petitioner had been duly notified of the charges filed against him by Ramirez or served with a *subpoena* relative to the preliminary investigation conducted by the OCP-QC. The Court therefore takes exception to the CA's observation that petitioner failed to prove that he was denied participation in the preliminary investigation, for it would have been impossible for him to prove such negative allegation. Instead, under the circumstances, it was incumbent upon respondent to show that petitioner had been duly notified of the proceedings and that, despite notice, he still failed to appear or participate thereat. In the absence of such proof, the Court therefore finds that petitioner had not been given an opportunity to be heard. Case law states that "[w]hen service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence."

APPEARANCES OF COUNSEL

G.P. Angeles and Associates Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition[1] for review on *certiorari* are the Decision[2] dated January 18, 2018 and the Resolution[3] dated July 11, 2018 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 150260, which upheld the Orders dated October 5, 2016[4] and January 25, 2017[5] of the Regional Trial Court of Quezon City, Branch 86 (RTC) denying petitioner Jimmy Lim Palacios' (petitioner) motion for reinvestigation and to recall warrant of arrest.

The Facts

The present case stemmed from a complaint[6] for violation of Section 5 (i) of Republic Act No. (RA) 9262[7] otherwise known

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[1] *Rollo*, pp. 21-57.

[2] *Id.* at 61-68. Penned by Associate Justice Socorro B. Inting with Associate Justices Apolinario D. Bruselas, Jr. and Rafael Antonio M. Santos, concurring.

[3] *Id*. at 69-71. Penned by Associate Justice Rafael Antonio M. Santos with Associate Justices Apolinario D. Bruselas, Jr. and Carmelita Salandanan Manahan, concurring.

[4] *Id*. at 72. Penned by Presiding Judge Roberto P. Buenaventura.

[5] *Id*. at 73.

[6] See undated *Sinumpaang-Reklamong Salaysay*; *id*. at 107-112.

[7] See Section 5 (i) of RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004, which reads:

> Section 5. *Acts of Violence Against Women and Their Children*. — The crime of violence against women and their children is committed through any of the following acts:
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> x x x x x x x x x
>
> (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children. (Underscoring supplied)

as the "Anti-Violence Against Women and Their Children Act of 2004" filed by Maria Cecilia Ramirez (Ramirez) against petitioner. Ramirez alleged that she and petitioner were married[8] on November 17, 1987 and thereafter, had a son.[9] However, petitioner abandoned them and refused to give them financial support, acts which constitute economic abuse under Section 5 (i) of RA 9262. Further, in her *Sinumpaang-Reklamong Salaysay* filed before the Office of the City Prosecutor, Quezon City (OCP-QC), she alleged that petitioner's residence where he may be served with summons is **Block 3 Lot 24 Turquoise St., Las Piñas Royale Estate, Naga Road, Brgy. Pulang Lupa Dos, Las Piñas City**.

In a Resolution[10] dated March 19, 2015, the OCP-QC recommended that petitioner be indicted for the crime charged. In resolving the case based on the evidence proffered solely by Ramirez, the investigating prosecutor held that petitioner failed to appear during the preliminary investigation and submit his counter-affidavit despite being given ample opportunity to do so.[11] Consequently, the corresponding Information[12] was filed before the RTC, docketed as Crim. Case No. R-QZN-15-04286 and a warrant[13] for petitioner's arrest was issued pursuant to the RTC Order[14] dated May 12, 2015 (May 12, 2015 Order).

Sometime in September 2016, petitioner, through his lawyer, filed before the RTC an extremely very urgent motion for reinvestigation and to recall warrant of arrest,[15] decrying violation

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[8] See Marriage Contract dated November 17, 1987: *rollo*, p. 113.

[9] See Certificate of Live Birth of one Jimmy Ramirez Palacios, Jr., who was born on April 24, 1991; *id*. at 115.

[10] *Id*. at 117. Issued by Assistant City Prosecutor Pedro M. Tresvalles, approved by City Prosecutor Donald T. Lee.

[11] See *id*.

[12] *Id*. at 118-119.

[13] *Id*. at 121.

[14] *Id*. at 120.

[15] Dated September 2, 2016. *Id*. at 123-126.

of his right to due process upon learning of the case that Ramirez filed against him and the RTC's May 12, 2015 Order directing the issuance of a warrant of arrest. He averred that he only learned of the subject complaint when, in a criminal case that he had filed against *her*, his lawyer was furnished with a copy of her *Kontra-Salaysay*[16] where the May 12, 2015 Order was attached as an annex. He further alleged that he would not have been denied of his right to due process and to a preliminary investigation had Ramirez not concealed his true and correct address, *i.e.*, **Block 9 Lot 6 Pag-Ibig Homes, Talon IV, Las Piñas City**. As a result of the fraud employed by Ramirez, petitioner asserted that he was not able to interpose his valid and meritorious defenses to show that no probable cause exists to charge him in this case.[17]

The RTC Ruling

In an Order[18] dated October 5, 2016, the RTC denied petitioner's motion, citing A.M. No. 11-6-10-SC[19] which states that a motion for preliminary investigation shall only be granted where the accused was subjected to inquest proceedings,[20] which was not the case here.

Petitioner's motion for reconsideration[21] was denied in an Order[22] dated January 25, 2017. Thus, he elevated the case to

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[16] Not attached to the *rollo*.

[17] See *rollo*, pp. 123-125.

[18] *Id*. at 72.

[19] See Notice of Resolution in A.M. No. 11-6-10-SC entitled "GUIDELINES FOR LITIGATION IN QUEZON CITY TRIAL COURTS," dated February 21, 2012.

[20] See paragraph C (2) (b) of A.M. No. 11-6-10-SC, which reads:

> C. Guidelines for Criminal Cases.
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> x x x x x x x x x
>
> 2. Suspension of arraignment. — x x x
>
> (a) x x x
>
> (b) A motion for preliminary investigation shall only be granted where the accused was made subject to inquest proceedings, pursuant to Rule 112, Section 7 of the Rules of Court.

[21] See Vigorous Motion for Reconsideration dated November 10, 2016; *rollo*, pp. 127-129.

[22] *Id*. at 73.

the CA *via* a petition for *certiorari*[23] ascribing grave abuse of discretion on the part of the RTC.

The CA Ruling

In a Decision[24] dated January 18, 2018, the CA dismissed the petition and affirmed the assailed RTC Orders upon finding that petitioner was given the opportunity to participate in the preliminary investigation, based on the certification[25] of Assistant City Prosecutor Pedro M. Tresvalles (ACP Tresvalles) dated March 19, 2015. Likewise, it was observed that ACP Tresvalles had examined Ramirez's statements and the pieces of evidence, and on the basis thereof, found that there was probable cause. Furthermore, it was determined that the accused was informed of the complaint and evidence against him and was given an opportunity to submit controverting evidence. Finally, the CA affirmed the RTC's finding that pursuant to A.M. No. 11-6-10-SC, a motion for preliminary investigation shall only be granted when accused was subjected to inquest proceedings, which was not so in this case.[26]

Petitioner's motion for reconsideration[27] was denied in a Resolution[28] dated July 11, 2018; hence, this petition.

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[23] Dated February 7, 2017. *Id*. at 130-143.

[24] *Id*. at 61-68.

[25] See second page of the Information dated March 19, 2015 signed by ACP Tresvalles; *id*. at 119. The full text of the certification reads:

> "I hereby certify that a preliminary investigation in this case has been conducted by me in accordance with law; that I have examined the complainant/s and on the basis of the sworn statements and other evidence submitted before me there is a reasonable ground to believe that the offense charged has been committed and the accused is/are probabl[y] guilty thereof; that the accused was/were informed of the complaint and evidence submitted against him/her/them and was given opportunity to submit controverting evidence; that the filing of this Information is with the prior authority and approval of the City Prosecutor.
>
> x x x x x x x x x"

[26] See *id*. at 65-66.

[27] Dated February 14, 2018. *Id*. at 157-172.

[28] *Id*. at 69-71.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the denial of petitioner's motion for preliminary investigation and to recall warrant of arrest.

The Court's Ruling

The petition is impressed with merit.

Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.[29] The rationale of preliminary investigation is to "protect the accused from the inconvenience, expense[,] and burden of defending himself in a formal trial unless the reasonable probability of his guilt shall have been first ascertained in a fairly summary proceeding by a competent officer."[30] Section 1,[31] Rule 112 of the Rules of Court requires the conduct of a preliminary investigation before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to fine.

In this case, although the OCP-QC conducted a preliminary investigation relative to the complaint filed by Ramirez against petitioner, the latter bewails the lack of notice to him of the

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[29] See Section 1, Rule 112 of the Rules of Court.

[30] *Yusop v. Sandiganbayan*, 405 Phil. 233, 239 (2001), citing *Tandoc v. Resultan*, 256 Phil. 485, 492 (1989).

[31] Section 1. *Preliminary investigation defined; when required*. — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Except as provided in Section 7 of this Rule, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine.

proceedings, which resulted in his failure to participate in the preliminary investigation. He claims that Ramirez committed fraud by intentionally giving the wrong address in her *Sinumpaang-Reklamong Salaysay* instead of his true and correct residence address, which is **Block 9 Lot 6 Pag-Ibig Homes, Talon IV, Las Piñas City**, as evidenced by: (*a*) a Certification[32] dated July 10, 2017 issued by Barangay Talon Kuatro, Las Piñas City; (*b*) his Seaman's Service Record Book;[33] and (*c*) their Marriage Contract[34] dated November 17, 1987. To bolster his claim that Ramirez was fully aware of his correct address, he pointed out that in the petition[35] for declaration of nullity of their marriage and the Affidavit of Withdrawal[36] dated May 3, 1990, both of which Ramirez filed, she indicated his address at Block 9 Lot 6[37] Pag-Ibig Homes, Talon, Las Piñas, Metro Manila. Thus, petitioner contends that he was denied due process when Ramirez supplied the wrong address when she filed the present complaint against him.

Due process is comprised of two (2) components — substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal.[38] The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.[39] "Non-observance

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[32] *Rollo*, p. 80. Issued by Barangay Chairman Lawrence Philip DL. Roco.

[33] *Id*. at 83.

[34] *Id*. at 113.

[35] Dated October 25, 1994. *Id*. at 103-106.

[36] *Id*. at 81.

[37] Erroneously written as "Loto" in the petition for declaration of nullity of marriage.

[38] *Secretary of Justice v. Lantion*, 379 Phil. 165, 202-203 (2000), citing Cruz, *Constitutional Law*, 1993 Ed., pp. 102-106.

[39] *Disciplinary Board, Land Transportation Office v. Gutierrez*, G.R. No. 224395, July 3, 2017, citing *Ebdane, Jr. v. Apurillo*, 775 Phil. 298, 306 (2015).

of these rights will invalidate the proceedings. Individuals are entitled to be notified of any pending case affecting their interests, and upon notice, they may claim the right to appear therein and present their side and to refute the position of the opposing parties."[40]

The Court has punctiliously examined the available records of this case and found no showing that indeed, petitioner had been duly notified of the charges filed against him by Ramirez or served with a *subpoena* relative to the preliminary investigation conducted by the OCP-QC. The Court therefore takes exception to the CA's observation[41] that petitioner failed to prove that he was denied participation in the preliminary investigation, for it would have been impossible for him to prove such negative allegation. Instead, under the circumstances, it was incumbent upon respondent to show that petitioner had been duly notified of the proceedings and that, despite notice, he still failed to appear or participate thereat. In the absence of such proof, the Court therefore finds that petitioner had not been given an opportunity to be heard. Case law states that "[w]hen service of notice is an issue, the rule is that the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence."[42]

It bears to stress that the right to preliminary investigation is *substantive*, not merely formal or technical.[43] As such, to deny petitioner's motion for reinvestigation on the basis of the provisions of A.M. No. 11-6-10-SC would be to deprive him of the full measure of his right to due process[44] on purely procedural grounds. Thus, the courts *a quo* should allow petitioner to be accorded the right to submit counter-affidavits and evidence

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[40] *Secretary of Justice v. Lantion*, *supra* note 38, at 203, citing Cruz, *Phil. Administrative Law*, 1996 ed., p. 64.

[41] See *rollo*, p. 66.

[42] *The Government of the Philippines v. Aballe*, 520 Phil. 181, 190 (2006); citation omitted.

[43] *Yusop v. Sandiganbayan*, *supra* note 30, at 242.

[44] See *id*.

in a preliminary investigation for, after all, "the fiscal is not called by the Rules of Court to wait in ambush; the role of a fiscal is not mainly to prosecute but essentially to do justice to every man and to assist the court in dispensing that justice."[45]

Contrary to the CA's conclusion, the fact that ACP Tresvalles certified in the Information that: (a) he had conducted the preliminary investigation in accordance with law and examined Ramirez's statements and pieces of evidence; and (b) the accused was informed of the complaint and evidence against him, and thus, given an opportunity to submit controverting evidence, should not suffice in light of the absence of notice to petitioner regarding the conduct of the preliminary investigation. Given petitioner's insistence that Ramirez provided the wrong address in her complaint, it behooved the respondent to show that petitioner was duly notified at the said address, especially in light of the fact that the warrant for his arrest was returned unserved[46] at the said address. Such failure, to the Court's mind, compounded the violation of petitioner's constitutionally-guaranteed right to due process. Besides, the said certification in the Information is merely *pro forma*, and hence, does not enjoy the presumption of regularity in its issuance.[47] Consequently, Crim. Case No. R-QZN-15-04286 pending before the RTC must be suspended until the completion of a preliminary investigation in order to afford petitioner a chance to present his counter-affidavit and any countervailing evidence.

WHEREFORE, the Decision dated January 18, 2018 and the Resolution dated July 11, 2018 rendered by the Court of Appeals in CA-G.R. SP No. 150260 upholding the Orders dated October 5, 2016 and January 25, 2017 of the Regional Trial Court of Quezon City, Branch 86 are **REVERSED** and **SET ASIDE.** The Office of the City Prosecutor, Quezon City is hereby **ORDERED** to conduct forthwith a preliminary investigation

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[45] *People v. Lacson,* 448 Phil. 317, 373 (2003); citation omitted.

[46] See 1st Indorsement dated July 6, 2015; *rollo*, p. 122.

[47] See *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 730 (2014).

on the charge of violation of Section 5 (i) of Republic Act No. 9262 against petitioner Jimmy Lim Palacios. The trial on the merits of Crim. Case No. R-QZN-15-04286 shall be **SUSPENDED** until the conclusion of the preliminary investigation. No pronouncement as to costs.

SO ORDERED.

Carpio[*] *(Chairperson), Caguioa, Reyes, J. Jr.*, and *Lazaro-Javier, JJ.*, concur.

EN BANC

[A.C. No. 8124. March 19, 2019]

ATTY. FERDINAND S. AGUSTIN, *complainant, vs.* **ATTY. DOMINGO C. LAENO, ATTY. ROMEO R. ROBISO, ATTY. REGINALDO D. BERGADO,** *respondents.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; EVERY LAWYER SHOULD ACT WITH THE HIGHEST STANDARDS OF TRUTHFULNESS, FAIR PLAY, AND NOBILITY IN THE COURSE OF HIS PRACTICE OF LAW.— Atty. Laeno's acts of (i) executing two deeds of sale that covered one single property, (ii) indicating an undervalued consideration contrary to what was agreed on by the contracting parties, and (iii) offering one of these bogus deeds as evidence before the Court is exactly what is proscribed under x x x Canons [1, 7, and 10]. of the Code of Professional Responsibility x x x. Next, Atty. Laeno's resort to several suits against Marcelina and Perpetua to avoid eviction or cause the delay in the execution of an unfavorable judgment in an ejectment suit is likewise contrary to Canon

[*] Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

> 12. x x x Certainly, he had a duty as an officer of the court to abide by the judgment rendered even if it was unfavorable to him. Therefore, a five (5) year suspension is appropriate to penalize his reprehensible transgressions. In *Lazareto v. Atty. Acorda*, We said: [T]he ethics of the legal profession rightly enjoins every lawyer to act with the highest standards of truthfulness, fair play, and nobility in the course of his practice of law.

R E S O L U T I O N

***PER CURIAM*:**

This is a complaint for disbarment filed against respondents Attys. Domingo C. Laeno, Romeo R. Robiso and Reginaldo D. Bergado.

Atty. Laeno and the mother of complainant Atty. Ferdinand S. Agustin, Marcelina Agustin, agreed to the sale of a house and lot registered under E.M. Laeno and Associates for ₱6,500,000.00. In the agreement to sell and the completion of the sale thereof, Marcelina was represented by her daughter Perpetua. After the property was transferred in the name of Marcelina, Perpetua entered into a rental agreement with Atty. Laeno at ₱20,000.00 per month over the same property.[1]

Later, Atty. Laeno started to miss rental payments and when asked, refused to vacate the premises. After Marcelina through her son Atty. Agustin instituted an ejectment case against Atty. Laeno, it was discovered that the sale of the above-mentioned property was covered by two (2) Deeds of Absolute Sale executed and signed by Atty. Laeno and both were notarized by Atty. Bergado. None of these documents reflected the true consideration of the property. One said it was for ₱2,000,000.00 and the other said it was for ₱2,500,000.00. The Investigating Commissioner of the Integrated Bar of the Philippines (IBP) is convinced that the undervalued consideration in the two deeds is to avoid payment of the proper taxes. Moreover, Atty. Laeno offered one of these bogus deeds as evidence before the Supreme

[1] *Rollo*, p. 587.

Court. The Commissioner also noted that the other respondent, Atty. Bergado, allowed the said two deeds to be notarized although both refer to one and the same property; notarized at the same date since both documents bear the same notarial document number as Doc. 138; Page No. 28; Book VII, Series of 2002.[2]

In the ejectment case, Atty. Laeno denied dealing with Marcelina and recognized only Perpetua as the beneficial and absolute owner of the subject property. He further claimed that there is an unpaid balance of ₱1,500,000.00. According to the Commissioner, Atty. Laeno made it appear that Perpetua's loan with the wife of Atty. Laeno was connected with the consideration of the sale on the subject property as the unpaid portion.[3]

Furthermore, a certain Carolina Nielsen through Atty. Bergado filed a civil case against Perpetua, and several court orders in the case were annotated on Marcelina's title. There is also the case for the rescission of the sale to Marcelina where respondent Atty. Robiso was the counsel of Atty. Laeno.[4]

In his evaluation, report and recommendation, The Investigating IBP Commissioner absolved Atty. Robiso from any administrative liability. The Commissioner, however, found Atty. Laeno guilty of misconduct for executing two (2) Deeds of Absolute Sale covering one (1) property and one (1) transaction; instituting several suits as a ploy to avoid being evicted from the property despite a final adjudication in the ejectment suit; and knowingly introducing a bogus deed of sale as evidence. Similarly, Atty. Bergado is guilty of affixing his seal as a notary on the two (2) Deeds of Sale covering one and the same property, and of assisting in causing several annotations on Marcelina's property although the latter was never a party to the case.

The IBP-Board of Governors (IBP-BOG), in affirming the findings of the Investigating IBP Commissioner, issued RESOLUTION NO. XX-2013-464 on April 16, 2013.

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[2] *Id*. at 77 and 85.

[3] *Id*. at 588-589.

[4] *Id*. at 589.

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the and the applicable laws and rules and for violation of Canon 1, Canon 7, Canon 10, and Canon 12 of the Code of Professional Responsibility, Atty. Domingo C. Laeno is hereby ***SUSPENDED from the practice of law for two years****. For violation of the notarial law and Canon 1 of the Code of Professional Responsibility, Atty Reginaldo D. Bergado's notarial commission is hereby* ***REVOKED immediately if presently commissioned. Further, he is DISQUALIFIED from reappointment as Notary Public for two (2) years****. For insufficiency of evidence, the case against Atty. Romeo R. Robiso is hereby* ***DISMISSED****.*[5] (Emphasis and italics in the original)

We agree with the IBP-Board of Governors' report and recommendation with regard to Atty. Laeno. We must, however, modify the penalty imposed against him by increasing the penalty to five (5) years.

Atty. Laeno's acts of (i) executing two deeds of sale that covered one single property, (ii) indicating an undervalued consideration contrary to what was agreed on by the contracting parties, and (iii) offering one of these bogus deeds as evidence before the Court is exactly what is proscribed under the following Canons of the Code of Professional Responsibility:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

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 x x x.

x x x x x x x x x

CANON 10 — A lawyer owes candor, fairness and good faith to the court.

Next, Atty. Laeno's resort to several suits against Marcelina and Perpetua to avoid eviction or cause the delay in the execution of an unfavorable judgment in an ejectment suit is likewise contrary to Canon 12.

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[5] *Id*. at 585-586.

Canon 12 — A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

Certainly, he had a duty as an officer of the court to abide by the judgment rendered even if it was unfavorable to him. Therefore, a five (5) year suspension is appropriate to penalize his reprehensible transgressions. In *Lazareto v. Atty. Acorda*,[6] We said:

[T]he ethics of the legal profession rightly enjoins every lawyer to act with the highest standards of truthfulness, fair play, and nobility in the course of his practice of law. x x x.[7] (Citations omitted)

As regards to Atty. Bergado, it has come to the Court's attention that he is dead. A copy of his death certificate dated November 22, 2008 was attached as Exhibit 2 in the position paper of Atty. Laeno submitted on March 24, 2010,[8] but was overlooked by the IBP Investigating Commissioner.

WHEREFORE, Atty. Domingo C. Laeno is hereby **SUSPENDED** from the practice of law for five (5) years. For insufficiency of Evidence, the case against Atty. Romeo R. Robiso is hereby **DISMISSED**.

Let copies of this Resolution be furnished to all courts, the Office of the Bar Confidant, and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is directed to append a copy of this Resolution to respondent's record as member of the Bar.

SO ORDERED.

Carpio,[*] *Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Carandang*, and *Lazaro-Javier, JJ.*, concur.

Bersamin, C.J., on official business.

Hernando, J., on leave.

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[6] A.C. No. 9603, June 16, 2015.

[7] *Id*.

[8] *Rollo*, pp. 395 and 406.

[*] Designated Acting Chief Justice per Special Order No. 2644 dated Match 15, 2019.

EN BANC

[A.C. No. 9833. March 19, 2019]

FORTUNE MEDICARE, INC., represented by its President and Chief Operating Officer, DOROTHEA J. SIBAL, and ATTY. MELAN ESPELA, *complainants, vs.* **ATTY. RICHARD C. LEE,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; EXPECTED TO BE BEYOND REPROACH IN ALL ASPECTS OF THEIR LIVES, ESPECIALLY WHEN DEALING WITH THEIR COLLEAGUES.— Those granted with the special privilege of being members of the legal profession are expected to meet high standards of legal proficiency and morality such that it is their duty to conduct themselves in a manner upholding integrity and promoting the public's faith in the profession. Lawyers are expected to be beyond reproach in all aspects of their lives, especially when dealing with their colleagues. This high moral standard imposed on members of the Bar is but a consequence of them being officers of the Court, after all, any thoughtless or ill-conceived actions can irreparably tarnish public confidence in the law, and consequently, those who practice it.

2. ID.; ID.; ADMINISTRATIVE CASES AGAINST LAWYERS ARE GEARED TOWARDS THE DETERMINATION WHETHER THE ATTORNEY IS STILL A PERSON TO BE ALLOWED THE PRIVILEGES AS SUCH.— Administrative cases against lawyers are geared towards the determination whether the attorney is still a person to be allowed the privileges as such. The Court, in the exercise of its disciplinary powers, merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members, who, by their misconduct, have proven themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.

3. ID.; ID.; DISBARMENT; SERIOUS DISHONESTY AND PROFESSIONAL MISCONDUCT ARE CAUSES FOR DISBARMENT; CASE AT BAR.— The appropriate penalty for an errant lawyer depends on sound judicial discretion based on the surrounding facts. The Court agrees that respondent should be disbarred from the practice of law. Serious dishonesty and professional misconduct are causes for disbarment. Here, he intentionally misled Fortune and Atty. Espela into believing that he had agreed to the Compromise Agreement. At the early stages of the negotiation, respondent was already aware that the ₱2 Million was intended to be the full satisfaction of the judgment award. He, however, allowed the meeting in LA Franco's office to take place and thereafter deviate from the agreement taking the ₱2 Million insisting that it was only a partial payment of his judgment award. As a lawyer, respondent should have been aware that there are legal remedies available to him in order to protect his rights and to secure his judgment award from being a mere paper judgment. He, however, opted to employ deceit and chicanery to get what he believed he deserved. Such cavalier attitude of respondent shows an utter disrespect of the law and legal processes. At the same time, it fosters an environment where the rule of law is disregarded and emboldens the public to resort to extralegal means to obtain what they desire. Further, it is noteworthy that respondent had been previously admonished by the Court for violating the CPR. His deceitful and dishonest conduct in dealing with Fortune, coupled with his past indiscretions, manifest an unfitness to continue as a member of the legal profession. 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.

APPEARANCES OF COUNSEL

Law Firm of Guevarra Espiritu Mendoza & Espinosa for complainants.

D E C I S I O N

***PER CURIAM*:**

Subject of this Decision is the Complaint[1] dated March 20, 2013 of complainants Fortune Medicare, Inc. (Fortune), represented by its President and Chief Operating Officer, Dorothea J. Sibal, and Atty. Melan Espela (Atty. Espela) against Atty. Richard C. Lee (respondent) for disbarment on account of violation of the Code of Professional Responsibility (CPR).

Complainants' Position

Respondent obtained a favorable decision in the illegal dismissal case he filed against Fortune — the said decision having attained finality after its dismissal by the Court of Appeals. In the execution proceedings, Labor Arbiter Fatima Franco (LA Franco) computed the monetary award of respondent in the amount of ₱3,241,181.00. Both parties disagreed with the amount and filed their respective Petitions for Extraordinary Remedy before the National Labor Relations Commission (NLRC).[2]

While the petitions were pending before the NLRC, LA Franco issued writs of garnishment against several bank accounts of Fortune. Wanting to end the labor dispute, Fortune negotiated for an amicable settlement with respondent. Respondent agreed to settle the case for ₱2 Million and the withdrawal of cases filed against him before the Ombudsman. In addition, the parties concurred that they jointly sign a Compromise Agreement and Urgent Motion to Dismiss Cases and for Lifting of Notice of Garnishment Upon Amicable Settlement.[3]

The parties agreed to meet on March 1, 2013 in LA Franco's office for the signing of pertinent documents and payment of the agreed amount. Fortune had furnished respondent in advance copies of the above-mentioned documents and a photocopy of

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[1] *Rollo*, pp. 1-25.

[2] *Id*. at 3.

[3] *Id*. at 4.

the Manager's Check to be drawn from Banco de Oro payable to respondent. Days before the scheduled meeting, respondent insisted that he be paid in cash, to which Fortune acceded.[4]

On March 1, 2013, Fortune's counsel Atty. Espela and its Treasury Officer Rose Gahunia (Gahunia) met respondent in LA Franco's office. They noticed that respondent had a companion holding a black bag. After exchanging pleasantries, Atty. Espela handed the documents to be signed by respondent, who remarked that he would sign them after seeing the money. Gahunia gave a bundle of stacked bills to respondent with the latter confirming that it amounted to ₱2 Million. Atty. Espela asked him to sign the Compromise Agreement and the Omnibus Motion to Dismiss, but the latter refused and retorted that he will take the money as partial payment of his labor money claims.[5]

Then, respondent signaled his two companions to enter LA Franco's office and to take the money. Atty. Espela tried to prevent him from leaving with the money, but was unable to do so as one of the latter's companions blocked him from giving chase. Still, Atty. Espela followed respondent and his companions, but when he tried to grab the money, one of respondent's companions motioned as if drawing a concealed firearm. Out of fear, Atty. Espela failed to stop respondent and his companions from leaving the premises. As a result of this untoward incident, criminal and administrative charges were filed against respondent before the City Prosecutor and the Department of Justice respectively.[6]

Respondent's Position

As a result of his victory in his illegal dismissal case against Fortune, respondent was awarded ₱3,241,181.00. On February 27, 2013, he received a text message from the NLRC Sheriff that Fortune did not have enough funds in its deposit accounts, particularly in City State Savings Bank (City State) and United

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[4] *Id*.

[5] *Id*. at 10-11.

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

Coconut Planters Bank, to satisfy the judgment award. Respondent also received information from a Fortune employee that Fortune had transferred its properties to a separate corporation. This led him to believe that Fortune had no genuine interest to pay him and that the writ of garnishment in his favor could not be executed especially considering that City State is a sister company of Fortune.[7]

Consequently, respondent had to go along with Fortune's offer to settle because he felt that if he refused, Fortune would continue to hide its assets and frustrate the execution of his judgment award. He agreed to meet in LA Franco's office to receive the ₱2 Million as partial payment — this was the reason why he wanted the payment to be in cash and not through a Manager's Check. After receiving the money, respondent gave Atty. Espela and LA Franco their respective copies of the Acknowledgment Receipt stating that the ₱2 Million was a partial payment and that Fortune had a remaining balance of ₱1,241,181.00. Thereafter, he left the NLRC premises.[8]

Instead of paying the remaining balance, Fortune filed a series of cases for robbery, administrative cases and this present complaint for disbarment to harass respondent. He denied that he robbed Fortune highlighting that the criminal case for robbery was dismissed. Respondent added that Fortune even moved to approve the Compromise Agreement and to declare the full execution of the judgment award, which LA Franco granted considering the ₱2 Million as the full and complete payment of Fortune's judgment obligation. He likewise noted that he never categorically agreed to settle the labor case for ₱2 Million.[9]

In its July 15, 2013 Resolution,[10] the Court referred Fortune's complaint to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

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[7] *Id*. at 100-102.

[8] *Id.* at 102-103.

[9] *Id*. at 103-106.

[10] *Id*. at 95.

Report and Recommendation

In his Report and Recommendation[11] dated August 24, 2015, Commissioner Numeriano F. Rodriguez, Jr. (Commissioner Rodriguez) found respondent guilty of violating Canon 7 and Rule 7.03 of the CPR. He found sufficient evidence that respondent acted in a manner wanting in moral character, honesty, probity and good demeanor. Nevertheless, Commissioner Rodriquez found that disbarment is too harsh a penalty considering the circumstances and instead recommended the penalty of three years suspension. He expounded that sanctions against lawyers are not primarily intended as a punishment but as a means to protect the public and the legal profession. As to the restitution of the ₱2 Million, Commissioner Rodriguez found it untenable considering that LA Franco had approved the Compromise Agreement as valid and binding.

In its Resolution No. XXII-2015-99[12] dated November 28, 2015, the IBP Board of Governors (IBP-BOG) affirmed the findings of facts and recommended penalty of Commissioner Rodriguez. Respondent moved for reconsideration, but it was denied by the IBP-BOG in its Resolution No. XXII-2017-1144[13] dated May 27, 2017.

Hence, this review.

The Court's Ruling

The Court agrees with the findings of the IBP-BOG, but modifies the penalty imposed.

Those granted with the special privilege of being members of the legal profession are expected to meet high standards of legal proficiency and morality such that it is their duty to conduct themselves in a manner upholding integrity and promoting the public's faith in the profession.[14] Lawyers are expected to be

[11] *Id*. at 226-238.

[12] *Id*. at 224-225.

[13] *Id*. at 289-290.

[14] *Noble v. Atty. Ailes*, 762 Phil. 296, 300 (2015).

beyond reproach in all aspects of their lives, especially when dealing with their colleagues.[15] This high moral standard imposed on members of the Bar is but a consequence of them being officers of the Court, after all, any thoughtless or ill-conceived actions can irreparably tarnish public confidence in the law, and consequently, those who practice it.[16]

Rule 1.01 of the CPR mandates that lawyers should not engage in unlawful, dishonest, immoral and deceitful conduct. To be dishonest means the disposition to lie, cheat, deceive, defraud, or betray; lacking in integrity, honesty, probity, integrity in principle, fairness and straightforwardness.[17] On the other hand, deceitful conduct is one tainted with fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the latter.[18]

Meanwhile, Canon 7,[19] in conjunction with Rule 7.03,[20] of the CPR requires that lawyers should conduct themselves in a manner that upholds the integrity and dignity of the profession shunning actions that would adversely reflect on their fitness to practice law. On the other hand, Canon 8[21] of the CPR mandates that lawyers should be guided with courteousness, fairness and candor in their dealings with colleagues.

Administrative cases against lawyers are geared towards the determination whether the attorney is still a person to be allowed,

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[15] *Id*.

[16] *Fabugais v. Atty. Faundo, Jr.,* A.C. No. 10145, June 11, 2018.

[17] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 565 (2014).

[18] *Id*. at 566.

[19] A lawyer shall, at all times, uphold the integrity and credibility of the legal profession, and support activities of the integrated bar.

[20] 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.

[21] A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

the privileges as such.[22] The Court, in the exercise of its disciplinary powers, merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members, who, by their misconduct, have proven themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[23]

A review of the records of the case would show that respondent failed to meet the lofty standards required of those privileged to practice law.

In the case at bench, it is undisputed that respondent agreed to meet with Fortune representatives in LA Franco's office where the former expected to receive ₱2 Million from the latter. However, the purpose of the payment, as well as how the payment was made, are contested. On the one hand, Fortune assailed that respondent had agreed to settle the labor case in consideration of ₱2 Million and it was caught off guard when the latter reneged on their agreement and decided to take the money without signing the Compromise Agreement and Omnibus Motion to Dismiss insisting that the amount was only a partial fulfillment of Fortune's obligation. On the other hand, respondent argued that he never categorically expressed that he agreed to the full settlement of the labor case for ₱2 Million noting that he had prepared an Acknowledgment Receipt stating that the sum was only a partial payment of the judgment award.

Based on the exchange of text communications and conversations[24] between Atty. Espela and respondent, it is readily apparent that the parties agreed that the ₱2 Million was for the full settlement of the judgment award. This is bolstered by the fact that prior to the meeting in LA Franco's office, Atty. Espela had sent respondent the Compromise Agreement and Omnibus Motion to Dismiss to be signed during the meeting. Thus, he

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[22] *Espanto v. Atty. Belleza*, A.C. No. 10756, February 21, 2018.

[23] *Id*.

[24] *Rollo*, pp. 4-9.

should have been aware that it was the understanding of Fortune and its representatives that the ₱2 Million served as the full payment of the judgment award.

If it were true that he did not agree with the terms of the compromise, he should have informed them about it. Respondent could have easily relayed his objections as evidenced by the fact that he even insisted to be paid in cash after he was sent a photocopy of the Manager's Check. Instead, he continued to communicate with Atty. Espela under the premise that he was amenable to the ₱2 Million as compensation for the compromise.

Respondent cannot claim that there was no clear agreement that the ₱2 Million was in consideration of the full judgment award because there was nothing categorical in his phone conversations and text messages with Atty. Espela. This is belied by his admission that he was only forced to go along with Fortune's offer to settle the case so that at least his judgment award could be partially settled.

Thus, it is readily apparent that respondent was never straightforward and honest in his dealings with Fortune in arriving at a compromise. He was in constant communication with Atty. Espela and he made him believe that there was progress in the negotiations for compromise. Respondent even agreed to meet with Atty. Espela in LA Franco's office in spite of him not being amenable to the terms of the compromise. He goaded Fortune into paying him ₱2 Million without any intention of accepting any settlement for the judgment award. Respondent consciously and deliberately deceived Fortune because he knew from the start that the latter's representative were there to meet him to consummate the agreed compromise.

In an attempt to justify his actions, respondent shifts the blame to Fortune claiming that it had withdrawn its deposit accounts and transferred properties to another corporations in order to reduce his victory to a meaningless paper judgment. He laments that he had to go through the motions of negotiating a compromise, otherwise, he would not be able to get anything from Fortune. Respondent adds that the present complaint for disbarment is only another means for Fortune to harass and prejudice him.

Still, it does not negate the fact that respondent was intentionally dishonest when he dealt with Atty. Espela and Fortune. Instead of pursuing legal means of protecting his rights, he opted to take the law into his own hands employing deceit to get what he felt he deserved. As a member of the Bar, respondent is held to a higher standard compared to laypeople as he is duty-bound to promote the respect and observance of the law and to be a beacon of justice, fairness, honesty and integrity.

Assuming that respondent is guilty, he argued that the investigating commissioner erred in recommending a penalty of suspension for three years. He noted that the cases cited in the investigating Commissioner's report and recommendation only imposed six months suspension. Meanwhile, Fortune assailed that the penalty of suspension for three years should be increased to disbarment, reiterating that the acts committed by respondent, and the fact that he had been administratively sanctioned, justified the imposition of the highest penalty possible.

The appropriate penalty for an errant lawyer depends on sound judicial discretion based on the surrounding facts.[25] The Court agrees that respondent should be disbarred from the practice of law. Serious dishonesty and professional misconduct are causes for disbarment.[26]

Here, he intentionally misled Fortune and Atty. Espela into believing that he had agreed to the Compromise Agreement. At the early stages of the negotiation, respondent was already aware that the ₱2 Million was intended to be the full satisfaction of the judgment award. He, however, allowed the meeting in LA Franco's office to take place and thereafter deviate from the agreement taking the ₱2 Million insisting that it was only a partial payment of his judgment award.

As a lawyer, respondent should have been aware that there are legal remedies available to him in order to protect his rights

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[25] *Spouses Concepcion v. Atty. Dela Rosa,* 752 Phil. 485, 496 (2015).

[26] *Brennisen v. Atty. Contawi*, 686 Phil. 342, 349 (2012), citing *Sabayle v. Tandayag*, 242 Phil. 224, 233 (1988).

and to secure his judgment award from being a mere paper judgment. He, however, opted to employ deceit and chicanery to get what he believed he deserved. Such cavalier attitude of respondent shows an utter disrespect of the law and legal processes. At the same time, it fosters an environment where the rule of law is disregarded and emboldens the public to resort to extralegal means to obtain what they desire.

Further, it is noteworthy that respondent had been previously admonished by the Court for violating the CPR.[27] His deceitful and dishonest conduct in dealing with Fortune, coupled with his past indiscretions, manifest an unfitness to continue as a member of the legal profession. 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.[28]

WHEREFORE, respondent Atty. Richard C. Lee is found **GUILTY** of violation of Rule 1.01, Rule 7.03, Canon 7, and Canon 8 of the Code of Professional Responsibility. Accordingly, he is **DISBARRED** from the practice of law effective upon the finality of this Decision.

Let copies of this Decision be furnished the Office of the Bar Confidant to be reflected on the records of respondent; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.

Carpio,[*] *Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Carandang,* and *Lazaro-Javier, JJ.*, concur.

Bersamin, C.J., on official business.

Hernando, J., on leave.

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[27] *Rollo*, p. 285.

[28] *Sebastian v. Atty. Bajar*, 559 Phil. 211, 226 (2007).

[*] Designated as Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

EN BANC

[A.M. No. MTJ-01-1385. March 19, 2019]

EUGENIO STO. TOMAS, *complainant, vs.* **JUDGE ZENAIDA L. GALVEZ, Municipal Trial Court, Cabuyao, Laguna,** *respondent.*

[A.M. No. P-17-3704. March 19, 2019]
(Formerly OCA IPI No. 03-1758-P)

VICTORIA BENIGNO, *complainant, vs.* **EUGENIO STO. TOMAS, Clerk of Court, Municipal Trial Court, Cabuyao, Laguna,** *respondent.*

[A.M. No. MTJ-03-1472. March 19, 2019]
(Formerly A.M. No. 02-10-271-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE ZENAIDA L. GALVEZ and CLERK OF COURT EUGENIO STO. TOMAS, Municipal Trial Court, Cabuyao, Laguna,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT; AS CUSTODIANS OF COURT FUNDS AND REVENUES, THEY ARE DUTY-BOUND TO IMMEDIATELY DEPOSIT THE VARIOUS FUNDS THEY RECEIVED TO THE AUTHORIZED GOVERNMENT DEPOSITORIES, FOR THEY ARE NOT SUPPOSED TO KEEP FUNDS IN THEIR CUSTODY.— As custodians of court funds and revenues, Clerks of Court have the duty to immediately deposit the various funds received by them to the authorized government depositories, for they are not supposed to keep funds in their custody. Such functions are highlighted by OCA Circular Nos. 50-95 and 113-2004 and Administrative Circular No. 35-2004 which mandate Clerks of Court to timely deposit judiciary collections as well as to submit monthly

financial reports on the same. In the same vein, Administrative Circular No. 3-2000, commands that all fiduciary collections be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. SC Circular No. 13-92 directs that all fiduciary collections be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank, while SC Circular No. 5-93 provides that the Land Bank of the Philippines is designated as the authorized government depository. These SC Circulars are plain enough to command strict compliance to promote full accountability for government funds and no protestation of good faith can override such mandatory nature.

2. LEGAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION OR ORDER; FAILURE TO NEGATE FINDINGS REGARDING A JUDGE'S INACTION ON NUMEROUS CASES AS LISTED BY THE AUDIT TEAM WARRANTS THE PENALTY OF FINE; CASE AT BAR.— With regard to Judge Galvez, who failed to negate the findings regarding her inaction on numerous cases as listed by the audit team, the records are bereft of any showing that she requested for extensions of the period within which she can decide or resolve the aforesaid cases and incidents, or that she gave any credible explanation for the delay in their disposition. Hence, the OCA correctly found Judge Galvez administratively liable for undue delay in rendering a decision or order. Considering that Judge Galvez had already resigned from the judiciary in 2001, a fine of ₱20,000.00 is deemed to be reasonable.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; MUST CONDUCT THEMSELVES WITH PROPRIETY AND DECORUM AT ALL TIMES AND ABOVE ALL BEYOND SUSPICION; PENALTY OF DISMISSAL, PROPER IN CASE AT BAR.— It is best to stress that dishonesty is a malevolent conduct that has no place in the judiciary. We have repeatedly warned that dishonesty, particularly that which amounts to malversation of public funds, will not be countenanced. Otherwise, courts of justice may come to be regarded as mere havens of thievery and corruption. This is the reason why the Court has emphasized countless times that all persons working in the judiciary, from the presiding

judge to the lowliest clerk, are tasked with a heavy burden of responsibility. Their conduct must at all times be characterized by propriety and decorum, and above all beyond suspicion. The Institution demands the best possible individuals in the service and it has never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system. For respondent's transgressions and numerous violations of the Court's administrative circulars, the 2002 Revised Manual for Clerks of Courts and the Code of Conduct for Court Personnel, the Court is left with no other recourse but to recommend his dismissal from the service, pursuant to Section 52, A(1)(3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service.

D E C I S I O N

***PER CURIAM*:**

This consolidated administrative cases stemmed from A.M. No. 01-4-133-MTC[1] entitled "*Re: Administrative Matter Withholding of Other Emoluments, etc. of the Clerk of Court Elsie C. Remoroza, et al.*" imputing neglect of duty to several clerks of court, including Clerk of Court Eugenio Sto. Tomas (Sto. Tomas) of the Municipal Trial Court (MTC) of Cabuyao, Laguna, for their failure to submit reports of monthly collections for the judiciary funds pursuant to Section 122[2] of

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[1] Re: Withholding of Other Emoluments of the following Clerks of Court: Elsie C. Remoroza of the Municipal Trial Court (MTC) of Mauban, Quezon; Elena P. Reformado of the MTC of Guinayangan, Quezon; Eugenio Sto. Tomas of the MTC of Cabuyao, Laguna; Maura D. Campaño of the MTC of San Jose, Occidental Mindoro; Eleanor D. Flores of the Municipal Circuit Trial Court (MCTC) of Taytay, Palawan; and Jesusa P. Benipayo of the MCTC of Ligao, Albay, August 26, 2003, A.M. No. 01-4-133-MTC, pp. 1-2.

[2] Section 122. Submission of reports. Whenever deemed necessary in the exigencies of the service the Commission may under regulations issued by it require the agency heads, chief accountants, budget officers, administrative or personnel officers, and other responsible officials of the various agencies to submit trial balances, physical inventory reports, current

Presidential Decree No. 1445[3] and Supreme Court (SC) Circular No. 32-93.[4]

In a Resolution[5] dated May 4, 2001, the Court resolved, among others, to direct the Office of the Court Administrator (OCA) to conduct an immediate audit of the cases and accounts of these court officers; to withhold further emoluments due them; and to impose administrative sanctions on them for their continued defiance of SC Circular No. 32-93. Upon the recommendation of the OCA, the Court suspended the erring clerks of court without pay, including Sto. Tomas, until full compliance with the Court's directives.[6]

The Case and the Facts

A.M. No. MTJ-01-1385

During the pendency of A.M. No. 01-4-133-MTC, Sto. Tomas filed a motion to implead[7] Judge Zenaida L. Galvez (Judge Galvez), as the Presiding Judge of MTC, Cabuyao, Laguna, in the said administrative case; thus, the Court required Judge Galvez to file her comment and also placed her under preventive suspension.[8]

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plantilla of personnel, and such other reports as may be necessary for the exercise of its functions.

(2) Failure on the part of the officials concerned to submit the documents and reports mentioned herein shall automatically cause the suspension of payment of their salaries until they shall have complied with the requirements of the Commission.

(3) No appropriation authorized in the General Appropriations Act shall be available to pay the salary of any official or employee who violates the provisions of this section, without prejudice to any disciplinary action that may be instituted against such official or employee.

[3] Government Auditing Code of the Philippines.

[4] Collection of Legal Fees and Submission of Monthly Report of Collections.

[5] *Rollo* (A.M. No. 01-4-133-MTC), pp. 6-7.

[6] *Id*. at 9, Resolution dated August 7, 2001.

[7] *Rollo* (A.M. No. MTJ-01-1385), pp. 1-6.

[8] *Rollo* (A.M. No. 01-4-133-MTC), p. 52.

In the Court's Resolution[9] dated December 11, 2001, the Court resolved, among others, to docket the complaint[10] of Sto. Tomas against Judge Galvez and the latter's comment thereon as A.M. No. MTJ-01-1385. The Court also lifted the suspension of Judge Galvez and directed the OCA to detail the latter to another court; hence, she was detailed as Acting Presiding Judge in the MTC of Biñan and Alaminos, Laguna.[11]

A.M. No. MTJ-03-1472

On account of Sto. Tomas' failure to submit the required reports despite several directives, the Court sent judicial and financial audit teams from the OCA to the MTC of Cabuyao, Laguna. In its report dated July 5, 2002[12] and August 30, 2002,[13] the Audit Teams discovered the following:

A. Judge Zenaida L. Galvez
(a) failed to decide some 31 criminal cases and 66 civil cases despite the lapse of the reglementary period;[14]
(b) failed to resolve motions/incidents in some criminal and civil cases within the prescribed period;[15]

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[9] *Id*. at 254-255.

[10] *Rollo* (A.M. No. MTJ-01-1385), pp. 29-31.

[11] *Rollo* (A.M. No. 01-4-133-MTC), p. 275.

[12] *Rollo* (A.M. No. MTJ-03-1472), pp. 9-33.

[13] *Id*. at 34-41.

[14] In Criminal Case Nos. 5257, 5318, 4303 to 4311, 5075, 5276 to 5287, 5049, 4333, 4334, 5498, 4727, 5085 and 5338; and Civil Case Nos. 653 to 655, 648, 427, 413, 517, 718, 642 to 646, 634, 611, 539, 394, 481, 522, 747, 581, 489, 490, 514, 660, 662, 651, 665 and 631 including the following ejectment cases, to wit: Civil Case Nos. 712, 717, 711, 627, 628, 629, 530, 792, 760, 762, 765, 782, 785, 771, 772, 773, 774, 753, 332, 351, 354, 355, 392, 406, 482, 241, 249, 251, 421, 713, 714, 716, 710, 709, 708 and 666 which are governed by the rules on summary procedure.

[15] In Criminal Case Nos. 6426, 6427 and 6428 (Motion to Quash), 4084 (Accused's Formal Offer of Exhibits), 4832 and 4923 (Complainant's Formal Offer of Evidence), 4597 (Motion For Reconsideration/Motion to Quash), 7006 (Motion for Reconsideration with Prayer to Lift Order of Arrest), 6113 (Motion to Admit Pre-Trial Order), 7378 (Motion to Withdraw Exhibits)

(c) failed to take further appropriate action on cases under preliminary investigation which offenses are cognizable by the Regional Trial Court (RTC) as well as by the MTC for an unreasonable length of time some of which have been pending for several years already;[16]
(d) failed to set for arraignment after the accused posted his bail bond for quite a long time;[17]
(e) failed to take initial action such as issuance of subpoenas and summonses;[18]
(f) failed to take action in several motions;[19]

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and 7011 (Motion to Quash); and Civil Case Nos. 761 (Urgent Motion to Withdraw Complaint) and 714 (Motion for Reconsideration of Orders denying Motion to Dismiss).

[16] In Case Nos. 3839, 6474, 6669, 6884, 6779, 5978, 5533, 6899, 7018, 6997, 3982, 7003, 6906, 7206, 6816, 6817, 6826, 6808, 6914, 6885, 6913, 5929, 5014, 7227, 7087, 7088, 7089, 7027, 7020, 6993, 6953, 6942, 7099, 7098, 6911, 6905, 6897, 6824, 6850, 6833, 7090, 7091, 6267, 6264, 6231, 4593, 6590, 6226, 6225, 6241, 6746, 4003, 6591, 4088, 4089, 5314, 5268, 4046, 6035, 6105, 5738, 6420, 6543, 6108, 6066, 6419, 6524, 6525, 6351, 6299, 6185, 6002, 7203, 7306, 6071, 6675, 6561, 6500, 6707, 6917, 6918, 4855, 6676, 6568, 6570, 6528, 7009, 7190, 6838, 7031, 7019, 6269, 5181, 5539, 5148, 4005, 4394 and 6641 (offenses cognizable by the RTC); and 4394, 5181, 5148, 5539, 6269, 6641 and 6737 (offenses cognizable by the MTC).

[17] In Criminal Case Nos. 7055, 6984, 7210, 6985, 7224, 7008, 4708, 6823, 7142, 7444, 7445, 7398, 7195, 7196, 7239, 7499, 7523, 7249, 7248, 7284, 6852, 6833, 6899, 6939, 6242, 6710, 6728, 7149, 7197, 7199, 7207, 7209, 7219, 3581, 3923 and 6732 and in Criminal Case Nos. 6591, 6049, 6050, 6051, 6052 and 6953 where Judge Galvez had not acted on the Affidavit of Desistance filed by the private complainant.

[18] In Criminal Case Nos. 7428, 5966, 4951, 4833, 6080, 5951, 5465, 7396, 7397, 6588, 4297, 6899, 6137, (*Pp v. Alcantara*, Less Serious Physical Injuries), 6137 (*Pp. v. Orbina*, Viol. of PD 1602), 6680, 6731 (*Pp v. Galinao*, Viol. of PD 1602), 6732, 6733 (*Pp v. Ilag*, Viol. of PD 1602), 6733 (*Pp v. Palmores*, Viol. of PD 1602), 6734 (*Pp v. Capuchino*, Viol. of PD 1602), 6734 (*Pp v. Mantis*, Viol. of PD 1602), 6747, 6829, 6834, 6981 (*Pp v. Bernardo*, Serious Physical Injuries), 6981 (*Pp v. Galang*, Viol. of PD 1602), 6510, 6511, 7108, 7024 and 7032 and issuance of summonses in Civil Case Nos. 686, 487 and 291 since these cases were filed.

[19] In Civil Case Nos. 610, 607, 542, 715, 458, 431, 412, 437 and 417.

(g) purportedly dismissed cases which actually are still going on trial and ordered the irregular withdrawals of cash bonds;[20]
(h) used the alleged amounts withdrawn to her personal use for the construction of her house and purchased a new Honda Civic car;
(i) acted on undocketed and unsubscribed criminal complaints,[21] and 76 unsubstantiated criminal complaints.[22]

B. Eugenio Sto. Tomas
(a) failed to transmit all the records of several criminal cases to the Office of the Provincial Prosecutor of Biñan, Laguna, despite the orders of Judge Galvez to forward the same;[23]
(b) failed to docket several criminal cases;[24]
(c) failed to take initial action such as issuances of summonses in Civil Cases Nos. 686, 487 and 291 since these cases were filed;
(d) assigned cases with double/triple identical docket numbers and for collecting docket fees therefore;[25]

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[20] In Criminal Case Nos. 3693, 4059, 4139 to 4141, 4150, 4279, 4479, 4597, 4708, 5611, 5689, 5624, 5723, 5852, 5957, 5945, 5946 and 5897.

[21] *People v. Agapay* (Violation of BP 22), *People v. Rolando Reyes* (Slight physical injuries), *People v. Jun Encarnacion* (attempted homicide), *People v. Millie Cruz* (Viol. of BP 22), and *People v. Ires Camada* (Viol. of BP 22).

[22] In Criminal Case Nos. 7263, 6882, 6934 to 6937, 7393, 7137 to 7140, 7112, 6631 to 6634, 7216, 7173, 5180, 6364, 6771, 3972, 3981, 6348, 6671, 6349, 5936, 7500, 7398, 7438, 4059, 7489, 7379, 7218, 7105, 7106, 7383, 7384, 7390, 7497, 7235, 7114, 7277, 5629, 6742, 7450, 6925 to 6930, 5693 to 5703, 7186, 6411 to 6414, 7072 to 7074, 7258, 6893, 7406 to 7409, 7121, 7230, 7037, 7525, 6991, 5951, 5645, 7347, 7348, 7039, 7402, 6893, 7406, 6346 to 6347, 7495, 7405, 6925, 6926 and 6869 to 6878.

[23] Criminal Case Nos. 5234, 5265, 6344, 5842, 6778, 6209, 6198, 6785, 5308, 6039, 6058, 5948, 5819, 6750, 6771, 6668, 4413, 6915, 6916, 6474, 5862, 5864, 6140, 6657, 6828, 6630, 6032 and 5253.

[24] *People v. Marivic Agapay, People v. Rolando Reyes, People v. Jun Encarnacion, People v. Willy Cruz*, and *People v. Ires Camada*.

[25] Criminal Case Nos. 6733, (Alejandro Wagan), 6733 (Roberto Palmores), 6733 (Elnor Ilag), 6734.

(e) issued temporary receipts for filing fees collected in criminal cases and in civil cases in violation of existing circulars and the rules and regulations on auditing manual;[26]
(f) participated in the double dismissal/issuance of fake orders of dismissal of cases and irregular withdrawal of cash bonds in criminal cases;[27]
(g) irregularities in the handling of the financial transactions of the court as well as shortages in its financial accountabilities.

The audit team also discovered the accountability of Sto. Tomas for the various court funds during the following periods listed as follows:

c.1 Judiciary Development Fund –
April 1985 to January 31, 1999 – ₱6,380.66
c.2 Judiciary Development Fund –
February 1999 to May 30, 2001 – ₱31,817.50
c.3 Clerk of Court General Fund –
November 1997 to January 31, 1999 – ₱1,207.50
c.4 Clerk of Court General Fund –
February 1999 to May 30, 2001 – ₱15,703.00
c.5 Clerk of Court Fiduciary Fund –
June 1997 to May 30, 2001 – ₱10,201.25

Based on these reports, an administrative complaint was filed by the OCA against Judge Galvez and Sto. Tomas docketed as A.M. No. MTJ-03-1472.

The Court issued a Resolution[28] dated January 22, 2003, directing then Acting Presiding Judge Alden V. Cervantes (Judge Cervantes) to conduct within 10 days from notice a physical inventory of all cases filed and pending before the subject court

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[26] Criminal Cases Nos. 7004, 7014 to 7017, 7036, 7037, 7131 to 7135, 7130, 7244 and in Civil Cases Nos. 692, 699, 702 and 708.

[27] In Criminal Case Nos. 3693, 4059, 4139 to 4141, 4150, 4279, 4479, 4597, 4708, 5611, 5689, 5624, 5723, 5852, 5957, 5945, 5946 and 5897.

[28] *Rollo* (A.M. No. MTJ-03-1472), pp. 42-51.

and to submit a report thereon within 30 days from notice. Mrs. Elvira B. Manlegro (Manlegro), Acting Clerk of Court, and Mrs. Amelia D. Teñido (Teñido), Clerk II and former Acting Clerk of Court, were subsequently directed by the Court to assist Judge Cervantes in the conduct of the physical inventory of cases and in the preparation of the report. However, despite repeated directives from the Court, Judge Cervantes, Manlegro and Teñido failed to comply.

In a Resolution[29] dated May 3, 2005, the Court resolved to: (a) immediately withhold the salaries and allowances of Judge Cervantes, Manlegro and Teñido; (b) direct them to submit the required complete and accurate monthly reports of the cases from October 2001 up to August 2004 and docket inventory reports by semester for the years 2001, 2002 and 2003; and (c) explain in writing why they should not be administratively charged for their failure to religiously comply with the Court's directives.

Consequently, in a Decision[30] dated October 17, 2007 in A.M. No. MTJ-03-1472, the Court adopted the evaluation, report and recommendation of the OCA and found Judge Cervantes guilty of gross neglect of judicial duty and inefficiency of official function, to wit:

WHEREFORE, judgment is hereby rendered as follows:

1.) Acting Presiding Judge Alden V. Cervantes of the MTC of Cabuyao, Laguna is found guilty of gross neglect of judicial duty, inefficiency in the performance of official functions and gross misconduct, and is hereby ordered to pay a **FINE** of one hundred thousand pesos (₱100,000.00) to be deducted from his retirement benefits.

2.) The Resolution dated May 3, 2005 directing Judge Alden V. Cervantes to submit the required complete and accurate monthly reports of cases corresponding to the months from October 1, 2001 to August 2004, and docket inventory reports

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[29] *Rollo* (A.M. No. MTJ-03-1472), pp. 74-75.

[30] *Rollo* (A.M. No. MTJ-03-1472), pp. 207-218.

by semester for years 2001, 2002 and 2003, is **SET ASIDE** it appearing that Judge Conrado L. Zumaraga had already submitted the same.

SO ORDERED.[31]

In the Court's Resolution[32] dated April 28, 2009, the Court resolved, among others, to: (a) set aside the Resolution dated May 3, 2005 which ordered Teñido and Manlegro to submit the required complete and accurate Monthly Report of Cases corresponding to the months from October 2001 up to August 2004 and Docket Inventory Reports by semester for the years 2001, 2002 and 2003; it appearing the Judge Conrado L. Zumaraga had already submitted the same; and (b) impose upon Teñido and Manlegro a fine of ₱1,000.00 each for the undue delay in the submission of their respective explanation.

In a Resolution[33] dated July 7, 2009, the Court noted the payment of fine of Teñido and Manlegro evidenced by Official Receipt Nos. 5279659 and 5279660, respectively.

Citing their compliance, Teñido and Manlegro filed separate letters asking for clarification of the Court's orders and the immediate release of their benefits since they have already retired from service.

A.M. No. P-17-3704

This administrative complaint arose from the "*Reklamong Salaysay*"[34] dated September 3, 2003 of Ms. Victoria V. Benigno (Benigno) charging Sto. Tomas with gross misconduct. Benigno claimed that she gave the amounts of ₱1,500.00 and ₱3,500.00 to Sto. Tomas on the pretext that the same were needed to facilitate the court's approval of her complaint. She further alleged that Sto. Tomas pocketed the cash bail of ₱2,000.00

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[31] *Id*. at 216-217.

[32] *Id*. at 240-241.

[33] *Id*. at 243-244.

[34] *Rollo* (A.M. No. P-17-3704), pp. 3-5.

that she gave to the latter to avoid arrest in connection with a criminal case against her for malicious mischief. Nonetheless, Benigno failed to appear and adduce evidence to substantiate her accusations.

Meanwhile, the Court directed the Executive Judge of the RTC of Biñan, Laguna to conduct an investigation on these administrative cases and to submit a report and recommendation.

In compliance with the Court's order, Judge Marino E. Rubia submitted a Resolution[35] dated September 4, 2009 and a report and recommendation[36] dated July 6, 2010, finding that: (a) Judge Galvez is not guilty of any serious administrative infraction, and at the most, her administrative liability would only be limited to simple negligence in the performance of her administrative functions as Presiding Judge because of her inability to effectively control and supervise the doings of her Clerk of Court with whom she accorded full trust and confidence; and (b) Sto. Tomas is guilty beyond reasonable doubt of using, converting and manipulating judiciary funds and court records for his personal use and benefit, apart from his being guilty of dishonesty, gross neglect of his duties and responsibilities; thus, the extreme penalty of dismissal and loss of retirement benefits are strongly recommended.

The Report and Recommendation of the OCA

In its Memorandum[37] dated November 24, 2009, the OCA finds the conclusion of fact and the recommendation of Judge Rubia to be fully supported by the evidence on record and adopts the same with an additional recommendation that Judge Galvez be sanctioned for her failure to resolve her cases and motions within the reglementary period. The OCA found Judge Galvez administratively liable for undue delay in rendering an order or decision because she did not refute the findings of the audit team regarding her non-action on numerous cases.

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[35] *Rollo* (A.M. No. MTJ-01-1385), pp. 64-104.

[36] *Rollo* (A.M. No. P-17-3704), pp. 88-92.

[37] *Rollo* (A.M. No. MTJ-01-1385), pp. 151-161.

With regard to Sto. Tomas, the OCA sustained the findings of Judge Rubia since the investigation clearly established that he used, converted and manipulated the judiciary funds and court records of MTC, Cabuyao, Laguna.

On the basis of the foregoing findings, the OCA recommended, on November 24, 2009, that:

1. respondent Judge Zenaida L. Galvez, MTC, Cabuyao, Laguna, be found **GUILTY** of undue delay in rendering a decision or order and be **FINED** in the maximum amount of Twenty Thousand Pesos (₱20,000.00) with a **STERN WARNING** that repetition of the same or similar acts in the future shall be dealt with more severely; and that the other charges against her be **DISMISSED** for insufficiency of evidence and lack of merit;

2. respondent Clerk of Court Eugenio Sto. Tomas be found **GUILTY** of dishonesty and gross misconduct, and his retirement and all other benefits be ordered forfeited, except accrued leave credits, with prejudice to reemployment in any government agency, including government-owned and controlled corporations;

3. respondent Eugenio Sto. Tomas be **ORDERED** to restitute within fifteen (15) days from receipt of this resolution the amount of ₱55,108.66 representing his shortage as follows: Judiciary Development Fund amounting to Thirty[-]Eight Thousand One Hundred Ninety[-]Eight and (₱38,198.16) Pesos and Sixteen Centavos and Clerk of Court General Fund amounting to Sixteen Thousand Nine Hundred Ten pesos and Fifty Centavos (₱16,910.50);

4. the Employees Leave Division, Office of Administrative Services, OCA be **DIRECTED** to compute the balance of respondent Eugenio Sto. Tomas's earned leave credits and forward the same to the Finance Division, Financial Management Office-OCA which shall compute its monetary value. Whatever amount he may still be entitled to shall be applied as part of the restitution of the shortage;

5. the Legal Office, OCA be **DIRECTED** to coordinate with the prosecution arm of the government to ensure the expeditious criminal prosecution of respondent Eugenio Sto. Tomas; and

6. the Bureau of Immigration be **DIRECTED** to issue a hold-departure order against respondent Eugenio Sto. Tomas to prevent him from leaving the country.[38]

Subsequently, on December 15, 2009, the Court resolved to consolidate these three administrative cases.[39]

In a Resolution[40] dated January 25, 2011, the Court issued a hold departure order against Sto. Tomas to prevent him from leaving the country, pending resolution of these administrative cases.

The Issue

The sole issue presented for the Court's resolution is whether Judge Galvez and Sto. Tomas should be held administratively liable.

The Ruling of the Court

The Court agrees and adopts the findings and recommendation of the OCA.

The record shows that Sto. Tomas started as a clerk-stenographer of the MTC of Cabuyao, Laguna in 1965, and later became the Clerk of Court until the term of Judge Galvez who was appointed as Presiding Judge in 1996. Subsequently, Judge Galvez was designated as Acting Presiding Judge of the MTC of Biñan and Sta. Rosa, Laguna on August 1998 and October 1998, respectively. Given the situation, Sto. Tomas enjoyed the complete control and management of the business affairs of MTC, Cabuyao in his capacity as Clerk of Court and custodian of court records. He took advantage of the busy schedule of Judge Galvez and reveled in the unsuspected and complete trust and confidence of the latter.

There is no question with respect to the guilt of Sto. Tomas. It is apparent from the results of the audit that Sto. Tomas has a poor system of recording both the financial transactions and

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[38] *Id*. at 160-161.

[39] *Id*. at 164.

[40] *Id*. at 166.

the case records of the court. The audit teams found that the records of cases were in complete disarray. There was no systematic filing in that cases of archive status were mixed up with cases already decided and dismissed. The audit teams also discovered the various shortages in remittances of funds in different periods, manipulations of entries in ledgers, mixing of receipts, loss of booklets of official receipts, and various irregularities in the handling of finances of the court including unauthorized issuance of provisional or handwritten receipts.

Clearly, Sto. Tomas had been careless and imprudent in discharging his duties. His failure to manage and properly document the cash collections allocated for the various court funds, as well as his action of misappropriating them for his personal use, demonstrated a serious corruption on his integrity. His cavalier attitude disregards the duty of every employee in the judiciary to obey the orders and processes of this Court without delay. He proved himself to be untrustworthy in every aspect of his task and responsibility.

In *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan*,[41] the Court stressed the vitality of the role and office of the Clerk of Court in the discharge by the judiciary of its primary responsibility in the administration of justice, to wit:

> Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. As such, they are generally regarded as treasurer, accountant, guard, and physical plant manager thereof. It is the duty of the Clerks of Court to faithfully perform their duties and responsibilities. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice.

As custodians of court funds and revenues, Clerks of Court have the duty to immediately deposit the various funds received

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[41] *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan*, A.M. No. P-15-3298, February 4, 2015.

by them to the authorized government depositories, for they are not supposed to keep funds in their custody. Such functions are highlighted by OCA Circular Nos. 50-95[42] and 113-2004[43] and Administrative Circular No. 35-2004 which mandate Clerks of Court to timely deposit judiciary collections as well as to submit monthly financial reports on the same.[44]

In the same vein, Administrative Circular No. 3-2000,[45] commands that all fiduciary collections be deposited immediately

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[42] (4) All collections from bail bonds, rental deposits, and other fiduciary funds shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof with the Land Bank of the Philippines.

[43] The circular prescribes that all monthly reports of collections, deposits and withdrawals shall be submitted not later than the 10th day of each succeeding month to the Chief Accountant of the Supreme Court.

[44] *Office of the Court Administrator v. Remedios R. Viesca, Clerk of Court II, Municipal Trial Court of San Antonio, Nueva Ecija*, A.M. No. P-12-3092, April 14, 2015.

[45] II. Procedural Guidelines

A. Judiciary Development Fund

x x x x x x x x x

3. Systems and Procedures

x x x x x x x x x

c. In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. — The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch for the account of the Judiciary Development Fund, Supreme Court, Manila — SAVINGS ACCOUNT NO. 0591-0116-34 or if depositing daily is not possible, deposits for the Fund shall be at the end of every month, provided, however, that whenever collections for the Fund reach ₱500.00, the same shall be deposited immediately even before the period above-indicated.

x x x x x x x x x

Collections shall not be used for encashment of personal checks, salary checks, *etc.* x x x

x x x x x x x x x

B. General Fund (GF)

(1.) Duty of the Clerks of Court, Officers-in-Charge or Accountable Officers. — The Clerks of Court, Officers-in-Charge of the Office of the Clerk of Court, or their accountable duly-authorized representatives designated by them in writing, who must be accountable officers, shall receive the General Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked CASH BOOK FOR CLERK

by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. SC Circular No. 13-92 directs that all fiduciary collections be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank, while SC Circular No. 5-93 provides that the Land Bank of the Philippines is designated as the authorized government depository.[46]

These SC Circulars are plain enough to command strict compliance to promote full accountability for government funds and no protestation of good faith can override such mandatory nature.[47]

To escape liability, Sto. Tomas tried to pass on the blame to Judge Galvez regarding the misappropriation of the court's funds contending that the latter took all the money for her personal use to construct her house and to purchase a new car. The records, however, contradict these allegations because it was established by the report of the audit teams that the mismanagement of court records and the embezzlement of the court's funds happened even before Judge Galvez was appointed as the presiding judge. Sto. Tomas had been pilfering from the coffers of the court for his personal use since 1985, and, fearful of being discovered, refused and failed to submit the financial reports despite repeated Court orders. His failure to submit the monthly financial reports despite several directives spawned suspicion on his wrongdoings — and there is no one but himself to blame. Verily, his grave misdemeanors justify his severance from service.

It is important to mention that the anomalies in the handling of cash collections and other judiciary funds discovered in the

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OF COURT'S GENERAL FUND AND SHERIFF'S GENERAL FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund.

[46] *Office of the Court Administrator v. Atty. Mary Ann Paduganan-Penaranda and Ms. Jocelyn Mediante*, A.M. No. P-07-2355, March 19, 2010.

[47] *Office of the Court Administrator v. Nelia D.C. Recio, Eralyn S. Cavite, Ruth G. Cabigas and Chona Aurelia R. Reniedo*, A.M. No. P-04-1813, May 31, 2011.

MTC of Cabuyao, Laguna did not exist at all in both the MTC of Santa Rosa and Biñan where Judge Galvez was concurrently the Acting Presiding Judge.

With regard to Judge Galvez, who failed to negate the findings regarding her inaction on numerous cases as listed by the audit team, the records are bereft of any showing that she requested for extensions of the period within which she can decide or resolve the aforesaid cases and incidents, or that she gave any credible explanation for the delay in their disposition. Hence, the OCA correctly found Judge Galvez administratively liable for undue delay in rendering a decision or order. Considering that Judge Galvez had already resigned from the judiciary in 2001, a fine of ₱20,000.00 is deemed to be reasonable.

As to Teñido and Manlegro, since they have already complied with the Court's resolution of paying the fine of ₱1,000.00, the case against them should be considered closed and terminated; and their withheld salaries and allowances should be released.

It is best to stress that dishonesty is a malevolent conduct that has no place in the judiciary. We have repeatedly warned that dishonesty, particularly that which amounts to malversation of public funds, will not be countenanced. Otherwise, courts of justice may come to be regarded as mere havens of thievery and corruption.[48]

This is the reason why the Court has emphasized countless times that all persons working in the judiciary, from the presiding judge to the lowliest clerk, are tasked with a heavy burden of responsibility. Their conduct must at all times be characterized by propriety and decorum, and above all beyond suspicion.[49] The Institution demands the best possible individuals in the service and it has never and will never tolerate nor condone any conduct which would violate the norms of public accountability,

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[48] *Office of the Court Administrator v. Librada Puno, Cash Clerk III*, A.M. No. P-03-1748 (Formerly A.M. No. 03-8-472-RTC), September 22, 2008.

[49] *Office of the Court Administrator v. Clerk of Court Ermelina C. Bernardino, et al.*, A.M. No. P-97-1258, January 31, 2005.

and diminish, or even tend to diminish, the faith of the people in the justice system.[50] For respondent's transgressions and numerous violations of the Court's administrative circulars, the 2002 Revised Manual for Clerks of Courts and the Code of Conduct for Court Personnel, the Court is left with no other recourse but to recommend his dismissal from the service, pursuant to Section 52, A(1)(3), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service.

WHEREFORE, premises considered, the Court finds as follows:

(1) MR. EUGENIO STO. TOMAS, Clerk of Court, Municipal Trial Court, Cabuyao, Laguna, **GUILTY** of serious dishonesty, grave misconduct and gross neglect of duty and is hereby **DISMISSED** from the service with forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.

(2) JUDGE ZENAIDA L. GALVEZ, former Presiding Judge of MTC Cabuyao, Laguna, **GUILTY** of undue delay in rendering decisions or orders for which she is **FINED** Twenty Thousand Pesos (₱20,000.00) to be deducted from her accrued leave credits. To effect the penalty imposed, the Employee's Leave Division, Office of Administrative Services-Office of the Court Administrator, is **DIRECTED** to ascertain Judge Galvez's total earned leave credits. Thereafter, the Finance Division, Financial Management Office-OCA, is **DIRECTED** to compute the monetary value of her total accrued leave credits and deduct therefrom the amount of fine herein imposed.

(3) The Finance Division, Financial Management Office-OCA, is directed to **RELEASE** the retirement benefits and the monetary value of the accrued leave credits of MRS. ELVIRA B. MANLEGRO and MRS. AMELIA D.

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[50] *Supra* note 43.

TEÑIDO, which they are entitled to, since they have fully complied with the directives of the Court contained in the Resolution dated May 3, 2005.

SO ORDERED.

Carpio,[*] *Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Carandang*, and *Lazaro-Javier, JJ.*, concur.

Bersamin, C.J., on official business.

Hernando, J., on leave.

EN BANC

[G.R. No. 237987. March 19, 2019]

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, REGION IV-A and GENEVIEVE E. CUARESMA, as one of the Certifying Officers at the time of the grant of the assailed CNA INCENTIVE,[*] *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); POWERS AND DUTIES AS THE GUARDIAN OF PUBLIC FUNDS.— In the discharge of its constitutional mandate, the COA is endowed with enough latitude

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[*] Designated Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

[*] Also referred to as "CNA Incentives" in the Petition and in some parts of the *rollo*.

to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended. The 1987 Constitution has expressly made the COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the exclusive authority to define the scope of its audit and examination, establishing the techniques and methods for such review, and to promulgate accounting and auditing rules.

2. ID.; ID.; ID.; ID.; THE COA DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN IT DISALLOWED THE SUBJECT COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE.— PSLMC Resolution No. 4, Series of 2002, authorized the grant of CNA Incentive for employees in the NGAs, SUCs, and LGUs. It states that CNA Incentive may be provided in the CNAs between the government agency and the employees association therein in recognition of the joint efforts of labor and management to achieve all planned targets, programs, and services approved in the budget of the agency at a lesser cost. The resolution also provided guidelines which must be followed in the grant of CNA Incentive to employees in NGAs, SUCs, and LGUs. Among these is Section 1 which mandated that only the savings generated after the signing of the CNA may be used for the CNA Incentive; and Section 2 which required the inclusion of provisions on cost-cutting measures and systems improvement that will be undertaken by both the management and the labor organization to ensure that savings will be generated after the signing of each CNA. A.O. No. 135, Series of 2005, confirmed the grant of CNA Incentive under PSLMC Resolution No. 4, Series of 2002. It reiterated that CNA Incentive shall be sourced solely from the savings generated during the life of the CNA, and that there must be provisions on cost-cutting measures in the CNA. It further clarified that CNA Incentive may be extended to rank-and-file employees only. x x x DBM Budget Circular No. 2006-1 provided limitations and conditions for the grant of CNA Incentive. Among these is Item No. 7, which specified the fund from which the CNA Incentive may be sourced. **7.0 Funding Source** 7.1 **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 Clear

from the foregoing is that CNA Incentive may not be allocated out of the savings of any fund. To be valid, the CNA Incentive must be released from the savings of the MOOE. In this case, there is no dispute that the subject CNA Incentive was paid out of the savings from the EAO. The violation of the provisions of DBM Budget Circular No. 2006-1 is glaring. Thus, the COA correctly affirmed ND No. 09-01-101-(09) as there are factual and legal justifications therefor.

3. ID.; ID.; ID.; ID.; IN THE ABSENCE OF AN EVIDENCE THAT THE DISALLOWANCE WAS MADE PURSUANT TO A DISCRIMINATORY PURPOSE, NO VIOLATION OF EQUAL PROTECTION CLAUSE FOR SELECTIVE ENFORCEMENT COULD BE ATTRIBUTED TO THE COA.— Like the prosecution which has been given the discretion to prosecute whoever it believes to have committed a crime, depending on its sound assessment of the evidence, the COA has the authority to disallow disbursements of public funds if, in its judgment, they were utilized in violation of its intended purpose. Consequently, it is up to the person who claims to have been the victim of selective enforcement to prove that the same was made for a discriminatory purpose. In this case, aside from her allegation that DPWH IV-A was among those singled out by the COA concerning the disallowance of the CNA Incentive, Cuaresma failed to present even a single evidence to show that the disallowance of the subject CNA Incentive was made pursuant to a discriminatory purpose. Clearly, no violation of equal protection clause for selective enforcement could be attributed to the COA as Cuaresma failed to prove that there was intentional discrimination.

4. ID.; ID.; ID.; ID.; ALLOWANCE BY THE COA OF THE CNA INCENTIVE FOR THE PRIOR YEAR WAS NOT SUFFICIENT REASON TO UPHOLD THE VALIDITY OF THE CNA INCENTIVE IN QUESTION; THE STATE CANNOT BE PUT IN ESTOPPEL BY THE MISTAKES OR ERRORS OF ITS OFFICIALS OR AGENTS.— Neither could the alleged allowance by the COA of the CNA Incentive for calendar year 2007 be sufficient reason to conclude that the commission is guilty of grave abuse of discretion. Suffice it to state that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. The supposed error by the COA in allowing DPWH IV-A's CNA Incentive for calendar year 2007, allegedly similarly sourced from the savings from

the EAO, is insufficient justification to uphold the validity of the CNA Incentive in question. A contrary ruling would compel the COA to contravene its constitutional duty as the guardian of public funds.

5. **ID.; ID.; ID.; ID.; CERTIFYING OFFICERS WHO FAILED TO OBSERVE THE LIMITATION AS TO THE SOURCE OF THE CNA INCENTIVE ARE LIABLE FOR THE AMOUNT OF THE DISALLOWANCE; THE COA ERRED WHEN IT ABSOLVED THE EMPLOYEES WHO RECEIVED THE BENEFIT FROM ANY LIABILITY; THESE EMPLOYEES ARE OBLIGED TO RETURN THE AMOUNTS THEY RECEIVED UNDER THE PRINCIPLE OF UNJUST ENRICHMENT.—** In this case, Cuaresma, as one of the certifying officers of DPWH IV-A, was duty-bound to ensure compliance with the conditions and limitations imposed in PSLMC Resolution No. 4, Series of 2002, in relation to DBM Budget Circular No. 2006-1, before she could issue certification on the availability of funds for the subject CNA Incentive. Unfortunately, she failed in this regard considering the non-observance with the limitation that savings from MOOE shall be the sole source of CNA Incentive. Hence, she must be held liable for the amount of the disallowance. Nevertheless, although the CNA Incentive released by the DPWH IV-A was properly disallowed, the COA erred when it ruled that the DPWH IV-A employees who benefited from the incentive need not refund the amounts they received. The Court holds that the DPWH IV-A employees are obliged to return the amounts they received under the principle of unjust enrichment.

6. **ID.; ID.; ID.; ID.; EMPLOYEES' OBLIGATION TO REIMBURSE THE AMOUNT THEY RECEIVED BECOMES MORE OBVIOUS IN VIEW OF NON-COMPLIANCE WITH THE NECESSARY STEPS WHICH MUST BE UNDERTAKEN BEFORE THE CNA INCENTIVE COULD BE RELEASED TO THEM.—** The obligation of the DPWH IV-A employees to reimburse the amounts they received becomes more obvious when the nature of CNA Incentive as negotiated benefit is considered. It must be recalled that CNA Incentive is granted as a form of reward to motivate employees to exert more effort toward higher productivity and better performance. However, before any CNA Incentive may be granted, the CNA on which it is based must

first be negotiated, approved, and implemented. x x x [T]here are two necessary steps which must be undertaken before the CNA Incentive could be released to the government employees: *first*, the negotiation between the government agency and the employees' collective negotiation representative; and *second*, the approval by the majority of the rank-and-file employees in the negotiating unit. In the first step, the government employees concerned participates through their duly-elected representative; in the second, the rank-and-file employees participate directly. Thus, unlike ordinary monetary benefits granted by the government, the CNA Incentive involve the participation of the employees who are intended to be the beneficiaries thereof.

7. CIVIL LAW; CIVIL CODE; PRINCIPLE OF UNJUST ENRICHMENT, EXPLAINED; CONDITIONS FOR THE PRINCIPLE TO APPLY, PRESENT IN CASE AT BAR.— Jurisprudence holds that 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 statutory basis for the principle of unjust enrichment is Article 22 of the Civil Code which provides that "[e]very 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." The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage. There is no unjust enrichment when the person who will benefit has a valid claim to such benefit. The conditions set forth under Article 22 of the Civil Code are present in this case. It is settled that the subject CNA Incentive was invalidly released by the DPWH IV-A to its employees as a consequence of the erroneous application by its certifying and approving officers of the provisions of DBM Budget Circular No. 2006-1. As such, it only follows that the DPWH IV-A employees received the CNA Incentive without valid basis or justification; and that the DPWH IV-A employees have no valid claim to the benefit. Moreover, it is clear that the DPWH IV-A employees received the subject benefit at the expense of another, specifically, the government. Thus, applying the principle of unjust enrichment, the DPWH IV-A employees must return the benefit they unduly received.

APPEARANCES OF COUNSEL

Marvey Jay A. Gonzales for petitioners.
The Solicitor General for respondent.

D E C I S I O N

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

This is a petition for *certiorari* under Section 1, Rule 64 of the Rules of Court which seeks to set aside the Decision No. 2016-377[1] dated November 10, 2016 and the Resolution No. 2017-458[2] dated December 27, 2017 of the respondent Commission on Audit (COA), which affirmed Decision No. 2013-29[3] dated October 21, 2013 of the COA Regional Office No. IV-A (COA IV-A), which in turn affirmed Notice of Disallowance (ND) No. 09-01-101-(09) dated December 14, 2009.[4]

The Facts

On December 16, 2008, the Department of Public Works and Highways (DPWH), Central Office, through then Secretary Hermogenes E. Ebdane, Jr. (Secretary Ebdane), issued a memorandum[5] authorizing the grant of Collective Negotiation Agreement (CNA) Incentive to rank-and-file employees in the DPWH for calendar year 2008. The memorandum provides, among others, that:

> 3. That the CNA Incentive shall be paid out of savings generated from the Maintenance and Other Operating Expenses (MOOE), completed projects and Engineering and

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[1] Concurred in by COA Chairperson Michael G. Aguinaldo, Commissioner Jose A. Fabia and Commissioner Isabel D. Agito; *rollo*, pp. 68-74.

[2] *Id*. at 19-21. (The said Resolution was docketed as "Decision No. 2017-458.")

[3] Penned by COA Regional Director Nilda M. Blanco; *id*. at 56-60.

[4] *Id*. at 51.

[5] *Id*. at 47.

> Administrative Overhead (EAO) of each office (Central Office and Regional and District Offices), subject to the usual accounting and auditing rules and regulations[.][6]

The memorandum was issued pursuant to Administrative Order (A.O.) No. 135, Series of 2005 dated December 27, 2005, which confirmed the grant of CNA Incentive to rank-and-file employees in government agencies; and Public Sector Labor-Management Council (PSLMC) Resolution No. 04, Series of 2002, which supplied the guidelines for the grant of CNA Incentive to rank-and-file employees in national government agencies (NGAs), state universities and colleges (SUCs), and local government units (LGUs).

Later, the DPWH Regional Office No. IV-A (DPWH IV-A) released CNA Incentive for calendar year 2008 to its employees and officers amounting to ₱3,915,000.00.

On January 6, 2010, DPWH IV-A received a copy of ND No. 09-01-101-(09) dated December 14, 2009, signed by the Regional Audit Team Leader and Supervising Auditor, both of the COA IV-A. The COA auditors explained that the CNA Incentive in the amount of ₱3,915,000.00 was disallowed because it was paid out of the Engineering and Administrative Overhead (EAO), in violation of the Department of Budget and Management (DBM) Budget Circular No. 2006-1, issued on February 1, 2006, which states that CNA Incentive shall be sourced solely from the Maintenance and Other Operating Expenses (MOOE).

The COA auditors also identified several DPWH IV-A personnel whom they found to be liable for the illegal payment of the subject CNA Incentive. Among those found to be liable is herein petitioner Genevieve E. Cuaresma (Cuaresma), who was then the Chief Accountant of DPWH IV-A and who certified the availability of funds, completeness of the supporting documents, and validity of the obligation for the payment of the subject CNA Incentive.

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[6] *Id*.

On May 26, 2010, DPWH IV-A Regional Director Marcelina N. Ocampo (Director Ocampo) sent a letter, by way of an appeal, to the COA IV-A.

Ruling of COA Regional Office IV-A

In its Decision No. 2013-29 dated October 21, 2013, the COA IV-A dismissed Director Ocampo's appeal. COA IV-A stressed that the MOOE shall be the sole source of the CNA Incentive as expressly provided for in Budget Circular No. 2006-1; and that only rank-and-file employees may be granted the benefit of the said incentive. Thus, it ruled that the release of the subject CNA Incentive, charged from DPWH IV-A's EAO, to the DPWH IV-A employees including officers with salary grades 24 and above, was illegal. The dispositive portion of the said decision states:

> All told, the questioned Incentive may not be charged to EAO, hence, the instant Appeal is hereby **DISMISSED** for lack of merit. ND No. 2009-01-101-09 is hereby **AFFIRMED**.[7]

Unconvinced, the DPWH IV-A Employees Association, represented by its president, Engineer Diosdado J. Villanueva (Engr. Villanueva) elevated an appeal,[8] which was treated as a petition for review, to the COA Proper.

Ruling of the COA

In its assailed Decision[9] No. 2016-377 dated November 10, 2016, the COA denied DPWH IV-A Employees Association's petition. The COA concurred with COA IV-A's conclusion that DPWH IV-A violated DBM Budget Circular No. 2006-1 when it paid the CNA Incentive out of the savings from the EAO, instead of the MOOE. Further, the COA observed that DPWH IV-A and its Employees Association failed to show any proof of the cost-cutting measures it undertook to generate savings as required under DBM Budget Circular No. 2006-1, PSLMC

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

[8] *Id*. at 61-67.

[9] *Supra* note 1.

Resolution No. 4, Series of 2002, and Section 3 of A.O. No. 135, Series of 2005. The dispositive portion of the assailed decision provides:

> **WHEREFORE**, premises considered, the Petition for Review of Engr. Diosdado J. Villanueva, President, Department of Public Works and Highways (DPWH) Region IV-A Employees Association, of Commission on Audit Regional Office (RO) No. IV-A Decision No. 2013-29 dated October 21, 2013 is hereby **DENIED**. Accordingly, Notice of Disallowance No. 2009-01-101-(09) dated December 14, 2009 on the payment of 2008 Collective Negotiation Agreement incentive to officials and employees of DPWH RO No. IV-A in the total amount of ₱3,915,000.00 is **AFFIRMED**.[10]

DPWH IV-A Employees Association, through Engr. Villanueva, moved for reconsideration, but the same was denied by the COA in its Resolution[11] No. 2017-458 dated December 27, 2017. In denying the motion for reconsideration, the COA maintained that the CNA Incentive could not be validly sourced from the EAO. It stressed that DBM Budget Circular No. 2006-1 is clear on this point. Further, it reiterated the liability of the officers who approved the invalid release of the CNA Incentive as well as the officers who certified the availability of funds and sufficiency of documents necessary for such release. It, however, clarified that the officers and employees who were mere passive recipients of the said benefit need not refund the amounts they received in good faith. The dispositive portion of the resolution states:

> **WHEREFORE**, premises considered, the Motion for Reconsideration of Engr. Diosdado J. Villanueva, President, Department of Public Works and Highways (DPWH) Regional Office (RO) No. IV-A Employees Association, is hereby **DENIED with FINALITY**. Accordingly, Commission on Audit (COA) Decision No. 2016-377 dated November 10, 2016, denying the Petition for Review of COA RO No. IV-A Decision No. 2013-29 dated October 21, 2013 and affirming Notice of Disallowance No. 09-01-101-(09)

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

[11] *Supra* note 2.

dated December 14, 2009, on the payment of Collective Negotiation Agreement Incentive for calendar year 2008 to officials and employees of DPWH RO No. IV-A in the total amount of ₱3,915,000.00, is **AFFIRMED**. However, passive recipients need not refund the benefits they received in good faith, while the approving/certifying officers remain solidarily liable for the entire amount of disallowance based on the *Silang* case.[12]

On February 28, 2018, Cuaresma received a copy of the COA Resolution No. 2017-458. Considering that she was among those found to be liable for the disallowed incentive, Cuaresma was prompted to file this petition.

The Issues

I.

WHETHER OR NOT THE GRANT OF THE CNA INCENTIVE IS VALID AND SUPPORTED BY LAW AND OTHER PERTINENT RULES AND REGULATIONS.

II.

WHETHER OR NOT RESPONDENT COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING WITH FINALITY THE MOTION FOR RECONSIDERATION OF ENGR. DIOSDADO J. VILLANUEVA AND FURTHER AFFIRMED THE DECISION NO. 2016-377 DATED NOVEMBER 10, 2016, DENYING THE PETITION FOR REVIEW OF COA RO NO. IV-A DECISION NO. 2013-29 DATED OCTOBER 21, 2013 AND AFFIRMING THE NOTICE OF DISALLOWANCE NO. 09-01-101-(09) DATED DECEMBER 14, 2009, ON THE PAYMENT OF COLLECTIVE NEGOTIATION AGREEMENT INCENTIVE FOR CALENDAR YEAR 2008 TO OFFICIALS AND EMPLOYEES OF DPWH RO NO. IV-A IN THE TOTAL AMOUNT OF PHP3,915,000.00.

III.

WHETHER OR NOT RESPONDENT COA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MODIFYING THE SAID DECISION AND DECLARING THAT PASSIVE RECIPIENTS NEED NOT REFUND

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[12] *Id*. at 20.

THE BENEFITS THEY RECEIVED IN GOOD FAITH, WHILE THE APPROVING/CERTIFYING OFFICERS REMAIN SOLIDARILY LIABLE FOR THE ENTIRE AMOUNT OF DISALLOWANCE BASED ON *SILANG* CASE.[13]

Cuaresma insists that the subject CNA Incentive was validly paid out of the EAO. She argues that payment of the CNA Incentive out of the savings from the EAO in lieu of the MOOE is allowed under the General Appropriations Act (GAA) because MOOE and EAO serve substantially the same purpose. According to her, this intent could be gleaned from the budget deliberations of the DPWH in Congress, where the reason for the reduction of DPWH's MOOE was discussed.

Cuaresma further argues that she should not be held liable for the amount of the disallowance. She explains that she merely relied on the authority given by then DPWH Secretary Ebdane, when the latter issued a memorandum stating that the CNA Incentive may be paid out of the savings from the EAO.

Lastly, Cuaresma avers that the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it disallowed the subject CNA Incentive. She asserts that DPWH IV-A was among the offices singled out by the COA concerning the disallowance of the CNA Incentive. She claims that there were other offices which granted the CNA Incentive sourced from the savings from EAO but these releases were allowed. Cuaresma further points out that the DPWH IV-A's CNA Incentive for calendar year 2007, or for the previous year, was also paid out of the savings from the EAO. Surprisingly, however, the COA did not disallow the release of this incentive.

In its Comment[14] dated August 23, 2018, the COA, through the Office of the Solicitor General, maintains that the subject CNA Incentive was invalidly released and paid out of the savings from the EAO. It counters that DBM Budget Circular No. 2006-1 unequivocally states that the CNA Incentive shall be sourced solely from the savings from the MOOE and to no other fund.

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[13] *Id*. at 7-8.

[14] *Id*. at 95-109.

As to Cuaresma's defense that she merely relied on the authority given by Secretary Ebdane, the COA stresses that the December 16, 2008 memorandum itself cited A.O. No. 135, Series of 2005 as its basis and even specified that the CNA Incentive shall be subject to the usual accounting and auditing rules and regulations. As such, the authority under the aforesaid memorandum must be consistently implemented with the procedural guidelines and be subjected to the conditions imposed under DBM Budget Circular No. 2006-1.

From the submissions of the parties, the issues to be resolved by the Court could be summarized as follows: (1) whether the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it disallowed the subject CNA Incentive; and (2) whether the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction when it adjudged certain DPWH IV-A officers, including Cuaresma, liable for the amount of the disallowance, while passive recipients were not ordered to share in the liability.

The Court's Ruling

The petition is partly meritorious.

The COA did not commit any grave abuse of discretion when it disallowed the subject CNA incentive.

In the discharge of its constitutional mandate, the COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended.[15] The 1987 Constitution has expressly made the COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenue and expenditures and the exclusive authority to define the scope

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[15] *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, G.R. No. 195105, November 21, 2017, citing *Sanchez v. Commission on Audit*, 575 Phil. 428, 444-445 (2008).

of its audit and examination, establishing the techniques and methods for such review, and to promulgate accounting and auditing rules.[16]

The grant of CNA Incentive in favor of the employees in the NGAs, such as the DPWH, is governed by PSLMC Resolution No. 4, Series of 2002, A.O. No. 135, Series of 2005, and DBM Budget Circular No. 2006-1.

PSLMC Resolution No. 4, Series of 2002, authorized the grant of CNA Incentive for employees in the NGAs, SUCs, and LGUs. It states that CNA Incentive may be provided in the CNAs between the government agency and the employees association therein in recognition of the joint efforts of labor and management to achieve all planned targets, programs, and services approved in the budget of the agency at a lesser cost.[17] The resolution also provided guidelines which must be followed in the grant of CNA Incentive to employees in NGAs, SUCs, and LGUs. Among these is Section 1 which mandated that only the savings generated after the signing of the CNA may be used for the CNA Incentive;[18] and Section 2 which required the inclusion of provisions on cost-cutting measures and systems improvement that will be undertaken by both the management and the labor organization to ensure that savings will be generated after the signing of each CNA.[19]

A.O. No. 135, Series of 2005, confirmed the grant of CNA Incentive under PSLMC Resolution No. 4, Series of 2002. It reiterated that CNA Incentive shall be sourced solely from the savings generated during the life of the CNA,[20] and that there must be provisions on cost-cutting measures in the CNA.[21] It

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[16] *Id*., citing *Yap v. Commission on Audit*, 633 Phil. 174, 189 (2010).

[17] PSLMC Resolution No. 4, Series of 2002, Section 1.

[18] *Id.*

[19] *Id*. at Section 2.

[20] Administrative Order No. 135, Series of 2005, Section 4.

[21] *Id*. at Section 3.

further clarified that CNA Incentive may be extended to rank-and-file employees only.[22]

Finally, DBM Budget Circular No. 2006-1 provided limitations and conditions for the grant of CNA Incentive. Among these is Item No. 7, which specified the fund from which the CNA Incentive may be sourced.

> **7.0 Funding Source**
>
> 7.1 **The CNA Incentive shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) 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 the 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;
>
> 7.1.3 Such savings shall be net of the priorities in the use thereof such as augmentation of amounts set aside for compensation, bonus, retirement gratuity, terminal leave benefits, old-age pension of veterans and other personnel benefits authorized by law and in special and general provisions of the annual General Appropriations Act, as well as other MOOE items found to be deficient. Augmentation shall be limited to the actual amount of deficiencies incurred; and
>
> 7.1.4 The basic rule that augmentation can be done only if there is deficiency in specific expenditure items, should be strictly observed. (Emphasis supplied)

Clear from the foregoing is that CNA Incentive may not be allocated out of the savings of any fund. To be valid, the CNA Incentive must be released from the savings of the MOOE. In

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[22] *Id*. at Section 2.

this case, there is no dispute that the subject CNA Incentive was paid out of the savings from the EAO. The violation of the provisions of DBM Budget Circular No. 2006-1 is glaring. Thus, the COA correctly affirmed ND No. 09-01-101-(09) as there are factual and legal justifications therefor.

Cuaresma, however, insists that savings from the EAO may be used to pay CNA Incentive considering that EAO and MOOE serve the same purpose. She pointed out that DPWH's MOOE was reduced because its EAO may be used to cover for the department's administrative expenses. She cited the following exchange during the budget deliberation before the Committee on Appropriations hearing on September 22, 2010 in support of her argument:

> **REP. ACHARON:**
>
> x x x x x x x x x
>
> No, you reported that the budget, as I've seen it, [is] really declining from 2009 to x x x last year x x x including the other operating expenses in different regional offices. Is that correct? So how will you appropriate this money when you reduce it by almost 55 percent. You mean to say that other regional offices will no longer have electricity or water? How's that?
>
> **MR. SINGSON:** Your Honor, there is also what we call engineering administrative overhead, that is between 3 and 3.5 percent that is provided for the various regions and districts for overhead expenses and operating expenses, Your Honor.
>
> **REP. ACHARON:** Okay, so you charge it to the indirect cost of the project. Okay. So I hope that there will be no complaints from regional offices that they can no longer pay their x x x.[23]

The Court is not convinced.

In the first place, the cited exchange does not have any material relation to the issue at hand. The Court notes that the subject hearing before the Committee on Appropriations on September 22, 2010 was for the purpose of enacting the 2011 GAA. On

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[23] *Rollo*, pp. 9, 64.

the other hand, the issue in this case involves the disallowance of a disbursement of a fund from the 2008 GAA.

Moreover, nothing in the cited exchange would support Cuaresma's conclusion that savings from the EAO may be used to pay the CNA Incentive in lieu of the savings from the MOOE. While former DPWH Secretary Rogelio Singson explained that the EAO fund may be used for the administrative expenses of the DPWH and its regional offices, he never suggested that savings from the EAO may also be the source of the CNA Incentive. Thus, the Court concurs with the COA's observation:

> Further, the TSN shows that Secretary Singson proposed the reduction of DPWH's MOOE considering that there were other sources of funds to cover DPWH administrative expenses such as the EAO. The House of Representatives only confirmed the proposed budget of DPWH for 2011 and did not, in any way, declare that EAO can be used as a source of CNA incentive in lieu of MOOE. The approval of the proposed budget of DPWH is not a blanket authority to use the EAO fund without complying with the existing laws and regulations.[24]

Cuaresma also faults the COA for allegedly being selective when it disallowed the subject CNA Incentive. She claims that there were other departments and regional offices which sourced their respective CNA Incentive from the EAO but the COA allowed their releases. Thus, she alleges violation of the equal protection clause.

This argument is misplaced.

In *People v. Dela Piedra*,[25] the Court declared that an erroneous performance of statutory duty — such as an apparent selective enforcement of the statute — could not be considered a violation of the equal protection clause, unless the element of intentional or purposeful discrimination is shown. In that case, the Court ruled that there is no violation of the equal protection of the laws in prosecuting only one of the many equally guilty persons.

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[24] *Id*. at 71.

[25] 403 Phil. 31 (2001).

This lone circumstance would not be sufficient to uphold the claim of denial of the equal protection clause. Absent a clear showing of intentional discrimination, the prosecuting officers shall be presumed to have regularly performed their official duties. Thus:

> The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the laws. **Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not *without more* a denial of the equal protection of the laws.** The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of *intentional* or *purposeful* discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory *design* over another not to be inferred from the action itself. *But a discriminatory purpose is not presumed, there must be a showing of* "*clear and intentional discrimination*." Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.[26] (Emphasis supplied; citations omitted; italics in the original)

Like the prosecution which has been given the discretion to prosecute whoever it believes to have committed a crime, depending on its sound assessment of the evidence, the COA has the authority to disallow disbursements of public funds if, in its judgment, they were utilized in violation of its intended purpose. Consequently, it is up to the person who claims to have been the victim of selective enforcement to prove that the same was made for a discriminatory purpose.

In this case, aside from her allegation that DPWH IV-A was among those singled out by the COA concerning the disallowance of the CNA Incentive, Cuaresma failed to present even a single evidence to show that the disallowance of the subject CNA

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

Incentive was made pursuant to a discriminatory purpose. Clearly, no violation of equal protection clause for selective enforcement could be attributed to the COA as Cuaresma failed to prove that there was intentional discrimination.

Neither could the alleged allowance by the COA of the CNA Incentive for calendar year 2007 be sufficient reason to conclude that the commission is guilty of grave abuse of discretion. Suffice it to state that the State cannot be put in estoppel by the mistakes or errors of its officials or agents.[27] The supposed error by the COA in allowing DPWH IV-A's CNA Incentive for calendar year 2007, allegedly similarly sourced from the savings from the EAO, is insufficient justification to uphold the validity of the CNA Incentive in question. A contrary ruling would compel the COA to contravene its constitutional duty as the guardian of public funds.

The COA erred when it absolved the DPWH IV-A employees who received the benefit from any liability.

The Court concurs with the COA's pronouncement that Cuaresma, as well as the other certifying and approving officers of DPWH IV-A, must be held liable for the amount of the disallowance.

In *Manila International Airport Authority v. Commission on Audit*,[28] the Court held that officers of the Manila International Airport Authority (MIAA) were not in the position to approve and certify the funding for the CNA Incentive without assuring themselves that the conditions imposed by PSLMC Resolution No. 2, Series of 2003, are complied with. PSLMC Resolution No. 2 is the resolution governing the grant of CNA Incentive to employees in Government Financial Institutions and Government-Owned and Controlled Corporations, such as the MIAA.

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[27] *Republic v. Intermediate Appellate Court*, 284-A Phil. 528, 540 (1992); *Republic v. Go Bon Lee*, 111 Phil. 805, 809 (1961); *Development Bank of the Philippines v. Commission on Audit*, 301 Phil. 207, 212 (1994).

[28] 681 Phil. 644 (2012).

In this case, Cuaresma, as one of the certifying officers of DPWH IV-A, was duty-bound to ensure compliance with the conditions and limitations imposed in PSLMC Resolution No. 4, Series of 2002, in relation to DBM Budget Circular No. 2006-1, before she could issue certification on the availability of funds for the subject CNA Incentive. Unfortunately, she failed in this regard considering the non-observance with the limitation that savings from MOOE shall be the sole source of CNA Incentive. Hence, she must be held liable for the amount of the disallowance.

Nevertheless, although the CNA Incentive released by the DPWH IV-A was properly disallowed, the COA erred when it ruled that the DPWH IV-A employees who benefited from the incentive need not refund the amounts they received. The Court holds that the DPWH IV-A employees are obliged to return the amounts they received under the principle of unjust enrichment.

Jurisprudence holds that 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 statutory basis for the principle of unjust enrichment is Article 22 of the Civil Code which provides that "[e]very 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."

The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage. There is no unjust enrichment when the person who will benefit has a valid claim to such benefit.[29]

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[29] *Car Cool Philippines, Inc. v. Ushio Realty & Development Corp.*, 515 Phil. 376, 384 (2006); *Cabrera v. Ameco Contractors Rental, Inc.*, G.R. No. 201560, June 20, 2012 (Minute Resolution); *Government Service Insurance System v. Commission on Audit*, 694 Phil. 518, 526 (2012).

The conditions set forth under Article 22 of the Civil Code are present in this case.

It is settled that the subject CNA Incentive was invalidly released by the DPWH IV-A to its employees as a consequence of the erroneous application by its certifying and approving officers of the provisions of DBM Budget Circular No. 2006-1. As such, it only follows that the DPWH IV-A employees received the CNA Incentive without valid basis or justification; and that the DPWH IV-A employees have no valid claim to the benefit. Moreover, it is clear that the DPWH IV-A employees received the subject benefit at the expense of another, specifically, the government. Thus, applying the principle of unjust enrichment, the DPWH IV-A employees must return the benefit they unduly received.

The obligation of the DPWH IV-A employees to reimburse the amounts they received becomes more obvious when the nature of CNA Incentive as negotiated benefit is considered.

It must be recalled that CNA Incentive is granted as a form of reward to motivate employees to exert more effort toward higher productivity and better performance. However, before any CNA Incentive may be granted, the CNA on which it is based must first be negotiated, approved, and implemented. On the negotiation and approval of CNAs, Rule XII of the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize, provides:

RULE XII

COLLECTIVE NEGOTIATIONS

Section 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.

Section 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; and

(n) such other concerns which are not prohibited by law and CSC rules and regulations.

x x x x x x x x x

Section 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.** (Emphasis supplied)

x x x x x x x x x

From the provisions of the aforecited rule, there are two necessary steps which must be undertaken before the CNA Incentive could be released to the government employees: *first*, the negotiation between the government agency and the employees' collective negotiation representative; and *second*, the approval by the majority of the rank-and-file employees in the negotiating unit. In the first step, the government employees concerned participates through their duly-elected representative; in the second, the rank-and-file employees participate directly. Thus, unlike ordinary monetary benefits granted by the government, the CNA Incentive involve the participation of the employees who are intended to be the beneficiaries thereof.

In this case, the DPWH IV-A employees' participation in the negotiation and approval of the CNA, whether direct or indirect, certainly gives them the necessary information to know the requirements for the valid release of the CNA Incentive. Verily, when they received the subject benefit, they must have known that they were undeserving of it.

WHEREFORE, the Decision No. 2016-377 dated November 10, 2016 and the Resolution No. 2017-458 dated December 27, 2017, both of the Commission on Audit, are hereby **AFFIRMED with MODIFICATION**. The certifying and approving officers, as well as all the employees of the DPWH IV-A who received the subject CNA Incentive, are liable for the amount of the disallowance. They must reimburse the amounts they received through salary deduction, or through whatever

mode of payment the COA may deem just and proper under the circumstances.

SO ORDERED.

Carpio,[**] *Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Carandang*, and *Lazaro-Javier, JJ.*, concur.

Bersamin, C.J., on official business.

Hernando, J., on leave.

[**] Designated as Acting Chief Justice per Special Order No. 2644 dated March 15, 2019.

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the CTA, the collection may jeopardize the interest of the Government and/or the taxpayer, it may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond. (*Id*.)

ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION (R.A. NO. 7610)

Application of — As can be gathered from the text of Sec. 5 of R.A. No. 7610 and having in mind that the term "lascivious conduct" has a clear definition which does not include "sexual intercourse," the phrase "children exploited in prostitution" contemplates four (4) scenarios: (a) a child, whether male or female, who for money, profit or any other consideration, indulges in lascivious conduct; (b) a female child, who for money, profit or any other consideration, indulges in sexual intercourse; (c) a child, whether male or female, who due to the coercion or influence of any adult, syndicate or group, indulges in lascivious conduct; and (d) a female, due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse. (People *vs*. Tulagan, G.R. No. 227363, Mar. 12, 2019) p. 197

— "Coercion or influence" is used in Sec. 5 of R.A. No. 7610 to qualify or refer to the means through which "any adult, syndicate or group" compels a child to indulge in sexual intercourse; on the other hand, the use of "money, profit or any other consideration" is the other mode by which a child indulges in sexual intercourse, without the participation of "any adult, syndicate or group"; in other words, "coercion or influence" of a child to indulge in sexual intercourse is clearly exerted NOT by the offender whose liability is based on Sec. 5(b) of R.A. No. 7610 for committing sexual act with a child exploited in prostitution or other sexual abuse. (*Id*.)

— Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to a "crime against persons" akin to rape, as well as the rulings in *Dimakuta* and *Caoili*; acts

citizens; moreover, it must be shown by evidence that a corporation or association falsely simulated the existence of the minimum required Filipino stock or capital ownership to enjoy or exercise the right, franchise, privilege, or business. (Gios-Samar, Inc. *vs*. Dept. of Transportation and Communications, G.R. No. 217158, Mar. 12, 2019) p. 120

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Section 3 (c) — The elements of violation of Sec. 3 (c) of R.A. No. 3019 are as follows: (1) the offender is a public officer; (2) he has secured or obtained, or would secure or obtain, for a person any government permit or license; (3) he directly or indirectly requested or received from said person any gift, present or other pecuniary or material benefit for himself or for another; and (4) he requested or received the gift, present or other pecuniary or material benefit in consideration for help given or to be given. (Lucman *vs*. People, G.R. No. 238815, Mar. 18, 2019) p. 768

APPEALS

Factual findings of the Court of Tax Appeals — It is well settled that factual findings of the CTA when supported by substantial evidence, will not be disturbed on appeal; due to the nature of its functions, the tax court dedicates itself to the study and consideration of tax problems and necessarily develops expertise thereon; unless there has been an abuse of discretion on its part, the Court accords the highest respect to the factual findings of the CTA. (Commissioner of Internal Revenue *vs*. Phil. Nat'l. Bank, G.R. No. 212699, Mar. 13, 2019) p. 469

Factual findings of the lower courts — Court is not a trier of facts; it is well established that the uniform findings of the lower courts should be accorded great weight in cases where, as here, they are supported by the evidence on record. (Meneses *vs*. Lee-Meneses, G.R. No. 200182, Mar. 13, 2019) p. 414

equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction; such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition. (People *vs*. Bangcola *y* Maki, G.R. No. 237802, Mar. 18, 2019) p. 742

(Reyes *y* Maquina *vs*. People, G.R. No. 226053, Mar. 13, 2019) p. 548

— In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction; it is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty; in order to obviate any unnecessary doubt on their identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. (People *vs*. Espejo *y* Rizaldo, G.R. No. 240914, Mar. 13, 2019) p. 632

— It is imperative for the prosecution to show the courts that the non-compliance with the procedural safeguards provided under Sec. 21 was not consciously ignored; the procedure is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. (People *vs*. Bayang, G.R. No. 234038, Mar. 13, 2019) p. 594

— 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 came out in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact. (Reyes *y* Maquina *vs*. People, G.R. No. 226053, Mar. 13, 2019) p. 548

— Sec. 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing; Sec. 21(1) is specific as to when and where these actions must be done; as to when, it must be immediately after seizure and confiscation; as to where, it depends on whether the seizure was supported by a search warrant; if a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. (Regalado *y* Laylay *vs*. People, G.R. No. 216632, Mar. 13, 2019) p. 483

— The integrity of the *corpus delicti* is compromised when there is a gap in the chain of custody. (People *vs*. Ameril *y* Abdul, G.R. No. 222192, Mar. 13, 2019) p. 499

— The procedural guidelines that the arresting officers must observe in the handling of seized illegal drugs to ensure the preservation of the identity and integrity thereof is embodied in Sec. 21, par. 1, Art. II of R.A. No. 9165. (People *vs*. Cartina *y* Garcia, G.R. No. 226152, Mar. 13, 2019) p. 566

— There is a saving clause under the IRR of R.A. No. 9165 in case of non-compliance with the chain of custody rule; this saving clause, however, applies only: (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds; and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. (People *vs*. Bangcola *y* Maki, G.R. No. 237802, Mar. 18, 2019) p. 742

— To properly guide law enforcement agents as to the proper handling of confiscated drugs, Sec. 21(a), Art. II of the Implementing Rules and Regulations of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed. (People *vs*. Duran, G.R. No. 233251, Mar. 13, 2019) p. 579

— Strict observance of the doctrine of hierarchy of courts should not be a matter of mere policy; it is a constitutional imperative given (1) the structure of our judicial system and (2) the requirements of due process; *first*: the doctrine of hierarchy of courts recognizes the various levels of courts in the country as they are established under the Constitution and by law, their ranking and effect of their rulings in relation with one another, and how these different levels of court interact with one another; it determines the venues of appeals and the appropriate forum for the issuance of extraordinary writs; *second*, strict adherence to the doctrine of hierarchy of courts also proceeds from considerations of due process; while the term "due process of law" evades exact and concrete definition, this Court, in one of its earliest decisions, referred to it as a law which hears before it condemns which proceeds upon inquiry and renders judgment only after trial. (Gios-Samar, Inc. *vs*. Dept. of Transportation and Communications, G.R. No. 217158, Mar. 12, 2019) p. 120

— The doctrine of hierarchy of courts operates to: (1) prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction; (2) prevent further over-crowding of the Court's docket; and (3) prevent the inevitable and resultant delay, intended or otherwise, in the adjudication of cases which often have to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as the court better equipped to resolve factual questions. (*Id*.)

— The transcendental importance doctrine does not clothe us with the power to tackle factual questions and play the role of a trial court; the only circumstance when we may take cognizance of a case in the first instance, despite the presence of factual issues, is in the exercise of our constitutionally-expressed task to review the sufficiency of the factual basis of the President's proclamation of martial law under Sec. 18, Art. VII of the 1987 Constitution. (*Id*.)

of Agrarian Reform Secretary; he or she takes jurisdiction over cases involving the cancellation of titles issued under any agrarian reform program, whether registered with the Land Registration Authority or not. (Hon. Sec. of DAR *vs*. Heirs of Redemptor and Elisa Abucay, G.R. No. 186432, Mar. 12, 2019) p. 30

— When the issue in a case hinges on whether a beneficiary has made insufficient or no payments for the land awarded to him or her, primary administrative jurisdiction is under the Department of Agrarian Reform; per the rules it has promulgated, the Department of Agrarian Reform has taken cognizance of cases involving either the issuance or cancellation of certificates of land ownership award and emancipation patents; cases involving registered certificates of land ownership awards, emancipation patents, and titles emanating from them are agrarian reform disputes, of which the Department of Agrarian Reform Adjudication Board takes cognizance. (*Id*.)

DUE PROCESS

Two components of due process — Due process is comprised of two (2) components, substantive due process which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property, and procedural due process which consists of the two basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal; the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard; non-observance of these rights will invalidate the proceedings. (Palacios *vs*. People, G.R. No. 240676, Mar. 18, 2019) p. 776

EMPLOYMENT, TERMINATION OF

Illegal dismissal — A case for illegal dismissal or unlawful termination which is the underlying case in this petition is one that relates purely to the status of the parties; the decision or ruling therein is essentially declaratory of the rights and obligations of the parties, and the monetary

JUDGMENTS

from internationally accepted doctrines; in our jurisdiction, a judgment or final order of a foreign tribunal creates a right of action, and its non-satisfaction is the cause of action by which a suit can be brought upon for its enforcement. (*Id*.)

JUDICIAL DEPARTMENT

Moot and academic issues — A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use; courts generally decline jurisdiction over such case or dismiss it on the ground of mootness; this is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced. (Heirs of Edgardo Del Fonso *vs*. Guingona, G.R. No. 213457, Mar. 18, 2019) p. 665

LABOR CODE

Project employment — An employee is said to be under a project employment when he is hired under a contract which specifies that the employment will last only for a specific project or undertaking the completion or termination of which is determined at the time of his engagement; for an employee to be considered project-based, it is incumbent upon the employer to prove that: (a) the employee was assigned to carry out a specific project or undertaking; and (b) the duration and scope of which were specified at the time the employee was engaged for such project; when a project employee is assigned to a project or phase thereof which begins and ends at determined or determinable times, his services may be lawfully terminated at the completion of such project or a phase thereof. (Freyssinet Filipinas Corp. *vs*. Lapuz, G.R. No. 226722, Mar. 18, 2019) p. 684

— If the particular job or undertaking is within the regular or usual business of the employer company and it is not identifiably distinct or separate from the other undertakings

— R.A. No. 10667 does not define what a "combination in restraint of trade" is; what it does is penalize anti-competitive *agreements*; agreement refers to "any type of form or contract, arrangement, understanding, collective recommendation, or concerted action, whether formal or informal. (*Id*.)

— R.A. No. 10667 does not define what constitutes a "monopoly"; instead, it prohibits one or more entities which has/have acquired or achieved a "dominant position" in a "relevant market" from "abusing" its dominant position; an entity is not prohibited from, or held liable for prosecution and punishment for, simply securing a dominant position in the relevant market in which it operates; it is only when that entity engages in conduct in abuse of its dominant position that it will be exposed to prosecution and possible punishment. (*Id*.)

— What R.A. No. 10667, in fact, prohibits and punishes is the situation where: (1) an entity, having been granted an exclusive franchise to maintain and operate one or more airports, attains a dominant position in that market; and (2) abuses such dominant position by engaging in prohibited conduct, *i.e.*, acts that substantially prevent, restrict or lessen competition in the market of airport development, operations and maintenance. (*Id*.)

Bundling is an anti-competitive agreement — To support the legal conclusion that bundling is an anti-competitive agreement, there must be *evidence* that: (1) the relevant market is that of airport development, maintenance, and operation (under the facts-based criterion enumerated in Sec. 24 of R.A. No. 10667); (2) bundling causes, or will cause, actual or potential adverse impact on the competition in that relevant market; (3) said impact is substantial and outweighs the actual or potential efficiency gains that results from bundling; and (4) the totality of evidence shows that the winning bidder, more likely than not engaged, in anti-competitive conduct. (Gios-Samar, Inc. *vs*. Dept. of Transportation and Communications, G.R. No. 217158, Mar. 12, 2019) p. 120

RAPE

of incestuous rape, and unless it is punished under the RPC as qualified seduction under Art. 337 or simple seduction under Art. 338. (*Id*.)

— Sexual intercourse with a victim who is under 12 years of age or is demented is always statutory rape, as Sec. 5(b) of R.A. No. 7610 expressly states that the perpetrator will be prosecuted under Art. 335, par. 3 of the RPC [now par. 1(d), Art. 266-A of the RPC as amended by R.A. No. 8353]; even if the girl who is below twelve (12) years old or is demented consents to the sexual intercourse, it is always a crime of statutory rape under the RPC, and the offender should no longer be held liable under R.A. No. 7610. (*Id*.)

REGIONAL TRIAL COURTS

Sitting as special agrarian courts — B.P. Blg. 129, or the Judiciary Reorganization Act of 1980, vested in regional trial courts exclusive and original jurisdiction of civil actions and special proceedings under the exclusive and original jurisdiction of the courts of agrarian relations; Sec. 56, in relation to Sec. 57 of the Comprehensive Agrarian Reform Law, confers "special jurisdiction" on special agrarian courts; regional trial courts, sitting as special agrarian courts, have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, as well as the prosecution of all criminal offenses under the Comprehensive Agrarian Reform Law; in contrast to the special agrarian courts, the Department of Agrarian Reform Adjudication Board only has preliminary administrative determination of just compensation. (LBP *vs*. Franco, G.R. No. 203242, Mar. 12, 2019) p. 65

— Special agrarian courts are not merely given appellate jurisdiction over the findings of administrative agencies; the law has explicitly vested them with jurisdiction to make a final and binding determination of just compensation. (*Id*.)

whether a carry over to the succeeding quarters was made even if the claimant has previously chosen the option of refund of, or tax credit for the claimed CWT. (Commissioner of Internal Revenue *vs*. Phil. Nat'l. Bank, G.R. No. 212699, Mar. 13, 2019) p. 469

Commissioner of Internal Revenue — The power to decide matters concerning refunds of internal revenue taxes, among others, is vested in the CIR; it has the duty to ascertain the veracity of such claims and should not just wait and hope for the burden to fall on the claimant when the issue reaches the court; it is the duty of the CIR to verify whether or not the claimant had carried over its excess CWT; the CTA's jurisdiction is appellate, meaning it merely has the authority to review the CIR's decisions on such matters; in the exercise of its authority to review, the CTA cannot dictate what particular evidence the parties must present to prove their respective cases; the means of ascertainment of a fact is best left to the party that alleges the same. (Commissioner of Internal Revenue *vs*. Phil. Nat'l. Bank, G.R. No. 212699, Mar. 13, 2019) p. 469

Real property taxation — When the beneficial use of the real property owned by the Republic or any of its political subdivisions, is vested to a taxable person, the real property is subject to tax; the liability for taxes generally rests on the owner of the real property at the time the tax accrues; this is a necessary consequence that proceeds from the fact of ownership; however, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the 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. (Privatization and Mgm't. Office *vs*. Court of Tax Appeals, G.R. No. 211839, Mar. 18, 2019) p. 652

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