PHILIPPINE REPORTS

VOL. 852

MAY 3, 2019 TO JUNE 6, 2019

VOLUME 852

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

MAY 3, 2019 TO JUNE 6, 2019

SUPREME COURT
MANILA
2021

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2021

FLOYD JONATHAN LIGOT TELAN
SC ASSISTANT CHIEF OF OFFICE

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY VI & CHIEF, LAW REPORTS DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V & CHIEF, RECORDS DIVISION

LEUWELYN TECSON-LAT
COURT ATTORNEY V

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY V

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY IV

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY IV & CHIEF, EDITORIAL DIVISION

LORELEI SANTOS BAUTISTA
COURT ATTORNEY III

ROUSE STEPHEN G. CEBREROS
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES

HON. LUCAS P. BERSAMIN, Chief Justice
HON. ANTONIO T. CARPIO, Senior Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. ESTELA M. PERLAS-BERNABE, Associate Justice
HON. MARVIC MARIO VICTOR F. LEONEN, Associate Justice
HON. FRANCIS H. JARDELEZA, Associate Justice
HON. ALFREDO BENJAMIN S. CAGUIOA, Associate Justice
HON. ANDRES B. REYES, JR., Associate Justice
HON. ALEXANDER G. GESMUNDO, Associate Justice
HON. JOSE C. REYES, JR., Associate Justice
HON. RAMON PAUL L. HERNANDO, Associate Justice
HON. ROSMARI D. CARANDANG, Associate Justice
HON. AMY C. LAZARO-JAVIER, Associate Justice
HON. HENRI JEAN PAUL B. INTING, Associate Justice

ATTY. EDGAR O. ARICHETA, Clerk of Court En Banc
ATTY. ANNA-LI R. PAPA-GOMBIO, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Lucas R. Bersamin

Members

Hon. Mariano C. Del Castillo
Hon. Francis H. Jaredeleza
Hon. Alexander G. Gesmundo
Hon. Rosmari D. Carandang

Division Clerk of Court

Atty. Librada C. Buena

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

Hon. Estela M. Perlas-Bernabe
Hon. Alfredo Benjamin S. Caguioa
Hon. Jose C. Reyes, Jr.
Hon. Amy C. Lazaro-Javier

Division Clerk of Court

Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Diosdado M. Peralta

Members

Hon. Marvic Mario Victor F. Leonen
Hon. Andres B. Reyes, Jr.
Hon. Ramon Paul L. Hernando
Hon. Rosmari D. Carandang

Division Clerk of Court

Atty. Wilfredo Y. Lapitan

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[G.R. No. 227670. May 3, 2019]

ALYANSA PARA SA BAGONG PILIPINAS, INC. (ABP), REPRESENTED BY EVELYN V. JALLORINA AND NOEL VILLONES, *petitioner, vs.* **ENERGY REGULATORY COMMISSION, REPRESENTED BY ITS CHAIRMAN, JOSE VICENTE B. SALAZAR, DEPARTMENT OF ENERGY, REPRESENTED BY SECRETARY ALFONSO G. CUSI, MERALCO, CENTRAL LUZON PREMIERE POWER CORPORATION, ST. RAPHAEL POWER GENERATION CORPORATION, PANAY ENERGY DEVELOPMENT CORPORATION, MARIVELES POWER GENERATION CORPORATION, GLOBAL LUZON ENERGY DEVELOPMENT CORPORATION, ATIMONAN ONE ENERGY, INC., REDONDO PENINSULA ENERGY, INC., AND PHILIPPINE COMPETITION COMMISSION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA) OF 2001 (RA 9136); THE ENERGY REGULATORY COMMISSION (ERC) COMMITTED GRAVE ABUSE OF DISCRETION IN POSTPONING THE EFFECTIVITY OF THE

COMPETITIVE SELECTION PROCESS (CSP) THROUGH ISSUANCE OF THE ASSAILED CLARIFICATORY RESOLUTION; THE POSTPONEMENT EFFECTIVELY PREVENTED FOR AT LEAST TWENTY (20) YEARS THE ENFORCEMENT OF A MECHANISM INTENDED TO ENSURE "TRANSPARENT AND REASONABLE PRICES IN A REGIME OF FREE AND FAIR COMPETITION" MANDATED BY EPIRA.— The ERC's exercise of its quasi-legislative power, which took the form of the issuance of the ERC Clarificatory Resolution, was done in excess of its jurisdiction. **The postponement of the effectivity of CSP was without the approval, and even without coordination with the DOE, in clear and blatant violation of Section 4 of the 2015 DOE Circular mandating CSP.** The ERC has no power to postpone the effectivity of the 2015 DOE Circular. Under the 2015 DOE Circular, the ERC can only issue supplemental guidelines, which means guidelines to implement the 2015 DOE Circular, and not to amend it. Postponing the effectivity of CSP amends the 2015 DOE Circular, and does not constitute issuance of mere supplemental guidelines. **The issuance of the ERC Clarificatory Resolution was attended with grave abuse of discretion amounting to lack or excess of jurisdiction for the following reasons: (1) Postponing the effectivity of CSP from 30 June 2015 to 7 November 2015, and again postponing the effectivity of CSP from 7 November 2015 to 30 April 2016, or a total of 305 days, allowed DUs nationwide to avoid the mandatory CSP; (2) Postponing the effectivity of CSP effectively freezes for at least *20 years* the DOE-mandated CSP to the great prejudice of the public. The purpose of CSP is to compel DUs to purchase their electric power at a transparent, reasonable, and least-cost basis, since this cost is entirely passed on to consumers. The ERC's postponement unconscionably placed this public purpose in deep freeze for at least 20 years. Indisputably, the ERC committed grave abuse of discretion amounting to lack or excess of jurisdiction when the ERC postponed the effectivity of CSP. The postponement effectively prevented for at least 20 years the enforcement of a mechanism intended to ensure "*transparent and reasonable prices in a regime of free and fair competition*," as mandated by law under EPIRA, a mechanism implemented in the 2015 DOE Circular which took effect on 30 June 2015.**

In short, in the absence of CSP, there is no transparency in the purchase by DUs of electric power, and thus there is no assurance of the reasonableness of the power rates charged to consumers. As a consequence, all PSA applications submitted to the ERC on or after 30 June 2015 should be deemed not submitted and should be made to comply with CSP.

2. ID.; ID.; ID.; ID.; THE ERC HAS NO POWER TO AMEND THE IMPLEMENTING RULES AND REGULATIONS OF THE EPIRA AS ISSUED BY THE DEPARTMENT OF ENERGY (DOE); THE MANDATE OF THE ERC IS TO IMPLEMENT THE RULES AND REGULATIONS OF THE EPIRA AS FORMULATED AND ADOPTED BY DOE; ERC'S POWER TO IMPLEMENT CSP DOES NOT INCLUDE THE POWER TO POSTPONE THE EFFECTIVITY DATE OF CSP.— Under the EPIRA, it is the DOE that issues the rules and regulations to implement the EPIRA, including the implementation of the policy objectives stated in Section 2 of the EPIRA. Rules and regulations include circulars that have the force and effect of rules or regulations. Thus, pursuant to its powers and functions under the EPIRA, the DOE issued the 2015 DOE Circular mandating the conduct of CSP. The 2015 DOE Circular, as stated in its very provisions, was issued pursuant to the DOE's power to "formulate such rules and regulations as may be necessary to implement the objectives of the EPIRA," where the State policy is to "[p]rotect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power." Under the EPIRA, it is also the State policy to "ensure the x x x *affordability* of the supply of electric power." The purpose of the 2015 DOE Circular is to implement the State policies prescribed in the EPIRA. Clearly, the 2015 DOE Circular constitutes a rule or regulation issued by the DOE pursuant to its rule-making power under Section 37(p) of the EPIRA. x x x [T]he very first mandate of the ERC under its charter, the EPIRA, is *to "[e]nforce the implementing rules and regulations" of the EPIRA as formulated and adopted by DOE*. Clearly, under the EPIRA, it is the DOE that formulates the policies, and issues the rules and regulations, to implement the EPIRA. *The function of the ERC is to enforce and implement the policies formulated, as well as the rules and*

regulations issued, by the DOE. **The ERC has no power whatsoever to amend the implementing rules and regulations of the EPIRA as issued by the DOE. The ERC is further mandated under EPIRA to ensure that the "*pass through of bulk purchase cost by distributors is transparent [and] non-discriminatory*." x x x The Joint Resolution did not authorize the ERC to change the date of effectivity of the mandatory CSP. The Joint Resolution expressly mandated that the "ERC shall issue the appropriate regulation *to implement*" CSP.** The power "**to implement**" CSP does not include the power **to postpone** the date of effectivity of CSP, which is expressly mandated in the 2015 DOE Circular to take effect upon the publication of the Circular. In fact, **to postpone** is the opposite of "**to implement**."

3. ID.; ID.; ID.; ID.; ERC IS MANDATED TO ACT JOINTLY WITH THE DOE IN THE IMPLEMENTATION OF CSP; ERC'S ISSUANCE OF THE ASSAILED CLARIFICATORY RESOLUTION WITHOUT COORDINATION WITH THE DOE CONSTITUTES GRAVE ABUSE OF DISCRETION.— The 2015 DOE Circular explicitly stated the instances that required joint action of the DOE and the ERC: (1) Recognition of the Third Party that will conduct the CSP for the procurement of PSAs by the DUs; (2) Issuance of guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs; (3) Issuance of guidelines and procedures for the recognition or accreditation of the Third Party that conducts the CSP; and (4) Issuance of supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP. x x x In all the foregoing instances, the ERC is mandated to act jointly with the DOE. All these instances merely implement CSP, and do not postpone CSP or amend the 2015 DOE Circular, which are beyond mere implementation of CSP. If the ERC cannot act by itself on certain instances in the mere implementation of CSP, then the ERC certainly cannot act by itself in the postponement of CSP or in the amendment of the 2015 DOE Circular. x x x The 2015 DOE Circular **specifically stated** that **the ERC's power to issue CSP guidelines and procedures should be exercised "*in coordination with the DOE*."** The purpose of such coordination was "**to ensure efficiency and transparency in the CSP**." In short, the ERC could not issue CSP guidelines and procedures without coordination with DOE. The DOE has expressly declared

that the ERC did not coordinate with DOE in issuing the ERC Clarificatory Resolution. The ERC's unilateral postponement of CSP for 305 days, allowing DUs to avoid the mandatory CSP to the great prejudice of the public, was clearly without authority and manifestly constituted grave abuse of discretion.

4. **ID.; ID.; ID.; ID.; THE ERC ALSO GRAVELY ABUSED ITS DISCRETION WHEN IT ISSUED THE ASSAILED CLARIFICATORY RESOLUTION WITHOUT ANY PUBLIC CONSULTATION OR FOCUS GROUP DISCUSSION.— In stark contrast to the extensive consensus-building which attended the drafting of the 2015 DOE Circular and the CSP Guidelines, the ERC Clarificatory Resolution explicitly admitted that its issuance was *not* accompanied by any public consultation or focus group discussion. Rather, the ERC Clarificatory Resolution was unilaterally issued by the ERC, *without coordinating with DOE*, on the basis of "several letters from stakeholders."** The stakeholders had no way of knowing the concerns of their peers as there was no interaction or discussion among the stakeholders.

5. **ID.; ID.; ID.; EPIRA *VIS-À-VIS* THE LAW GRANTING MERALCO A CONGRESSIONAL FRANCHISE TO DISTRIBUTE ELECTRIC POWER TO END-USERS (RA 9209); MERALCO IS OBLIGATED TO PROVIDE ELECTRICITY AT THE LEAST COST TO ITS CONSUMERS AND THE ERC APPROVES THE RETAIL RATES; ERC'S POSTPONEMENT OF CSP TWICE AND ENABLING THE POWER SUPPLY AGREEMENTS (PSAs) IN VARIOUS AREAS IN THE COUNTRY TO AVOID CSP FOR AT LEAST 20 YEARS RESULT IN THE NON-TRANSPARENT, SECRETIVE FIXING OF PRICES FOR BULK PURCHASES OF ELECTRICITY TO THE PREJUDICE OF MILLIONS OF FILIPINOS LIVING IN THIS COUNTRY AS WELL AS MILLIONS OF BUSINESS ENTERPRISES OPERATING IN THIS COUNTRY; EFFECTS OF NON-COMPLIANCE WITH THE CSP REQUIREMENT.—** The EPIRA divided the electric power industry into four sectors, namely: generation, transmission, distribution, and supply. The distribution of electricity to end-users is a regulated common carrier business requiring a franchise. We reiterate that the EPIRA mandates that a

distribution utility has the obligation to supply electricity **in the least-cost manner to its captive market**, subject to the collection of distribution retail supply rate duly approved by the ERC. Republic Act No. 9209 granted Meralco a congressional franchise to construct, operate, and maintain a distribution system for the conveyance of electric power to the end-users in the cities and municipalities of Metro Manila, Bulacan, Cavite, and Rizal, and certain cities, municipalities, and barangays in Batangas, Laguna, Quezon, and Pampanga. **Meralco's franchise is in the nature of a monopoly because it does not have any competitor in its designated areas.** x x x **Section 5 of Republic Act No. 9209 provides that "[t]he retail rates to [Meralco's] captive market and charges for the distribution of electric power by [Meralco] to its end-users shall be regulated by and subject to the approval of the ERC."** As the holder of a distribution franchise, Meralco is obligated to provide electricity **at the least cost** to its consumers. The ERC, as Meralco's rate regulator, approves the retail rates - comprising of power and distribution costs - to be charged to end-users. As we have demonstrated above, both Meralco and the ERC have been remiss in their obligations. Going through competitive public bidding as prescribed in the 2015 DOE Circular is the only way to ensure a transparent and reasonable cost of electricity to consumers. Lest we forget, the ERC is expressly mandated in Section 43(o) of the EPIRA of "**ensuring that the x x x pass through of bulk purchase cost by distributors is *transparent***." The ERC's postponement of CSP twice, totaling 305 days and enabling **90 PSAs** in various areas of the country to avoid CSP for **at least 20 years**, directly and glaringly violates this express mandate of the ERC, resulting in the non-transparent, secretive fixing of prices for bulk purchases of electricity, to the great prejudice of the 95 million Filipinos living in this country as well as the millions of business enterprises operating in this country. This ERC action is a most extreme instance of grave abuse of discretion, amounting to lack or excess of jurisdiction, warranting the strong condemnation by this Court and the annulment of the ERC's action. Absent compliance with CSP in accordance with the 2015 DOE Circular, the PSAs shall be valid only as between the DUs and the power generation suppliers, and shall not bind the DOE, the ERC, and the public for purposes of determining the transparent and reasonable power purchase cost to be passed on to consumers.

6. ID.; ID.; ADMINISTRATIVE RULES AND REGULATIONS; THROUGH DOE CIRCULAR NO. DC2018-02-0003, THE DOE REVOKED THE AUTHORITY IT DELEGATED TO ERC TO ISSUE SUPPLEMENTAL GUIDELINES TO IMPLEMENT CSP AND DOE ITSELF ISSUED ITS OWN GUIDELINES; EFFECTS.— On 1 February 2018, the DOE issued Circular No. DC2018-02-0003 entitled "**Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreements for the Captive Market**" **(2018 DOE Circular)**. The DOE prescribed, in Annex "A" of this 2018 DOE Circular, the DOE's own CSP Policy in the procurement of power supply by DUs for their captive market **(2018 DOE CSP Policy)**. Section 16.1 of the 2018 DOE CSP Policy **expressly repealed Section 4 of the 2015 DOE Circular authorizing ERC to issue supplemental guidelines to implement CSP**. **In short, the DOE *revoked* the authority it delegated to the ERC to issue supplemental guidelines to implement CSP, and the DOE itself issued its own guidelines, the 2018 DOE CSP Policy, to implement CSP under the 2015 DOE Circular.** This means that the CSP Guidelines issued by the ERC have become *functus officio* and have been superseded by the 2018 DOE CSP Policy. Under its Section 15, the 2018 DOE CSP Policy is expressly made to apply to "**all *prospective* PSAs**." The 2018 DOE Circular, including its Annex "A," took effect upon its publication on 9 February 2018. Thus, the 90 PSAs mentioned in this present case must undergo CSP in accordance with the 2018 DOE Circular, in particular the 2018 DOE CSP Policy prescribed in Annex "A" of the 2018 DOE Circular.

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

1. POLITICAL LAW; ADMINISTRATIVE LAW; ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA) OF 2001 (RA 9136); THE ENERGY REGULATORY COMMISSION (ERC) GRAVELY ABUSED ITS DISCRETION WHEN IT ISSUED THE ASSAILED CLARIFICATORY RESOLUTION WHICH RESTATED THE DATE OF EFFECTIVITY OF ERC RESOLUTION NO. 13, SERIES OF 2015, WITHOUT COORDINATION WITH AND APPROVAL OF THE DEPARTMENT OF ENERGY (DOE);

COMPETITIVE SELECTION PROCESS (CSP), EXPLAINED.— I concur with the *ponencia* to the extent that the ***respondent*** **Energy Regulatory Commission (ERC) gravely abused its discretion when it issued ERC Resolution No. 01, Series of 2016, which "restated" the date of effectivity of ERC Resolution No. 13, Series of 2015**, entitled "A Resolution Directing All Distribution Utilities (DUs) to Conduct a Competitive Selection Process [(CSP)] in the Procurement of their Supply to the Captive Market." As will be herein discussed, absent the approval of and coordination with the Department of Energy (DOE), the ERC cannot suspend the effectivity of the CSP, which process was originally mandated under DOE Department Circular No. DC2015-06-0008, entitled "Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA)" (DOE Circular). x x x As backgrounder, the CSP is essentially a regulation on the procurement of PSAs by the DUs [to ensure] security and certainty of electricity prices of electric power to end-users in the long term." As presently defined in DOE Department Circular No. DC2018-02-0003 issued on February 1, 2018[.] x x x The CSP traces its roots to the policies mandated under Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA). Under the EPIRA, both the DOE and the ERC are authorized by law to issue and implement the proper rules in order to - among other policy objectives – "ensure transparent and reasonable prices of electricity in **a regime of free and fair competition** and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market."

2. ID.; ID.; ADMINISTRATIVE RULES AND REGULATIONS; THE FIRST PARAGRAPH OF SECTION 4 OF ERC RESOLUTION NO. 13, SERIES OF 2015, SHOULD NOT BE DECLARED VOID; THERE WAS NOTHING INFIRM ABOUT THE FAILURE TO IMPLEMENT THE CSP BY JUNE 30, 2015 AND POSTPONING THE SAME TO NOVEMBER 7, 2015 SINCE THE CSP COULD NOT HAVE BEEN IMPLEMENTED BY THE TIME THE ORIGINAL DOE CIRCULAR TOOK EFFECT ON JUNE 30, 2015 BECAUSE THERE WERE STILL NO PROPER IMPLEMENTING GUIDELINES AT THAT TIME.— I disagree with the holding anent the first paragraph of Section

4 of ERC Resolution No. 13, Series of 2015 because the validity of ERC Resolution No. 13, Series of 2015 was not questioned in the present petition. In any case, it is my view that there was nothing infirm about the failure to implement the CSP by June 30, 2015 and postponing the same to November 7, 2015. This is because the CSP could not have been implemented by the time the original DOE Circular took effect on June 30, 2015 given that there were no proper implementing guidelines at that time. Based on the records, it was only upon the issuance of ERC Resolution No. 13, Series of 2015 (which took effect later on November 7, 2015) that concrete guidelines on the CSP were set. Notably, this latter ERC Resolution was issued on the same day Joint Resolution No. 1 was issued by both the DOE and the ERC, and in this joint resolution, the authority of the ERC to issue the appropriate guidelines to implement the CSP, *by agreement of the DOE and the ERC*, was recognized. In fact, there is an express statement by the DOE in the original DOE Circular that the ERC was still to issue supplemental guidelines and procedures for the design and execution of the CSP to properly guide the DUs; hence, the immediate effectivity of the CSP requirement could not be reckoned as of June 30, 2015. Accordingly, for these reasons, only ERC Resolution No. 01, Series of 2016 - and not the first paragraph of Section 4 of ERC Resolution No. 13, Series of 2015 - should be declared null and void.

3. ID.; ID.; ID.; ID.; INVALIDATING THE POWER SUPPLY AGREEMENTS (PSAs) WHICH WERE CSP NON-COMPLIANT APPEARS TO BE IMPOSSIBLE; IT IS HIGHLY IMPRACTICABLE TO REVERSE THE CONSUMMATION OF ACTS ALREADY DONE.— I caution against the wholesale invalidation of PSAs which were non-compliant with the CSP requirement at the time the said process should have been carried out, which date the *ponencia* pegs on June 30, 2015. Being in the nature of a selection and qualification requirement, compliance with the CSP to already existing - more so, implemented - PSAs appears to be impossible, unless one invalidates the entire contract. Logically speaking, it is highly impracticable to reverse the consummation of acts already done. This being the case, it may be prudent to recognize the validity of the effects of the PSAs already approved prior to the invalidity of ERC Resolution No. 01, Series of 2016, notwithstanding their CSP non-compliance. Lest it be

misunderstood, this does not necessarily mean that the approved PSAs shall be valid and effective for their entire full 20 or 21-year term. The compromise to this matter is to only recognize these contracts' validity up until a new DU, *selected under the applicable CSP process*, has qualified to take-over the obligations for the remaining period in accordance with the appropriate transitory regulations to be issued by the proper governing agency/agencies. To my mind, this approach balances out the legalistic attribution of the questioned issuance with the practical impact that the afore-discussed declaration would have on the power industry and on a larger scale, the consuming public in general.

CAGUIOA, *J.*, *dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA) OF 2001 (RA 9136); THE ASSAILED RESOLUTION ISSUED BY THE ENERGY REGULATORY COMMISSION (ERC) WAS A REASONABLE WELL-THOUGHT RESPONSE TO THE VARIOUS CONCERNS OF STAKEHOLDERS; IT CANNOT REASONABLY BE CATEGORIZED AS ARBITRARY, WHIMSICAL OR CAPRICIOUS.— The issuance by the ERC of Resolution No. 1, s. 2016 (Resolution No. 1) creating a transition period for Distribution Utilities (DUs) to comply with the CSP requirement was a reasonable well thought-out response to the various concerns posed by DUs, Generation Companies (GenCos) and electric cooperatives which arose from the immediate implementation of the CSP. Accordingly, this issuance — that sought to correct what the ERC itself subsequently recognized as an untimely and unrealistic immediate imposition of a requirement that could not reasonably be complied with — was not, as it cannot reasonably be categorized as, arbitrary, whimsical or capricious.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; A PETITION FOR *CERTIORARI* AND PROHIBITION DIRECTLY FILED BEFORE THE COURT CANNOT RESOLVE FACTUAL CONTENTIONS AS IT VIOLATES THE DOCTRINE OF HIERARCHY OF COURTS.— [I]t should be pointed out that the present case contains several factual matters that are **not** cognizable by the Court, and which should

be threshed out before the appropriate forum. Whether the moving of the effective date of the CSP effectively puts the requirement into a "deep freeze," as maintained by the *ponencia*, is a factual matter that cannot intelligently be resolved by the Court. As to whether the restatement of the effectivity date of the CSP affected, or will continue to affect, the supply of electricity for the entire country is another matter that should be properly ventilated before a court equipped to receive evidence. As well, the problems that the DUs faced in the immediate effectivity of the requirement — which led them to seek exemption from the CSP requirement, and which later on prompted the ERC to issue Resolution No. 1 — are also better appreciated in the context of actual evidence. In addition, whether the restatement of the effectivity date of the CSP was reasonable, or effective in guaranteeing the steady supply of electricity for the entire country is a factual matter that demands the presentation of evidence. All these factual matters need to be addressed before the Court can even begin to determine whether the ERC's act of issuing Resolution No. 1 can be considered to have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. These factual contentions cannot be resolved in the petition at hand which is an ***original*** petition for *certiorari* and prohibition filed ***directly*** to this Court. x x x Thus, the *ponencia* committed a grave error in taking cognizance of the petition as it violates the long-standing doctrine of hierarchy of courts — a doctrine that, according to the pronouncement of the Court in *Gios-Samar*, is not simply a matter of policy but is, in fact, a constitutional imperative. This is so because, to borrow the language of the Court in *Gios-Samar*, the Court's "***sole*** role is to apply the law based on the **findings of facts brought before us**."

3. **POLITICAL LAW; ADMINISTRATIVE LAW; ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA) OF 2001 (RA 9136); THE COMPETITIVE SELECTION PROCESS (CSP) IS MERELY A TOOL; IT IS NOT THE ONLY MANNER TO ACHIEVE A REASONABLE COST OF ELECTRICITY; THE ENERGY REGULATORY COMMISSION (ERC) IS VESTED WITH POWERS TO ENSURE THE PRICES OF ELECTRICITY AT A REASONABLE COST EVEN WITHOUT THE CONDUCT OF THE CSP.—** [I]t is true that the CSP was devised to provide

electricity in the least-cost manner. However, contrary to the reasoning of the *ponencia*, it is **not** the only manner to achieve a reasonable cost of electricity. ***Prior to the CSP requirement***, DUs would secure their supply of electricity by entering into bilateral contracts with GenCos and the choice of which GenCo to have business with — or from which it will get their supply — rested on the sole discretion of the DUs. **This did not mean, however, that prior to the CSP requirement, the DUs had unbridled discretion on the price of electricity to impose on consumers.** Far from it. The EPIRA itself provides that DUs "shall have the obligation to supply electricity in the least cost manner to [their] captive market, ***subject to the collection of retail rate duly approved by the ERC***." Further, the ERC was empowered by the EPIRA to review "bilateral power supply contracts" entered into by DUs, **and to likewise *impose price controls*** and ***order the disgorgement of excess profits*** where, for instance, the DU is found to be engaged in market power abuse or anti-competitive behavior. x x x That the ERC possesses inherent and sufficient powers to control the price of electricity is supported not just by the foregoing letter of the EPIRA, but also by the x x x deliberations of the Senate on the said law[.] x x x [T]he ERC holds sufficient power, ***as the independent regulator of the industry***, to ensure that the prices of electricity passed on to the consumers are at a reasonable cost, **even without the conduct of the CSP**. Indeed, the EPIRA was passed as far back as 2001, or 18 years ago, and the DOE and ERC only conceptualized the CSP in recent years. **Throughout the years that the EPIRA was already in effect, *and while there was still no CSP requirement in place*, the ERC had been continuously doing its mandate of regulating the industry — particularly the DUs — to ensure that the prices passed on to the consumers are at a reasonable cost.** x x x **[I]t bears stressing that the CSP is not required by the EPIRA itself.** It is a mechanism which, in the DOE's and ERC's exercise of their wisdom, was envisioned to ***further*** ensure the low cost of electricity. Stated differently, the CSP requirement is merely a ***policy decision*** by the DOE and implemented by the ERC to ensure the reasonableness of the cost of electricity. **It is only a tool. It is but one of the various means that the ERC may adopt to control the price of electricity and ensure that it is set at a reasonable cost.**

4. ID.; ID.; ID.; IT IS PREMATURE TO CLAIM THAT THE CSP HAS BEEN PUT INTO DEEP FREEZE WITH THE ISSUANCE OF THE ASSAILED RESOLUTION; WITH OR WITHOUT THE CSP, THE PUBLIC IS PROTECTED FROM PRACTICES THAT WOULD HARM THEM OR THAT WOULD RESULT IN MARKET INCREASES ARISING FROM NON-COMPETITIVE PRACTICES.— Here, the ERC has yet to approve the PSAs. In fact, as of the filing of ERC's Comment, none of them had yet been approved. The mere submission of the application for the approvals of the PSAs does not necessarily mean that the PSAs have been approved or will be approved. **Also, even though the PSAs did not undergo the CSP, this will not mean that the public will be prejudiced.** The applicant still has to show that the PSA it has entered into will still result in the least cost to its captive market. The ERC will still have to look into the many factors enumerated above, including the procurement process of the distribution utility, in order to see how the proposal from the GenCo will be the least costly to its captive market. In fact, one of the first things that the applicant will submit to the ERC is the effect of the contract on the overall rates of the DU. It is therefore premature, if not outrightly erroneous, to claim that the executions of the PSAs during the transition period have placed the CSP into "deep freeze" for the duration of the PSAs, and that the public will be prejudiced. During the transition period provided by Resolution No. 1, and even before the implementation of the CSP, the ERC, in compliance with its mandate under the EPIRA, has the power — ***nay, the duty*** — to ensure that any bilateral power supply contracts entered into by the DUs will be consistent with their mandate that they supply electricity to their captive market in the least cost manner. Although the CSP is one manner by which this is attained, its non-application to the PSAs in this case — which, again, have yet to be approved — does not mean that the PSAs would prejudice the public. Once more, the EPIRA and its IRR are clear that acts that harm customers and those that prohibit participation of GenCos to increase market prices are prohibited. **These preceded the institution of the CSP and remain to be in force even if the CSP is implemented. Thus, *with or without the CSP*, the public is protected from practices that harm them or that would result in market increases arising from non-competitive practices.** As stated above, the ERC, among

other powers, may direct the disgorgement of excess profits and impose price control mechanisms, all with the objective of ensuring the reasonableness of the price of electricity.

5. ID.; ID.; ID.; THE ERC IS AN INDEPENDENT REGULATORY BODY SEPARATE AND DISTINCT FROM THE DEPARTMENT OF ENERGY (DOE).— [I]t should be emphasized that the ERC, under the EPIRA, is a purely **independent** regulatory body performing the combined quasi-judicial, quasi-legislative and administrative functions in the electric industry. Section 38 of the EPIRA mandated the creation of an "independent, *quasi-judicial* regulatory body to be named the Energy Regulatory Commission." **To be sure, one of the most important changes introduced by the EPIRA in the restructuring of the energy industry was the creation of an *independent regulatory body*.** x x x **The intent to *separate* the regulatory body from the DOE is further revealed from an analysis of both the letter of the law and the deliberations of the lawmakers.** x x x [T]he EPIRA intended the ERC to be the **body in charge of regulating the participants in the energy sector, particularly the DUs**. In contrast to this regulatory role of the ERC, the functions of the DOE are mainly on policy-making and direction-setting. x x x [W]hile the DOE validly set the CSP requirement, acting within the scope of its powers as the industry's policy-maker, the EPIRA nonetheless lodges the particulars, *i.e.*, its implementation, the specific requirements, and its effectivity date, among others, to ERC — the industry's independent **regulator**. Guided by the pronouncement of the Court in *Freedom From Debt Coalition* that "[i]n determining the extent of powers possessed by the ERC, the provisions of the EPIRA must not be read in separate parts" and that "the law must be read in its entirety, because a statute is passed as a whole, and is animated by one general purpose and intent," **it is therefore unquestionable that EPIRA granted the ERC sufficient powers to set when the players in the energy sector will be bound by the policy set by DOE. This is especially true *in this case* when, as will be shown below, the DOE itself did not set the timeframe for the effectivity of the policy it put in place**, and even, in fact, delegated to the ERC the power to issue supplemental guidelines for its implementation.

6. ID.; ID.; ID.; ID.; THE ERC HAS THE POWER TO ISSUE THE ASSAILED RESOLUTION; THE ERC WAS NOT

REQUIRED TO COORDINATE WITH THE DOE WITH REGARD TO THE DATE OF THE CSP.— I stress anew that Resolutions Nos. 13 and 1 cannot be said to have amended the DOE Circular **because the latter did not set the effective date or the start of the implementation of the CSP requirement**. The DOE Circular was a mere policy-setting document that put in place the CSP requirement, and it did not require that the CSP must be implemented by June 30, 2015, because by then no CSP guidelines existed. In fact, the effective date of the CSP Guidelines of November 7, 2015 was set only by Resolution No. 13 which, in turn, the ERC could *solely* issue precisely because it was empowered by the law, *i.e.*, the EPIRA. The power of the ERC to set the effectivity date was even recognized by the DOE in the Joint Resolution. When it issued Resolution No. 13, the ERC had yet to realize the effects of an immediate imposition of the CSP requirement. When the ERC subsequently decided to suspend the implementation of the CSP requirement by a few months, through the issuance of Resolution No. 1, in response to various issues raised by the players in the energy industry, it was, therefore, still acting within its powers as granted by the EPIRA, **the exercise of which was not limited or contracted by the issuance of the Joint Resolution**. There was thus no grave abuse of discretion when Resolutions Nos. 13 and 1 were issued because the ERC was acting within the scope of powers granted to it. It is erroneous to require the ERC to coordinate with, much less to seek the approval of, the DOE in connection with the issuance of Resolutions Nos. 13 and 1. **It simply did not, and does not, need to.** That the ERC was **not required** to coordinate with the DOE with regard to the date of effectivity of the CSP is fundamentally anchored on the EPIRA which created the ERC **as a body *separate* and *distinct* from the DOE**. Again, at the risk of belaboring the point, even Joint Resolution No. 1 recognized the power of ERC to state and restate the effective date of the CSP through Resolution No. 13, and later on Resolution No. 1.

7. ID.; ID.; ID.; ID.; ERC'S RESTATEMENT OF THE EFFECTIVITY DATE OF THE CSP IS VALID.— [I]n the exercise of its regulatory powers, the ERC's restatement of the effectivity date of the CSP implementation cannot be anything but valid. ***The creation of the transition period was done in good faith and was neither whimsical nor capricious — it***

was prompted by the ERC's receipt of numerous letters from stakeholders posing various concerns. x x x It bears stressing that these concerns were recognized to be reasonable and legitimate concerns by the DOE itself as shown by the act of the DOE of endorsing one of these letters to the ERC. x x x Confronted with these concerns, the ERC deemed it wise to restate the effectivity of the CSP implementation. Thus, the restatement of the effectivity date of the CSP implementation from November 7, 2015 to April 30, 2016, virtually creating a transition period of five (5) months, was deemed by the ERC a long enough period to allow fruition of the PSAs at the throes of perfection or those already executed but not yet filed, and short enough to block those PSAs which were still too early in the negotiation or so far from execution. The ERC found that granting a period of transition would avoid the risk of inconsistency in resolving the individual requests for exemptions sought by DUs, GenCos and electric cooperatives — **while, at the same, *ensuring a steady electric supply for the period covered by the different calls for the CSP exemption***.

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

1. POLITICAL LAW; ADMINISTRATIVE LAW; ELECTRIC POWER INDUSTRY REFORM ACT (EPIRA) OF 2001 (RA 9136); POWERS AND FUNCTIONS OF ENERGY REGULATORY COMMISSION (ERC), EXPLAINED.— [T]he ERC is an independent quasi-judicial body that has regulatory powers for the purpose of promoting competition, encouraging market development, ensuring customer choice and penalizing abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is also authorized to issue cease and desist orders after due notice and hearing. Indeed, any issue on ERC's action of promulgating ERC Resolution No. 1 is cognizable by the Court through a petition for *certiorari* or prohibition, but only if ERC has acted (1) without or in excess of its jurisdiction, or (2) with grave abuse of discretion amounting to lack or excess of jurisdiction. x x x The ERC is granted this quasi-legislative power by no less than Sections 43 (Functions of the ERC) and 45 (Cross Ownership, Market Power Abuse And Anti-Competitive Behavior) of R.A. No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA). x x x This rule-

making power by the ERC is further defined, at least insofar as the CSP implementation is concerned, in Sections 3 and 4 of DOE Circular No. DC2015-06-0008. This circular granted unto the DOE and the ERC the power to jointly issue the "guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP." It also empowered the ERC, "upon its determination and in coordination with the DOE [to] issue supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP."

2. **ID.; ID.; ID.; THE ERC ACTED WITHIN ITS JURISDICTION WHEN IT PROMULGATED THE ASSAILED RESOLUTION; REASONS; THE DOE AND THE ERC ALREADY HAVE A "COORDINATION" WITH REGARD TO THEIR DUTIES OF IMPLEMENTING THE CSP AND THE DOE ALREADY AUTHORIZED THE ERC TO PERFORM THIS DUTY.—** First, it is not correct to summarily state that the ERC's power is limited to the implementation of a policy dictated by the ERC. It could not be any clearer when Section 3 of DOE Circular No. DC2015-06-0008, as quoted above, specifically stated that "the ERC and DOE shall **jointly** issue the guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP as hereto provided." This is not a case where the DOE issues a policy and then the ERC implements the policy. As can be read in Section 3, the matter of formulating the guidelines, as well as the rules of procedure for its implementation, falls on **both** the DOE and the ERC. Second, this joint authority, as it were, is further clarified by Joint Resolution No. 1 where the DOE specifically delegated unto the ERC the power to issue the appropriate regulations to implement the CSP. At the risk of sounding repetitive, this could only mean that, contrary to the *ponencia*, the DOE and the ERC already have a "coordination" with regard to their duties of implementing the CSP, and the **DOE already authorized the ERC to perform this duty**. Again, the ERC in this case is not a mere implementing agency, rather, it is the main agency tasked and empowered to lay the ground for the new selection process,

the same being the agency which has the direct contact with the affected stakeholders of the energy sector. x x x Third, it is also misplaced to say that the ERC has no power at all to formulate the rules and regulations concerning the CSP because, according to the *ponencia*, the same power does not appear in the enumeration of the ERC's functions in Section 43 of the EPIRA. But paragraph (m) of the same section in fact authorizes the ERC to: **(m) Take any action delegated to it pursuant to this Act;** This function, taken together with the DOE and ERC's joint authority accorded by Section 3 of DOE Circular No. DC2015-06-0008 and the specific delegation in Section 1 of Joint Resolution No. 1, is more than enough to dispel any accusation of impropriety or any lack of authority to the ERC's issuance of the assailed resolution. x x x Finally, it must also be emphasized that Joint Resolution No. 1 speaks of the "**appropriate regulations**," and not merely of "guidelines and procedures" or of "supplemental guidelines" to implement the CSP. As a regulatory agency, one which is "vested with jurisdiction to regulate, administer or adjudicate matters affecting substantial rights and interests of private persons, the principal powers of which are exercised by a collective body, such as a commission, board or council," the ERC clearly is empowered to promulgate the assailed resolution. To be sure, in promulgating ERC Resolution No. 13, as well as ERC Resolution No. 1, the ERC acted *within* its jurisdiction.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; GRAVE ABUSE OF DISCRETION, DEFINED.— The term grave abuse of discretion has a specific meaning. It has been defined as the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. According to the case of *John Dennis G. Chua v. People of the Philippines*, citing *Yu v. Judge Reyes-Carpio, et al.* [a]n act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law,

as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." "For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross."

4. ID.; ID.; ID.; THE ERC DID NOT ACT WHIMSICALLY WHEN IT ISSUED THE ASSAILED RESOLUTION; REASONS.— [T]he ERC has sufficiently established that "restating" the effectivity of ERC Resolution No. 13 at a later date is not exercised whimsically or capriciously. Neither is it an arbitrary exercise of power by reason of passion or hostility. Indeed, its issuance is clearly not without basis. In fact, the Court finds that the ratiocination put forth by the Office of the Solicitor General (OSG) is reasonable to justify ERC's action. First, the implementation of ERC Resolution No. 13 caused an avalanche of concerns and confusion from the stakeholders of the industry regarding the actual implementation of the provisions of the resolution, so much so that a multitude of DUs, mostly electric cooperatives, sought for an exemption from the guidelines in the resolution. x x x The *ponencia* mistakenly characterizes ERC's "restatement" of the effectivity of Resolution No. 1 as an "amendment" to DOE Circular No. DC2015-06-0008. The *ponencia* stated that ERC extended the CSP's implementation twice, totaling 305 days, which should not be allowed by the Court. But this kind of interpretation with regard to the nature of implementing rules and regulations, specifically in this case, disavows the very purpose for which implementing rules and regulations are created. x x x [T]he action of the ERC in issuing ERC Resolution No. 1, rather than subvert the intentions of EPIRA, allowed the smooth transition of one procurement method to be utilized by the Government to another new method. Thus, the "restatement" of the effectivity of the CSP in ERC Resolution No. 1 is not an "amendment" but a carefully studied enforcement of the very same mandate reposed upon the ERC. Second, ERC did not "evade" its positive duty as provided for in the Constitution, the EPIRA, DOE Department Circular No. DC2015-06-0008, or ERC Resolution No. 13 as the petitioners would like the Court to believe. The petitioners stretch the interpretation of these laws and issuances by their insinuations that "restating" the effectivity of ERC Resolution No. 13 is already tantamount to evasion of duties. x x x The petitioners did not convincingly show any action by the ERC that negated

any provision of the Constitution, the EPIRA, or any of the resolutions mentioned. No action has been indicated to have disregarded CSP procedure. In fact, ERC Resolution No. 13, the very resolution that the petitioners assert to have been violated, has been in effect since April, 2016. As discussed earlier, the issuance of ERC Resolution No. 1 is a by-product of the concerns of the DUs, generation companies, and electric cooperatives. **The Court could not dictate upon the ERC the time upon which the effectivity of ERC Resolution No. 13 should begin. This is a policy decision that rests solely on the ERC.** x x x Third, it must also be emphasized that ERC Resolution No. 1 enjoys a strong presumption of its validity.

APPEARANCES OF COUNSEL

Yambot Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

CARPIO, *J.*:

The outcome of this case will greatly affect, for the next two decades, all consumers of electricity in the Philippines, which include the over 95 million Filipinos living in the Philippines as well as the millions of business enterprises operating in the Philippines.

Section 19, Article XII of the 1987 Constitution provides: "**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."

The State grants electricity distribution utilities, through legislative franchises, a regulated monopoly within their respective franchise areas. Competitors are legally barred within the franchise areas of distribution utilities. Facing no competition, distribution utilities can easily dictate the price of electricity that they charge consumers. To protect the consuming public from exorbitant or unconscionable charges by distribution

utilities, the State regulates the acquisition cost of electricity that distribution utilities can pass on to consumers.

As part of its regulation of this monopoly, the State requires distribution utilities to subject to **competitive public bidding** their purchases of electricity from power generating companies. Competitive public bidding is **essential** since the power cost purchased by distribution utilities is entirely passed on to consumers, along with other operating expenses of distribution utilities. **Competitive public bidding is the most efficient, transparent, and effective guarantee that there will be no price gouging by distribution utilities.**

Indeed, the requirement of competitive public bidding for power purchases of distribution utilities has been adopted in the United States, Europe, Latin America, India, and many developing countries.[1] This requirement is primarily aimed at ensuring a fair, reasonable, and least-cost generation charge to consumers, under a transparent power sale mechanism between the generation companies and the distribution utilities.

Section 6, Article XII of the 1987 Constitution provides: "The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, **subject to the duty of the State to promote distributive justice and to intervene when the common good so demands**."

Indisputably, the use of electricity bears a vital social function. The State, in requiring competitive public bidding in the purchase

---

[1] See Renewable Energy Auctions in Developing Countries (2013), https://www.irena.org/documentdownloads/publications/irena_renewable_energy_auctions_in_developing_countries.pdf; Electricity Auctions: An Overview of Efficient Practices (2011), http://hdl.handle.net/10986/2346; Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices (2008), https://www.analysisgroup.com/uploadedfiles/content/insights/publishing/competitive_procurement.pdf[All accessed 4 March 2019].

of power by distribution utilities, has exercised its constitutional "duty x x x to intervene when the common good so demands."[2]

The breakdown of charges in a Manila Electric Company (**Meralco**) bill contains the following: ***Generation Charge***, Transmission Charge, System Loss Charge, Distribution Charge (Meralco), Subsidies, Government Taxes, Universal Charges, FiT-All Charge (Renewable), and Other Charges. **The Power Supply Agreements (PSAs) involved in the present case were executed in April 2016 and have terms that range from 20 to 21 years.**

Section 43 of Republic Act No. 9136, or the Electric Power Industry Reform Act of 2001 (**EPIRA**), includes a description, in broad strokes, of the functions of the Energy Regulatory Commission (**ERC**): "The ERC shall **promote competition**, encourage market development, ensure customer choice and **discourage/penalize abuse of market power** in the restructured electricity industry." Moreover, Section 2 of the EPIRA declares it a state policy to "**ensure the x x x affordability of the supply of electric power**." Further, Section 45 of the EPIRA mandates the ERC to enforce safeguards to "**promote true market competition and prevent harmful monopoly and market**

---

[2] Another way for the State to intervene is to examine the accounts of public utilities. Section 22, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987 provides:

Section 22. *Authority to Examine Accounts of Public Utilities.* – (1) The Commission [on Audit] shall examine and audit the books, records and accounts of public utilities in connection with the fixing of rates of every nature, or in relation to the proceedings of the proper regulatory agencies, for purposes of determining franchise taxes;

(2) Any public utility refusing to allow an examination and audit of its books of accounts and pertinent records, or offering unnecessary obstruction to the examination and audit, or found guilty of concealing any material information concerning its financial status shall be subject to the penalties provided by law; and

(3) During the examination and audit, the public utility concerned shall produce all the reports, records, books of accounts and such other papers as may be required. The Commission shall have the power to examine under oath any official or employee of the said public utility.

power abuse." If the ERC violates its statutory functions, this Court, as mandated by Section 1, Article VIII of the 1987 Constitution,[3] has the duty to strike down the acts of ERC whenever these are performed with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Case

Alyansa para sa Bagong Pilipinas, Inc. (**ABP**), represented by Evelyn V. Jallorina and Noel Villones, filed G.R. No. 227670, a petition for *certiorari* and prohibition[4] with an application for a temporary restraining order and/or writ of preliminary injunction. Named as respondents are the ERC, the Department of Energy (DOE), Meralco, Central Luzon Premiere Power Corporation (CLPPC), St. Raphael Power Generation Corporation (SRPGC), Panay Energy Development Corporation (PEDC), Mariveles Power Generation Corporation (MPGC), Global Luzon Energy Development Corporation (GLEDC), Atimonan One Energy, Inc. (AIE), Redondo Peninsula Energy, Inc. (RPE), and the Philippine Competition Commission (PCC).

The petition seeks to declare as void ERC Resolution No. 1, Series of 2016 (**ERC Clarificatory Resolution**). The petition also seeks that this Court direct the ERC to disapprove the Power Supply Agreements (**PSAs**) of the Distribution Utilities (**DUs**) submitted after 7 November 2015 for failure to conduct Competitive Selection Process (**CSP**). The petition further asks the Court to order ERC to implement CSP in accordance with the Department of Energy (**DOE**) Circular No. DC2015-06-

---

[3] This provision reads:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[4] Under Rule 65 of the Rules of Court.

0008 (**2015 DOE Circular**) and ERC Resolution No. 13, Series of 2015 (**CSP Guidelines**).[5]

The Facts

On 11 June 2015, the DOE issued the 2015 DOE Circular entitled "**Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA)**." Sections 3 and 10 of the 2015 DOE Circular provide:

Section 3. Standard Features in the Conduct of the CSP. After the effectivity of this Circular, all DUs shall procure PSAs only through CSP conducted through a Third Party duly recognized by the ERC and the DOE. In the case of [Electric Cooperatives (ECs)], the Third Party shall also be duly recognized by the National Electrification Administration (NEA).

Under this Circular, CSPs for the procurement of PSAs of all DUs shall observe the following:

(a) Aggregation for un-contracted demand requirements of DUs

(b) Annually conducted; an

(c) Uniform template for the terms and conditions in the PSA to be issued by the ERC in coordination with the DOE.

Within one hundred twenty (120) days from the effectivity of this Circular, the ERC and [the] DOE shall jointly issue the guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP as hereto provided. For clarity, the term aggregation as used in this Circular refers to the wholesale demand and energy requirements of DUs, and not of the Contestable Markets under Retail Competition and Open Access (RCOA) regime.

As used in this section, the un-contracted demand or energy requirements of the DUs shall refer to the energy and demand not yet procured individually or collectively by the DUs, excluding those

---

[5] *Rollo*, p. 33.

energy and capacity covered by PSAs that have been filed for approval before the ERC.

x x x x x x x x x

Section 10. Effectivity. **This Circular shall take effect immediately upon its publication** in two (2) newspapers of general circulation and **shall remain in effect until otherwise revoked**. (Boldfacing added)

Section 3 of the 2015 DOE Circular expressly and categorically mandates CSP, or competitive public bidding, whenever DUs secure PSAs. The 2015 DOE Circular took effect on 30 June 2015 upon its publication in two newspapers of general circulation. Section 3 expressly states that "*[a]fter the effectivity of this Circular, all DUs shall procure PSAs only through CSP x x x*."

On 20 October 2015, Joint Resolution No. 1 (**Joint Resolution**), executed by the DOE and the ERC, reiterated the need to adopt a "**regime of transparent process in securing Power Supply Agreements**." The fifth Whereas clause of the Joint Resolution provides:

WHEREAS, the DOE and ERC recognize the adoption of competitive selection as a policy that will encourage investments in the power generation business thereby ensuring electric power supply availability in **a regime of transparent process in securing Power Supply Agreements** (PSAs), which is an integral part of the power sector reform agenda. (Boldfacing added)

Under the Joint Resolution, the DOE and the ERC agreed that ERC shall issue the appropriate regulation **to implement** CSP. Section 1 of the Joint Resolution states:

Section 1. Competitive Selection Process. **Consistent with their respective mandates**, the DOE and ERC recognize that Competitive Selection Process (CSP) in the procurement of Power Supply Agreements (PSAs) by the DUs engenders transparency, enhances security of supply, and ensures stability of electricity prices to captive electricity end-users in the long-term. **Consequently, by agreement of the DOE and ERC, the ERC shall issue the appropriate regulation to *implement* the same.** (Boldfacing and italicization added)

On the same date, 20 October 2015, the ERC issued the CSP Guidelines, which directed all DUs to conduct CSP in the procurement of their power supply for their captive markets.

The CSP Guidelines fixed a new date of effectivity for compliance with CSP. This is the first instance that the ERC unilaterally fixed a different date from 30 June 2015, **effectively postponing the date of effectivity of CSP from 30 June 2015 to 7 November 2015 or by 130 days**:

Section 4. Applicability. The CSP requirement herein mandated shall not apply to PSAs already filed with the ERC *as of the effectivity of this Resolution*. For PSAs already executed but are not yet filed or for those that are still in the process of negotiation, the concerned DUs are directed to comply with the CSP requirement before their PSA applications will be accepted by the ERC.

This Resolution shall take effect immediately following its publication in a newspaper of general circulation in the Philippines.

x x x x x x x x x
(Boldfacing and italicization added)

Based on its provisions, the CSP Guidelines took effect on 7 November 2015, following its publication in the *Philippine Daily Inquirer* and the *Philippine Star*. Section 4 of the CSP Guidelines expressly provides that CSP "**shall not apply to PSAs already filed with the ERC *as of the effectivity of this Resolution***." **Thus, the ERC no longer required CSP for all PSAs already filed with the ERC on or before 7 November 2015.** Section 4 of the CSP Guidelines further states that "[f]or PSAs already executed but are not yet filed or for those that are still in the process of negotiation, the concerned DUs are directed to comply with the CSP requirement before their PSA applications will be accepted by the ERC."

On 15 March 2016, however, the ERC, for the second time, unilaterally postponed the date of effectivity of CSP. The ERC issued the ERC Clarificatory Resolution, which restated the date of effectivity of the CSP Guidelines from 7 November

2015 to 30 April 2016. Paragraph 1 of the ERC Clarificatory Resolution reads:

> 1. **The effectivity of the CSP [Guidelines] is hereby restated to be 30 April 2016.** All PSAs executed on or after the said date shall be required, without exception, to comply with the provisions of the CSP [Guidelines]. (Boldfacing added)

The second postponement of the effectivity of CSPfrom 7 November 2015 to 30 April 2016, or by 175 days, allowed DUs to enter into contracts during the period of postponement to avoid the mandatory CSP.

The table below shows that the following PSAs between Meralco and its power suppliers were executed and submitted to the ERC **within 10 days prior the restated 30 April 2016 deadline**. According to the ERC Clarificatory Resolution, these PSAs are not required to comply with CSP.

Power Supplier	Power Purchaser	Amount of Power Purchased	Term of Agreement	Start of Negotiations	Date of PSA Execution	Date of Submission of Application to ERC
Redondo Peninsula Energy, Inc. (RPE)	Manila Electric Company (Meralco)	225 Megawatts (MW)[6]	20 years[7]	19 July 2012[8]	20 April 2016[9]	28 April 2016[10]
Atimonan One Energy, Inc. (A1E)	Meralco	2 x 600 MW(net)[11]	20 years and six months[12]	3rd or 4thquarter of 2014[13]	26 April 2016[14]	28 April 2016[15]

[6] *Id*. at 54, 329, 749.

[7] *Id*. at 55, 750.

[8] *Id*. at 501.

[9] *Id*. at 329, 501.

[10] *Id*. at 329.

[11] *Id*. at 77, 388.

[12] *Id*. at 77, 591.

[13] *Id*. at 501.

[14] *Id*. at 388.

[15] *Id*.

St. Raphael Power Generation Corporation (SRPGC)	Meralco	Up to 400 MW[16]	20 years and four months[17]	Latter part of 2014[18]	26 April 2016[19]	28 April 2016[20]
Panay Energy Development Corporation (PEDC)	Meralco	Up to 70 MW[21]	20 years[22]	21 May 2014[23]	26 April 2016[24]	27 April 2016[25]
Global Luzon Energy Development Corporation (GLEDC)	Meralco	600 MW[26]	20 years[27]	9 December 2014[28]	27 April 2016[29]	29 April 2016[30]
Central Luzon Premiere Power Corporation (CLPPC)	Meralco	Up to 528 MW[31]	21 years[32]	18 March 2015[33]	26 April 2016[34]	29 April 2016[35]

[16] *Id*. at 95, 445, 814.

[17] *Id*. at 96, 814.

[18] *Id*. at 502.

[19] *Id*. at 445.

[20] *Id*.

[21] *Id*. at 148, 698.

[22] *Id*. at 148, 699.

[23] *Id*. at 501.

[24] *Id*. at 987-988.

[25] *Id*. at 988.

[26] *Id*. at 164.

[27] *Id*.

[28] *Id*. at 502.

[29] *Id*. at 988.

[30] *Id*.

[31] *Id*. at 112, 646.

[32] *Id*. at 112, 647.

[33] *Id*. at 503.

[34] *Id*. at 1326.

[35] *Id*.

Mariveles Power Generation Corporation (MPGC)	Meralco	Up to 528 MW[36]	21 years[37]	11 February 2015[38]	26 April 2016[39]	29 April 2016[40]

A1E and RPE are subsidiaries or affiliates of Meralco.[41] In paragraph 3.71 of its Comment, .Meralco stated that "[a]t the time of the signing of the A1E PSA, A1E was wholly-owned by Meralco PowerGen Corporation ('PowerGen'), a wholly-owned subsidiary of Meralco. On the other hand, at the time of the signing of the RPE PSA, forty-seven percent (47%) of the total subscribed capital of RPE was owned by PowerGen, and three percent (3%) of its total subscribed capital was owned by the Meralco Pension Fund."[42]

CLPPC and MPGC are subsidiaries of SMC Global Power Holdings Corp. (SMC Global), the subsidiary of San Miguel Corporation (SMC) engaged in the construction and operation of various power projects.[43]

In its Comment, Meralco admitted that "**no actual bidding is conducted**,"[44] and that "the PSAs entered into by Meralco undergo competitive selection and **thorough negotiations**, taking into consideration its specific and unique requirements."[45] In short, no CSP was conducted through a third party recognized by the ERC as mandated in the 2015 DOE Circular.

---

[36] *Id*. at 130.

[37] *Id*.

[38] *Id*. at 502.

[39] *Id*. at 1346.

[40] *Id*.

[41] *Id*. at 346 (RPE), 411 (A1E).

[42] *Id*. at 534.

[43] *Id*. at 1325 (CLPPC), 1345 (MPGC).

[44] *Id*. at 497.

[45] *Id*. Boldfacing added.

Meralco also stated that, apart from the seven (7) PSAs between Meralco and its power suppliers, **there are eighty-three (83) other PSAs filed with the ERC during the period from 16 April 2016 to 29 April 2016, bringing the total PSAs excluded from CSP to ninety (90) PSAs**.

DATE	NO. OF PSAS	GENERATION COMPANIES
16 to 24 April 2016	4 PSAs	Mineral Power, Palm Concepcion, Astroenergy, GNPower Kauswagan
25 April 2016	5 PSAs	GNPower Dinginin
26 April 2016	5 PSAs	GNPower Dinginin, Astroenergy
27 April 2016	4 PSAs	GNPower Dinginin
28 April 2016	10 PSAs	A. Brown, GNPower Dinginin, Southern Philippines Power, SMCPC, Surepep, Total Power, Upper Manupali Hydro
29 April 2016	55 PSAs	SMEC, MPGC, SCPC, SMCPC, LPPC, PEDC, GLEDC, CLPPC, A. Brown, A1E, Anda, Astronenergy, Delta P, GNPower Dinginin, GPower, Isabela Power, Levan Marketing, Mapalad Power, Minergy, RPE, SRPGC, Sunasia Energy, TeaM Energy, Trans-Asia, Unified Leyte Geothermal Energy, Western Power Mindanao[46]

Meralco further stated in its Comment:

[46] *Id*. at 506.

1.41. Furthermore, apart from MERALCO, the following DUs and electric cooperatives also filed more than one PSA with the ERC during the second (2nd) half of April 2016: (a) Agusan del Sur Electric Cooperative, Inc.; (b) Bukidnon Second Electric Cooperative, Inc.; (c) Cagayan Electric Power & Light Company, Inc.; (d) Cotabato Light and Power Company; (e) Davao del Sur Electric Cooperative; (f) Iloilo 1 Electric Cooperative; (g) Ilocos Sur Electric Cooperative Incorporation; (h) Isabela I Electric Cooperative, Inc.; (i) Isabela II Electric Cooperative; (j) Leyte III Electric Cooperative, Inc.; (k) La Union Electric Cooperative, Inc.; (l) Pangasinan Electric Cooperative III; (m) Peninsula Electric Cooperative, Inc.; (n) Tarlac II Electric Cooperative, Inc.; (o) Zamboanga City Electric Cooperative, Inc.; and (p) Zamboanga del Sur Electric Cooperative, Inc.[47]

The Issues

ABP raised the following issues:

1. Whether or not the ERC committed grave abuse of discretion in issuing the [ERC Clarificatory Resolution].
2. Whether or not the separate PSAs of Meralco with respondent generation companies should be disapproved for their failure to comply with the requirements of the [2015 DOE Circular] and the [CSP Guidelines].[48]

ABP's petition thus presents a purely legal issue: Does ERC have the statutory authority to postpone the date of effectivity of CSP, thereby amending the 2015 DOE Circular which required CSP to take effect on 30 June 2015?The determination of the extent of the ERC's statutory authority in the present case is a purely legal question and can be resolved without making any finding of fact. The affirmative or negative resolution of this purely legal question will necessarily result in legal consequences, thus:

(a) If the Court rules affirmatively (that is, the ERC has the statutory authority to postpone the date of effectivity of CSP,

---

[47] *Id*. at 507.

[48] *Id*. at 17.

and thereby ERC can amend the 2015 DOE Circular), then the legal consequence is that the 90 PSAs submitted to the ERC before the amended effectivity of CSP (30 April 2016) will serve as basis to pass on the power cost to consumers for the duration of the PSAs, whatever the duration of these PSAs.

(b) If the Court rules negatively (that is, the ERC does not have the statutory authority to postpone the date of effectivity of CSP, and thereby cannot amend the 2015 DOE Circular), then the legal consequence is that the 90 PSAs submitted to the ERC after the effectivity of CSP on or after 30 June 2015 cannot serve as basis to pass on the power cost to consumers. In such a case, the ERC will have to conduct CSP on all PSA applications submitted on or after 30 June 2015.

Clearly, there is no factual issue in dispute in the present case, and no factual issue has been raised by any of the parties. Thus, the present case can be resolved purely on the legal issue raised by ABP even as the resolution of this purely legal issue will necessarily result in legal consequences either way.

The Court's Ruling

We **GRANT** ABP's petition. The ERC does not have the statutory authority to postpone the date of effectivity of CSP, and thereby cannot amend the 2015 DOE Circular. As a result, the 90 PSAs submitted to the ERC after the effectivity of CSP on or after 30 June 2015 cannot serve as basis to pass on the power cost to consumers. The ERC must require CSP on all PSA applications submitted on or after 30 June 2015.

Certiorari and Prohibition As Remedy

Petitioner ABP correctly filed a petition for *certiorari* and prohibition before this Court.

[T]he 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, [Article 8 of the 1987 Constitution].[49] (Boldfacing and italicization added)

Not every abuse of discretion can be occasion for this Court to exercise its jurisdiction. Grave abuse of discretion means "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. It is not sufficient that a tribunal, in the exercise of its power, abused its discretion, such abuse must be grave."[50]

The Dissenting Opinion of Justice Andres B. Reyes, Jr. would rather have this Court dismiss the petition. Justice Reyes asserts that the ERC, in issuing the ERC Clarificatory Resolution, acted within its jurisdiction[51] and did not act with grave abuse of discretion amounting to lack or excess of jurisdiction.[52] Justice Reyes claims that the ERC was exercising its quasi-legislative power, as granted by Sections 43 and 45 of the EPIRA and as defined in Sections 3 and 4 of the 2015 DOE Circular, when the ERC issued the ERC Clarificatory Resolution. Justice Reyes advances three reasons to justify his assertion that the ERC did not act with grave abuse of discretion amounting to lack or excess of jurisdiction.

---

[49] *Araullo v. President Benigno S. C. Aquino, III*, 737 Phil. 457, 531 (2014). Italicization in the original. Boldfacing added.

[50] *Pilipino Telephone Corporation v. NTC*, 457 Phil. 101, 113 (2003), citing *Benito v. Commission on Elections*, 402 Phil. 764 (2001).

[51] Dissenting Opinion, Justice Andres B. Reyes, Jr., pp. 5-7.

[52] *Id.* at 7-12.

First, the implementation of ERC Resolution No. 13 caused an avalanche of concerns and confusion from the stakeholders of the industry regarding the actual implementation of the provisions of the resolution, so much so that a multitude of [Distribution Utilities] DUs, mostly electric cooperatives, sought for an exemption from the guidelines in the resolution, x x x.

x x x x x x x x x

Second, ERC did not "evade" its positive duty as provided for in the Constitution, the EPIRA, [the 2015 DOE Circular], or [the CSP Guidelines] as the petitioners would like the Court to believe. x x x.

x x x x x x x x x

x x x ERC's action on merely "restating" the date of effectivity of [the ERC Clarificatory Resolution] – its own resolution that has been in effect since April, 2016 – has not been shown to have been promulgated with grave abuse of discretion amounting to lack or excess of jurisdiction.

Third, it must also be emphasized that [the ERC Clarificatory Resolution] enjoys a strong presumption of its validity. x x x.[53]

Justice Reyes's Dissenting Opinion also finds no problem with the issuance and the contents of the ERC Clarificatory Resolution. According to Justice Reyes, under the Joint Resolution executed by the DOE and the ERC on 20 October 2015, the DOE and the ERC agreed that the ERC shall issue the appropriate regulation to implement CSP.[54]

Justice Reyes is correct – **consistent with their respective mandates under EPIRA**, the DOE and the ERC agreed that the ERC shall issue the appropriate regulation **to implement**CSP in accordance with the 2015 DOE Circular.[55] However, the ERC's

---

[53] *Id.* at 8-11.

[54] *Id.* at 9. Emphasis omitted.

[55] Section 1 of Joint Resolution No. 1 reads:

Section 1. Competitive Selection Process. Consistent with their respective mandates, the DOE and ERC recognize that Competitive Selection Process (CSP) in the procurement of PSAs by the DUs engenders transparency,

delegated authority is limited **to implementing or executing** CSP in accordance with the 2015 DOE Circular, ***not postponing*** CSP so as to freeze CSP for at least 20 years, effectively suspending CSP for one entire generation of Filipinos. The delegated authority **to implement** CSP does not include the authority **to postpone or suspend** CSP for 20 years, beyond the seven-year terms of office[56] of the ERC Commissioners postponing or suspending the CSP, and beyond the seven-year terms of office of their next successors, as well as beyond the six-year terms of office of three Presidents of the Republic. The ERC's exercise of its quasi-legislative power, which took the form of the issuance of the ERC Clarificatory Resolution, was done in excess of its jurisdiction. **The postponement of the effectivity of CSP was without the approval, and even without coordination with the DOE, in clear and blatant violation of Section 4 of the 2015 DOE Circular mandating CSP.** The ERC has no power to postpone the effectivity of the 2015 DOE Circular. Under the 2015 DOE Circular, the ERC can only issue supplemental guidelines, which means guidelines to implement the 2015 DOE Circular, and not to amend it. Postponing the effectivity of CSP amends the 2015 DOE Circular, and does not constitute issuance of mere supplemental guidelines.

The issuance of the ERC Clarificatory Resolution was attended with grave abuse of discretion amounting to lack or excess of jurisdiction for the following reasons:

(1) Postponing the effectivity of CSP from 30 June 2015 to 7 November 2015, and again postponing the effectivity of CSP from 7 November 2015 to 30 April 2016, or a total of 305 days, allowed DUs nationwide to avoid the mandatory CSP;

---

enhances security of supply, and ensures stability of electricity prices to captive electricity end-users in the long-term. Consequently, by agreement of the DOE and ERC, the ERC shall issue the appropriate regulations to implement the same.

[56] Section 38, Republic Act No. 9136.

(2) Postponing the effectivity of CSP effectively freezes for at least 20years the DOE-mandated CSP to the great prejudice of the public. The purpose of CSP is to compel DUs to purchase their electric power at a transparent, reasonable, and least-cost basis, since this cost is entirely passed on to consumers. The ERC's postponement unconscionably placed this public purpose in deep freeze for at least 20 years.

Indisputably, the ERC committed grave abuse of discretion amounting to lack or excess of jurisdiction when the ERC postponed the effectivity of CSP. The postponement effectively prevented for at least 20 years the enforcement of a mechanism intended to ensure "*transparent and reasonable prices in a regime of free and fair competition*," as mandated by law under EPIRA, a mechanism implemented in the 2015 DOE Circular which took effect on 30 June 2015.

In short, in the absence of CSP, there is no transparency in the purchase by DUs of electric power, and thus there is no assurance of the reasonableness of the power rates charged to consumers. As a consequence, all PSA applications submitted to the ERC on or after 30 June 2015 should be deemed not submitted and should be made to comply with CSP.

Why the ERC Acted in Excess of its Jurisdiction: Purpose of CSP and Significance of the Postponement of the CSP Deadline

The EPIRA was enacted on 8 June 2001. Among the EPIRA's declared State policies are, as stated in its Section 2:[57]

---

[57] This provision reads:

Section 2. Declaration of Policy. – It is hereby declared the policy of the State:

(a) To ensure and accelerate the total electrification of the country;
(b) **To ensure the quality, reliability, security and affordability of the supply of electric power**;
(c) **To ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve**

x x x x x x x x x

(b) **To ensure the quality, reliability, security and *affordability* of the supply of electric power;**

(c) **To *ensure transparent and reasonable prices of electricity in a regime of free and fair competition* and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;** [and]

x x x x x x x x x

(f) **To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;**

x x x x x x x x x
(Boldfacing and italicization added)

The EPIRA mandates the DOE to "supervise the restructuring of the electricity industry."[58] The EPIRA amended Section 5 of Republic Act No. 7638, or "The Department of Energy Act

---

greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;

(d) To enhance the inflow of private capital and broaden the ownership base of the power generation, transmission and distribution sectors;

(e) To ensure fair and non-discriminatory treatment of public and private sector entities in the process of restructuring the electric power industry;

(f) **To protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power**;

(g) To assure socially and environmentally compatible energy sources and infrastructure;

(h) To promote the utilization of indigenous and new and renewable energy resources in power generation in order to reduce dependence on imported energy;

(i) To provide for an orderly and transparent privatization of the assets and liabilities of the National Power Corporation (NPC);

(j) To establish a strong and purely independent regulatory body and system to ensure consumer protection and enhance the competitive operation of the electricity market; and

(k) To encourage the efficient use of energy and other modalities of demand side management.

[58] Republic Act No. 9136, Section 37.

of 1992," to allow the DOE to fulfill this new mandate under the EPIRA.

More importantly, Section 37 of the EPIRA includes the following in its enumeration of the DOE's powers and functions:

(a) **Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan** x x x and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;

x x x x x x x x x

(d) **Ensure the reliability, quality and security of supply of electric power;**

x x x x x x x x x

(e) x x x [T]he DOE shall, among others,

x x x x x x x x x

(ii) **Facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs;**

x x x x x x x x x

(h) **Exercise supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of RA 7638;**

x x x x x x x x x

(p) ***Formulate such rules and regulations as may be necessary to implement the objectives of this Act*;** x x x

x x x x x x x x x

(Boldfacing and italicization added)

Under the EPIRA, it is the DOE that issues the rules and regulations to implement the EPIRA, including the implementation of the policy objectives stated in Section 2[59]

[59] See the complete enumeration of policies in note 57.

of the EPIRA. Rules and regulations include circulars that have the force and effect of rules or regulations. Thus, pursuant to its powers and functions under the EPIRA, the DOE issued the 2015 DOE Circular mandating the conduct of CSP.

The 2015 DOE Circular, as stated in its very provisions, was issued pursuant to the DOE's power to "formulate such rules and regulations as may be necessary to implement the objectives of the EPIRA,"[60] **where the State policy is to "[p]rotect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power."**[61] **Under the EPIRA, it is also the State policy to "ensure the x x x *affordability* of the supply of electric power."**[62] **The purpose of the 2015 DOE Circular is to implement the State policies prescribed in the EPIRA. Clearly, the 2015 DOE Circular constitutes a rule or regulation issued by the DOE pursuant to its rule-making power under Section 37(p) of the EPIRA.**

The EPIRA also provides for the powers and functions of the ERC. Section 43 of the EPIRA mandates that the ERC "shall be responsible for the following key functions in the restructured industry:"

(a) ***Enforce the implementing rules and regulations of this Act.***

x x x x x x x x x

(o) Monitor the activities in the generation and supply of the electric power industry with the end in view of promoting free market competition and ***ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent***, **non-discriminatory and that any existing subsidies shall be divided pro-rata among all retail suppliers**;

x x x x x x x x x

(Boldfacing and italicization added)

---

[60] 2015 DOE Circular, Second Whereas Clause, par. (d).

[61] 2015 DOE Circular, First Whereas Clause, par. (d).

[62] Republic Act No. 9136, Section 2 (b).

Thus, the very first mandate of the ERC under its charter, the EPIRA, is to "*[e]nforce the implementing rules and regulations*" *of the EPIRA as formulated and adopted by DOE*. Clearly, under the EPIRA, it is the DOE that formulates the policies, and issues the rules and regulations, to implement the EPIRA. ***The function of the ERC is to enforce and implement the policies formulated, as well as the rules and regulations issued, by the DOE.*** **The ERC has no power whatsoever to amend the implementing rules and regulations of the EPIRA as issued by the DOE. The ERC is further mandated under EPIRA to ensure that the "*pass through of bulk purchase cost by distributors is transparent [and] non-discriminatory*."**[63]

Despite the ERC's characterization as an "independent, quasi-judicial regulatory body,"[64] it is incorrect to conclude, as Justice Alfredo Benjamin S. Caguioa holds, that the ERC exercises "inherent and sufficient power,"[65] and "sufficient power, as the independent regulator of the industry,"[66] **to supplant or change**, as it did in the present case, policies, rules, and regulations prescribed by the DOE. **The power involved in the ERC's *implementation* of the 2015 DOE Circular is not quasi-judicial but executive.** There are no adverse parties involved in the implementation by the ERC of the 2015 DOE Circular. The ERC does not adjudicate rights and obligations of adverse parties in the present case. The issue presented here involves the propriety of the exercise of the ERC's **executive implementation** of the policies, as well as the rules and regulations of the EPIRA as issued by the DOE.

Moreover, the nature of the power involved in the ERC's **postponement** of the effectivity of CSP as mandated in the 2015 DOE Circular is not quasi-judicial but delegated legislative

---

[63] Republic Act No. 9136, Section 43 (o).

[64] Republic Act No. 9136, Section 38.

[65] Dissenting Opinion, Justice Caguioa, p. 11.

[66] *Id.* at 12. Emphasis omitted.

power. Justice Caguioa states that "**the ERC could solely *issue***"[67] any resolution changing the dates of effectivity of CSP as set by the CSP Guidelines and the ERC Clarificatory Resolution "**because it was empowered by the law, i.e., the EPIRA**."[68]

We quote below the entirety of Section 43 of the EPIRA, prescribing the functions of the ERC, and there is *absolutely nothing whatsoever* in this complete enumeration of the ERC's functions that grants the ERC rule-making power to supplant or change the policies, rules, regulations, or circulars prescribed by the DOE. The ERC's functions, as granted by the EPIRA, are limited, *inter alia*, to the enforcement of the implementing rules and regulations of the EPIRA, and not to amend or revoke them. At most, as stated in paragraph (m) of Section 43, the ERC may only take any other action **delegated** to it pursuant to EPIRA. The ERC may not exceed its delegated authority. Section 43 of the EPIRA provides as follows:

> Section 43. *Functions of the ERC*. – The ERC shall promote competition, encourage market development, ensure customer choice and discourage/penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:
>
> (a) Enforce the implementing rules and regulations of this Act;
>
> (b) Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law, a National Grid Code and a Distribution Code which shall include, but not limited to, the following:
>
> (i) Performance standards for TRANSCO O & M Concessionaire, distribution utilities and suppliers: *Provided*, That in the establishment of the performance standards, the nature and function of the entities shall be considered; and
>
> (ii) Financial capability standards for the generating companies, the TRANSCO, distribution utilities and suppliers: *Provided*,

---

[67] *Id.* at 25. Italicization in the original.

[68] *Id.*

That in the formulation of the financial capability standards, the nature and function of the entity shall be considered: *Provided, further*, That such standards are set to ensure that the electric power industry participants meet the minimum financial standards to protect the public interest. Determine, fix, and approve, after due notice and public hearings the universal charge, to be imposed on all electricity end-users pursuant to Section 34 hereof;

(c) Enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;

(d) Determine the level of cross subsidies in the existing retail rate until the same is removed pursuant to Section 74 hereof;

(e) Amend or revoke, after due notice and hearing, the authority to operate of any person or entity which fails to comply with the provisions hereof, the IRR or any order or resolution of the ERC. In the event a divestment is required, the ERC shall allow the affected party sufficient time to remedy the infraction or for an orderly disposal, but shall in no case exceed twelve (12) months from the issuance of the order;

(f) In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally accepted rate-resetting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non- discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency.

In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

(i) For purposes of determining the rate base, the TRANSCO or any distribution utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however*, That ERC may give an exemption in case of unusual devaluation: *Provided, further*, That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;
(ii) Interest expenses are not allowable deductions from permissible return on rate base;
(iii) In determining eligible cost of services that will be passed on to the end-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO and distribution utilities including systems losses, interruption frequency rates, and collection efficiency;
(iv) Further, in determining rate base, the TRANSCO or any distribution utility shall not be allowed to include management inefficiencies like cost of project delays not excused by *force majeure*, penalties and related interest during construction applicable to these unexcused delays; and
(v) Any significant operating costs or project investments of TRANSCO and distribution utilities which shall become part of the rate base shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest.

(g) Three (3) years after the imposition of the universal charge, ensure that the charges of the TRANSCO or any distribution utility shall bear no cross subsidies between grids, within grids, or between classes of customers, except as provided herein;

(h) Review and approve any changes on the terms and conditions of service of the TRANSCO or any distribution utility;

(i) Allow TRANSCO to charge user fees for ancillary services to all electric power industry participants or self-generating entities connected to the grid. Such fees shall be fixed by the ERC after due notice and public hearing;

(j) Set a lifeline rate for the marginalized end-users;

(k) Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;

(l) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers;

(m) Take any other action delegated to it pursuant to this Act;

(n) Before the end of April of each year, submit to the Office of the President of the Philippines and Congress, copy furnished the DOE, an annual report containing such matters or cases which have been filed before or referred to it during the preceding year, the actions and proceedings undertaken and its decision or resolution in each case. The ERC shall make copies of such reports available to any interested party upon payment of a charge which reflects the printing costs. The ERC shall publish all its decisions involving rates and anti-competitive cases in at least one (1) newspaper of general circulation, and/or post electronically and circulate to all interested electric power industry participants copies of its resolutions to ensure fair and impartial treatment;

(o) Monitor the activities of the generation and supply of the electric power industry with the end in view of promoting free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent, non-discriminatory and that any existing subsidies shall be divided pro-rata among all retail suppliers;

(p) Act on applications for or modifications of certificates of public convenience and/or necessity, licenses or permits of franchised electric utilities in accordance with law and revoke, review and modify such certificates, licenses or permits in appropriate cases, such as in cases of violations of the Grid Code, Distribution Code and other rules and regulations issued by the ERC in accordance with law;

(q) Act on applications for cost recovery and return on demand side management projects;

(r) In the exercise of its investigative and quasi-judicial powers, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross-ownership, anti-competitive practices, abuse of market positions and similar or related acts by any participant in the energy

sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act;

(s) Inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC;

(t) Perform such other regulatory functions as are appropriate in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, distribution utilities which are not publicly listed shall offer and sell to the public a portion not less than fifteen percent (15%) of their common shares of stocks: *Provided, however*, That generation companies, distribution utilities or their respective holding companies that are already listed in the PSE are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance; and

(u) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.

All notices of hearings to be conducted by the ERC for the purpose of fixing rates or fees shall be published at least twice for two successive weeks in two (2) newspapers of nationwide circulation.

In the present case, where there is no exercise of the ERC's quasi-judicial powers, the ERC is legally bound to enforce the rules and regulations of the DOE as authorized under the EPIRA. The ERC has no independence or discretion to ignore, waive, amend, postpone, or revoke the rules and regulations of the DOE pursuant to the EPIRA, **as it is hornbook doctrine that rules and regulations issued pursuant to law by administrative**

agencies, like the DOE, *have the force and effect of law.*[69] In fact, the first duty and function of the ERC under its charter is to "**enforce the implementing rules and regulations**" of the EPIRA as issued by the DOE. **Certainly, the ERC has no power to ignore, waive, amend, postpone, or revoke the policies, rules, regulations, and circulars issued by the DOE pursuant to the EPIRA.**

In any event, even in quasi-judicial cases, the ERC is bound to apply the policies, rules, regulations, and circulars issued by the DOE as the ERC has no power to ignore, waive, amend, postpone, or revoke the policies, rules, regulations, and circulars issued by the DOE pursuant to the EPIRA. To repeat, the DOE's rules, regulations, and circulars issued pursuant to the DOE's rule-making power under the EPIRA *have the force and effect of law which the ERC is legally bound to follow, whether the ERC is exercising executive, quasi-legislative, or quasi-judicial powers*.

Pursuant to the DOE's mandate under the EPIRA,[70] **the 2015 DOE Circular required all DUs to undergo CSP in**

---

[69] *Victorias Milling Co., Inc. v. Office of the Presidential Assistant for Legal Affairs*, 237 Phil. 306 (1987).

[70] Section 37 of the EPIRA reads:

SEC. 37. *Powers and Functions of the DOE*. — In addition to its existing powers and functions, the DOE is hereby mandated to supervise the restructuring of the electricity industry. In pursuance thereof, Section 5 of Republic Act No. 7638, otherwise known as "The Department of Energy Act of 1992," is hereby amended to read as follows:

(a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;

(b) Develop and update annually the existing Philippine Energy Plan, hereinafter referred to as 'The Plan', which shall provide for an integrated and comprehensive exploration, development, utilization, distribution, and conservation of energy resources, with preferential bias for

procuring PSAs. The DOE issued on 11 June 2015 the 2015 DOE Circular which took effect upon its publication on 30 June 2015.

---

environment-friendly, indigenous, and low-cost sources of energy. The plan shall include a policy direction towards the privatization of government agencies related to energy, deregulation of the power and energy industry, and reduction of dependency on oil-fired plants. Said Plan shall be submitted to Congress not later than the fifteenth day of September and every year thereafter;

(c) Prepare and update annually a Power Development Program (PDP) and integrate the same into the Philippine Energy Plan. The PDP shall consider and integrate the individual or joint development plans of the transmission, generation, and distribution sectors of the electric power industry, which are submitted to the Department: Provided, however, That the ERC shall have exclusive authority covering the Grid Code and the pertinent rules and regulations it may issue;

(d) Ensure the reliability, quality and security of supply of electric power;

(e) Following the restructuring of the electricity sector, the DOE shall, among others:

(i) Encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources;

(ii) Facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs;

(iii) In consultation with other government agencies, promote a system of incentives to encourage industry participants, including new generating companies and end-users to provide adequate and reliable electric supply; and

(iv) Undertake in coordination with the ERC, NPC, NEA and the Philippine Information Agency (PIA), information campaign to educate the public on the restructuring of the electricity sector and privatization of NPC assets.

(f) Jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the detailed rules governing the operations thereof;

(g) Establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources of all forms, whether conventional or non-conventional;

(h) Exercise supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of RA 7638;

The 2015 DOE Circular recognized that under the EPIRA, the DOE has the mandate to "**formulate such rules and regulations as may be necessary to implement the objectives of the EPIRA**,"[71] where the State policy is to "**[p]rotect the public interest as it is affected by the rates and services of**

(i) Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;

(j) Monitor private sector activities relative to energy projects in order to attain the goals of the restructuring, privatization, and modernization of the electric power sector as provided for under existing laws: *Provided*, That the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

(k) Assess the requirements of, determine priorities for, provide direction to, and disseminate information resulting from energy research and development programs for the optimal development of various forms of energy production and utilization technologies; (1) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;

(m) Formulate and implement a program for the accelerated development of non-conventional energy systems and the promotion and commercialization of its applications;

(n) Devise ways and means of giving direct benefit to the province, city, or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however*, That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements;

(o) Encourage private enterprises engaged in energy projects, including corporations, cooperatives, and similar collective organizations, to broaden the base of their ownership and thereby encourage the widest public ownership of energy-oriented corporations

(p) Formulate such rules and regulations as may be necessary to implement the objectives of this Act; and

(q) Exercise such other powers as may be necessary or incidental to attain the objectives of this Act.

[71] 2015 DOE Circular, Second Whereas Clause, par. (d).

electric utilities and other providers of electric power."[72] The 2015 DOE Circular reiterated the EPIRA's mandate that "all Distribution Utilities (DUs) shall have the obligation to supply electricity **in the least-cost manner to their Captive Market**, subject to the collection of retail rate du[l]y approved by the [ERC]."[73]

The 2015 DOE Circular mandated that DUs, including electric cooperatives, obtain their PSAs through CSP. Section 1 of the 2015 DOE Circular states the principles behind CSP:

> Section 1. General Principles. Consistent with its mandate, the DOE recognizes that Competitive Selection Process (CSP) in the procurement of PSAs by the DUs ensures security and certainty of electricity prices of electric power to end-users in the long-term. **Towards this end, all CSPs undertaken by the DUs shall be guided by the following principles**:
>
> (a) **Increase the transparency needed in the procurement process to reduce risks**;
>
> (b) **Promote and instill competition in the procurement and supply of electric power to all end-users**;
>
> (c) **Ascertain least-cost outcomes that are unlikely to be challenged in the future as the political and institutional scenarios should change**; and
>
> (d) **Protect the interest of the general public.** (Boldfacing added)

In sum, the *raison d'etre* of CSP is to ensure transparency and competition in the procurement of power supply by DUs so as to provide the least-cost electricity to the consuming public.

The clear text of Section 3 of the 2015 DOE Circular mandates the conduct of CSP after the Circular's effectivity on 30 June 2015.

> **Section 3. Standard Features in the Conduct of CSP.** ***After the effectivity of this Circular*****, all DUs shall procure PSAs only through**

---

[72] 2015 DOE Circular, First Whereas Clause, par. (d).

[73] 2015 DOE Circular, Third Whereas Clause.

CSP conducted through a Third Party duly recognized by the ERC and the DOE. In case of the [Electric Cooperatives (ECs)], the Third Party shall also be duly recognized by the National Electrification Administration (NEA).

x x x x x x x x x x x x
(Boldfacing and italicization added)

Section 5 of the 2015 DOE Circular states the non-retroactivity of the Circular's effect.

Section 5. Non-Retroactivity. This Circular shall have prospective application and will not apply to PSAs with tariff rates already approved and/or have been **filed for approval by the ERC before the effectivity of this Circular**. (Boldfacing added)

Clearly, PSAs filed with the ERC **after** the effectivity of the 2015 DOE Circular must comply with CSP as only PSAs filed "**before the effectivity**" of the Circular are excluded from CSP.

Section 10 of the 2015 DOE Circular provides for its effectivity

Section 10. Effectivity. This Circular shall take effect immediately upon its publication in two (2) newspapers of general circulation and shall remain in effect until otherwise revoked. (Boldfacing added)

The 2015 DOE Circular took effect upon its publication on 30 June 2015 in the *Philippine Daily Inquirer* and the *Philippine Star*.[74] Section 10 expressly declares that the "**Circular x x x shall remain in effect until otherwise revoked**." Indisputably, CSP became mandatory as of 30 June 2015. **Taking all these provisions together, all PSAs submitted to the ERC after the effectivity of the 2015 DOE Circular, on or after 30 June 2015, are required to undergo CSP.**

Since the 2015 DOE Circular was issued solely by the DOE, it is solely the DOE that can amend, postpone, or revoke the 2015 DOE Circular unless a higher authority, like the Congress

---

[74] http://www.nea.gov.ph/nea-ec-legal-conclave?download=1510%3Adoe-circular-no.-dc-2015-06-000-mandating-all-dus-to-undergo-competitive-selection-process-in-securing-psa(Accessed 1 July 2018).

or the President, amends or revokes it. **Certainly, the ERC has no authority to amend, postpone, or revoke the 2015 DOE Circular, including its date of effectivity.**

The Joint Resolution executed by DOE and the ERC on 20 October 2015 reiterated that the ERC shall issue the appropriate regulation to implement CSP. The Joint Resolution did not authorize the ERC to change the date of effectivity of the mandatory CSP. **The Joint Resolution expressly mandated that the "ERC shall issue the appropriate regulation *to implement*" CSP.** The power "**to implement**" CSP does not include the power **to postpone**the date of effectivity of CSP, which is expressly mandated in the 2015 DOE Circular to take effect upon the publication of the Circular. In fact, **to postpone** is the opposite of "**to implement**."

On the same date, 20 October 2015, the ERC issued the CSP Guidelines, which directed all DUs to conduct CSP in the procurement of their power supply for their captive markets. While the 2015 DOE Circular mandated CSP to take effect on 30 June 2015, **the ERC under the CSP Guidelines unilaterally postponed the date of effectivity of CSP from 30 June 2015 to 7 November 2015 or by 130 days**. This marks the first postponement by ERC of the effectivity of the mandatory CSP.

On 15 March 2016, however, the ERC, for the second time, unilaterally postponed the date of effectivity of the mandatory CSP. On this date the ERC issued the ERC Clarificatory Resolution, which restated the date of effectivity of CSP from 7 November 2015 to 30 April 2016. The second postponement of the effectivity of CSP from 7 November 2015 to 30 April 2016, or by 175 days, allowed DUs to enter into contracts during the period of postponement to avoid the mandatory CSP.

Why the ERC Acted in Excess of its Jurisdiction: Required Coordination Between the DOE and the ERC

The 2015 DOE Circular explicitly stated the instances that required joint action of the DOE and the ERC:

1. Recognition of the Third Party that will conduct the CSP for the procurement of PSAs by the DUs;
2. Issuance of guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs;
3. Issuance of guidelines and procedures for the recognition or accreditation of the Third Party that conducts the CSP; and
4. Issuance of supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP.

These instances are in Sections 3 and 4 of the 2015 DOE Circular:

Section 3. Standard Features in the Conduct of CSP. After the effectivity of this Circular, **all DUs shall procure PSAs only through CSP conducted through a Third Party duly recognized by the ERC and the DOE**. In case of the [Electric Cooperatives (ECs)], the Third Party shall also be duly recognized by the National Electrification Administration (NEA).

x x x x x x x x x

Within one hundred twenty (120) days from the effectivity of this Circular, **the ERC and [the] DOE shall jointly issue guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP as hereto provided**. x x x.

x x x x x x x x x

Section 4. Supplemental Guidelines. To ensure efficiency and transparency of the CSP Process [sic], **the ERC, upon its determination and *in coordination with the DOE* shall issue supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP**. The supplemental guidelines should ensure that any CSP and its outcome shall redound to greater transparency in the procurement of electric supply, and promote greater private sector participation

in the generation and supply sectors, consistent with the declared policies under EPIRA. (Boldfacing and italicization added)

In all the foregoing instances, the ERC is mandated to act jointly with the DOE. All these instances merely implement CSP, and do not postpone CSP or amend the 2015 DOE Circular, which are beyond mere implementation of CSP. If the ERC cannot act by itself on certain instances in the mere implementation of CSP, then the ERC certainly cannot act by itself in the postponement of CSP or in the amendment of the 2015 DOE Circular.

We reiterate that the ERC unilaterally postponed the effectivity of the mandatory CSP **twice**. The ERC made the first unilateral postponement on 20 October 2015, when it stated that PSAs already filed with the ERC on or before 7 November 2015 were not required to undergo CSP. This first unilateral postponement was from 30 June 2015 to 7 November 2015, or a period of postponement of 130 days. The ERC made a second unilateral postponement on 15 March 2016, when it restated the effectivity of the CSP Guidelines from 7 November 2015 to 30 April 2016, or a postponement of 175 days. **All in all, the ERC, by itself and without authorization from or coordination with the DOE, postponed the effectivity of the mandatory CSP for 305 days.**

The ERC thus amended, and not merely supplemented, the "guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP."[75] This is contrary to what the 2015 DOE Circular clearly intended – that CSP shall take effect upon the Circular's publication on 30 June 2015.

In its Comment to the present petition,[76] **the DOE denied any responsibility in the ERC's restatement of the effective date in the ERC Clarificatory Resolution**. The DOE stated:

---

[75] 2015 DOE Circular, Section 4.

[76] *Rollo*, pp. 1140-1152. Filed by the DOE's Assistant Secretary Gerardo D. Erguiza, Jr., Assistant Secretary Caron Aicitel E. Lascano, and Director III-Legal Services Arthus T. Tenazas.

15. **DOE is not aware of the cut-off date shift.** There is nothing on record that shows that ERC, contrary to Section 4 of the [2015] DOE Circular, coordinated with DOE in "restating" the date of effectivity to a later date, or from 7 November 2015 to 30 April 2016 for a period of one-hundred and seventy-five (175) days.[77] (Boldfacing added)

In contrast, there is nothing in the ERC's 60-page Comment[78] which disavowed DOE's allegation of non-coordination. If anything, the ERC's Comment underscored its assertion that **the ERC Clarificatory Resolution was solely issued by the ERC** supposedly as "a legitimate exercise of its quasi-legislative powers granted by law."[79]

We do not doubt that the ERC has the power to issue the appropriate regulation **to implement**CSP. This is clear from the EPIRA and the 2015 DOE Circular. Indeed, Justice Reyes in his Dissenting Opinion belabored this delegated power by underscoring the existence of the Joint Resolution. Justice Reyes misunderstood the delegation of power to mean that the Joint Resolution, by itself, is the required "coordination" in the implementation of CSP. Under this theory of Justice Reyes, the required "coordination" could take place **only once** upon the issuance of the Joint Resolution, and there can be no other coordination required in the future even if the ERC issues additional guidelines or regulations to implement CSP. This interpretation is obviously erroneous.

Moreover, **the ERC's power is neither absolute nor unbridled**. The ERC can only promulgate rules, but only insofar as it is authorized. Section 4(b) of Rule 3 of the Implementing Rules and Regulations of the EPIRA states:

---

[77] *Id*. at 1145.

[78] *Id*. at 1175-1234. Filed by the Office of the Solicitor General, and signed by Solicitor General Jose C. Calida, Assistant Solicitors General Raymund I. Rigodon and Henry S. Angeles, State Solicitor Lawrence Martin A. Albar, and Associate Solicitors Jose Angelo A. David, Lilibeth C. Perez-De Guzman, Maria Cristina T. Mundin, and Patricia Anne D. Sta. Maria.

[79] *Id*. at 1193.

Pursuant to Sections 43 and 45 of the Act, **the ERC shall promulgate such rules and regulations *as authorized thereby***, including but not limited to Competition Rules and limitations on recovery of system losses, and shall impose fines or penalties for any non-compliance with or breach of the Act, these Rules and the rules and regulations which it promulgates or administers. (Boldfacing and italicization added)

The 2015 DOE Circular **specifically stated** that **the ERC's power to issue CSP guidelines and procedures should be exercised "*in coordination with the DOE*."** The purpose of such coordination was "**to ensure efficiency and transparency in the CSP**." In short, the ERC could not issue CSP guidelines and procedures without coordination with DOE. The DOE has expressly declared that the ERC did not coordinate with DOE in issuing the ERC Clarificatory Resolution. The ERC's unilateral postponement of CSP for 305 days, allowing DUs to avoid the mandatory CSP to the great prejudice of the public, was clearly without authority and manifestly constituted grave abuse of discretion. Moreover, the ERC's unilateral postponement of CSP egregiously prevented "transparency" and resulted in inefficiency by delaying the implementation of CSP.

In their Dissenting Opinions, Justice Reyes[80] and Justice Caguioa[81] both use the DOE's letter dated 18 January 2016,[82]

---

[80] Dissenting Opinion, Justice A. B. Reyes, Jr., p. 5.

[81] Dissenting Opinion, Justice Caguioa, p. 32.

[82] *Rollo*, p. 1516. The letter reads:

18 January 2016

HON. JOSE VICENTE B. SALAZAR
Chairman
ENERGY REGULATORY COMMISSION
Pacific Center Building, San Miguel Avenue,
Ortigas Avenue, 1500 Pasig City, Metro Manila

Subject: ABRECO'S Interim Power Supply Requirement

Dear Chairman Salazar:

We refer to the attached communication we received from the Abra Electric Cooperative, Inc. (ABRECO) dated 24 November 2015, seeking DOE's

which requested the ERC to allow an electric cooperative (Abra Electric Cooperative, Inc. [ABRECO]) to directly negotiate with a power supplier despite the mandatory CSP, to justify the ERC's alleged power to amend the 2015 DOE Circular.

First, Justice Reyes overlooks the direction of the exercise of power in this instance: instead of the ERC acting alone, the DOE directed the ERC to take action on the matter. This letter proves that the power to amend the 2015 DOE Circular belongs to the DOE, not to the ERC. There is clearly a necessity for the ERC to coordinate with the DOE with regard to CSP matters.

Second, the DOE's endorsement to the ERC, as expressly stated in the DOE's letter dated 18 January 2016, "does not preclude the ERC from exercising its authority to evaluate ABRECO's PSAs and require further action, **such as subjecting ABRECO's PSA to a Swiss challenge**." A Swiss challenge is "a hybrid mechanism between the direct negotiation approach

---

endorsement to ERC to allow ABRECO to directly negotiate with a power supplier for their short-term requirement in its quest for a secured and affordable power supply and to consequently relieve them from full exposure with the WESM.

In its attached letter to ERC, ABRECO mentioned that AES is considering a 2MW Interim supply for the EC's power requirements for the next three (3) years from 2016 to 2018. We welcome this as a positive move for the improvement of ABRECO's operations, thus, we are endorsing for ERC's consideration to allow ABRECO to directly negotiate with a power supplier for its short-term requirement, albeit the requirement for competitive selection process. This request is made in consideration of ABRECO's situation as an ailing EC and to prevent its vulnerability to volatile WESM prices given its supply [is] sourced from the WESM currently. This endorsement, however, does not preclude the ERC from exercising its authority to evaluate the DUs Power Supply Agreements (PSAs) and require further action, such as, but not limited to subjecting ABRECO's PSA to a Swiss challenge.

For your consideration. Thank you.

Very truly yours,

(signed)
Zenaida Y. Monsad
Secretary

and the competitive bidding route."[83] It is a system where "[a] third party can bid on a project during a designated period but the original proponent can counter match any superior offer."[84] **In short, a Swiss challenge is a form of public bidding**, and is recognized in the implementing rules of laws such as Republic Act No. 6957, "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector and for Other Purposes," as amended by Republic Act No. 7718,[85] and Executive Order No. 146,[86] "Delegating to the National Economic and Development Authority (NED A) Board the Power of the President to Approve Reclamation Projects."[87]

Third, even assuming that the DOE letter exempted one specific DU from CSP, it did not authorize ERC to postpone the effectivity of the mandatory CSP for 305 days for all other DUs nationwide.

---

[83] *SM Land, Inc. v. Bases Conversion and Development Authority*, 741 Phil. 269, 288 (2014).

[84] Footnote 13 of *SM Land, Inc. v. Bases Conversion and Development Authority*, *id*.

[85] The term "Swiss Challenge" is also found in Section 3.2 of the Revised Implementing Rules and Regulations of Republic Act No. 6957, "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector and for Other Purposes," as amended by Republic Act No. 7718. Section 3.2 reads as follows

Responsibility of the PBAC. – The PBAC herein created shall be responsible for all aspects of the pre-bidding and bidding process in the case of solicited proposals, and for the comparative bidding process (otherwise known as the "Swiss Challenge"), in the case of Unsolicited Proposals, including, among others, the preparation of the bidding/tender documents, publication of the invitation to pre-qualify and bid, pre-qualification of prospective bidders, conduct of pre-bid conferences and issuance of supplemental notices, interpretation of the rules regarding the bidding, the conduct of bidding, evaluation of bids, resolution of disputes between bidders, and recommendation for the acceptance of the bid and/or for the award of the project.

[86] Repealed by Executive Order No. 74 (2019). The Philippine Reclamation Authority (PRA) shall be under the control and supervision of the Office of the President, while the power of the President to approve all reclamation projects shall be delegated to the PRA governing board.

Fourth, the term of exemption for ABRECO was only for three years, or from 2016 to 2018. The PSAs executed during ERC's unilateral 305-day postponement had terms that range from 20 to 21 years.

In view of the DOE's explicit assertion that the ERC did not coordinate with the DOE regarding the issuance of the ERC Clarificatory Resolution, and the ERC's corresponding silence on the same matter, we hold that the ERC's issuance of the ERC Clarificatory Resolution is void, because it was issued with grave abuse of discretion and in excess of its rule-making authority.

Why the ERC Gravely Abused its Discretion: Effective Twenty-Year Freeze of the

Mandatory CSP

The PSAs between Meralco and its power suppliers were executed and submitted to the ERC within 10 days prior to the restated 30 April 2016 deadline. The data collated in the above-mentioned tables are, as indicated in the footnotes, found in the pleadings submitted by the pertinent parties. These are judicial admissions, and are not findings of fact. According to the ERC Clarificatory Resolution, these PSAs are not required to comply with CSP.

Obviously, the rationale behind CSP – to ensure transparency in the purchase by DUs of bulk power supply so as to provide the consuming public affordable electricity rates – **acquires greater force and urgency when the DU or its parent company holds a significant equity interest in the bulk power supplier**. Such a parent-subsidiary relationship, or even a significant equity interest in the bulk power supplier, does not lend itself to fair and arms-length transactions between the DU and the bulk power supplier.

From Meralco's Comment, we see that the effect of the non-implementation of CSP is more widespread and far-reaching than what petitioners initially presented. **Non-implementation**

of CSP affects various areas of the country and not just Meralco's extensive service areas. Postponement of the effectivity of the mandatory CSP resulted in the exemption from CSP of a total of ninety (90) PSAs covering various areas of the country. Under the ERC Clarificatory Resolution, the dates of submission put these PSAs outside the ambit of the mandatory CSP for **at least 20 years** based on the contract terms of these PSAs.

In effect, the ERC Clarificatory Resolution signaled to DUs to rush the negotiations and finalize their PSAs with power generation companies. **Meeting the extended deadline would then render the 2015 DOE Circular mandating CSP *inutile* for at least 20 years. We cannot, in conscience, allow this to happen. To validate the ERC's postponement of CSP under the CSP Guidelines and the ERC Clarificatory Resolution means to validate ERC's arbitrary and unauthorized act of putting into deep freeze, for at least 20 years, the principles behind CSP to the great prejudice of the public.**[88]

---

[87] The term "Swiss Challenge" is also found in Section 6.2 of the Implementing Rules and Regulations of Executive Order No. 146, dated 13 November 2013, "Delegating to the National Economic and Development Authority (NEDA) Board the Power of the President to Approve Reclamation Projects." Section 6.2 reads as follows:

6.2. Reclamation projects identified under Sections 2.2.2, 2.3.2, 2.4 and 2.5, after undergoing a thorough review, evaluation and negotiation process and upon acceptance by the PRA Board, shall be subjected to a competitive challenge process ("Swiss Challenge") in accordance with existing laws such as but not limited to the BOT Law, NEDA JV Guidelines and based on the parameters as approved by the NEDA Board, upon recommendation of the PRA Board.

In all cases, the Public Bidding in Section 6.1 and competitive challenge process ("Swiss Challenge") under Section 6.2 shall be undertaken after the NEDA Board approval in compliance with the competitive bidding requirement of EO No. 146.

[88] 2015 DOE Circular, Section 1.

Why the ERC Gravely Abused its Discretion: The Whereas Clauses of the CSP Guidelines and of the ERC Clarificatory Resolution

The ERC's Comment states: "It must be emphasized that the considerable amount of time, money, and effort it took to enter into a PSA would have been wasted if the CSP [Guidelines] took effect immediately."[89] Granting that negotiations for the PSAs took considerable time, the issuance of the 2015 DOE Circular and of the CSP Guidelines was not conjured on a whim. We find that ERC's Comment fails to consider the efforts of both the DOE and the ERC prior to the issuance of the 2015 DOE Circular as well as the CSP Guidelines.

As early as 5 December 2003, the DOE issued Department Circular No. 2003-12-011, entitled "Enjoining All Distribution Utilities to Supply Adequate, Affordable, Quality and Reliable Electricity," which reiterated the state policy that "all DUs must x x x take cognizance and assume full responsibility to forecast, assure and contract for the supply of electric power within their respective franchise areas to meet their obligations as a DU particularly to their Captive Market."[90] **Moreover, the DOE had conducted a series of nationwide public consultations on the proposed policy on competitive procurement of electric power for all electricity end-users.**[91] The dates and manner of consultations, as well as the acts of the DOE and the ERC, were specifically mentioned in the Whereas Clauses of the CSP Guidelines, thus:

x x x x x x x x x

WHEREAS, on February 19, 2013, the ERC issued a Notice in ERC Case No. 2013-005 RM, entitled "In the Matter of the Promulgation of the Rules Governing the Execution, Review and

---

[89] *Rollo*, p. 1207.

[90] See 2015 DOE Circular, Fourth Whereas Clause.

[91] See 2015 DOE Circular, Seventh Whereas Clause.

Evaluation of Power Supply Agreements Entered Into by Distribution Utilities for the Supply of Electricity to their Captive Market" (PSA Rules), which was posted on the ERC's website, directing all interested parties to submit their respective comments on the first draft of the PSA Rules, not later than March 22, 2013;

WHEREAS, on various dates, the ERC received comments on the first draft of the PSA Rules from interested parties, namely: a) Cagayan Electric Power and Light Co., Inc. (CEPALCO); b) Visayan Electric Company, Inc. (VECO); c) Quezon Power (Philippines) Ltd. Co. (QPL); d) Power Source Philippines, Inc. (PSPI); e) National Grid Corporation of the Philippines (NGCP); f) Philippine Independent Power Producers Association, Inc. (PIPPA); g) Next Power Consortium, Inc.; h) SN Aboitiz Power Group (SNAP); i) Aboitiz Power Corporation (APC); j) Philippine Electricity Market Corporation (PEMC); k) Manila Electric Company (MERALCO); 1) Department of Energy (DOE); m) Philippine Rural Electric Cooperatives Associations, Inc. (PHILRECA); and n) National Rural Electric Cooperative Association (NRECA);

WHEREAS, on October 16, 2013, the ERC issued a Notice of Posting and Publication in the aforementioned case, which was posted on the ERC's website, directing all interested parties to submit their respective comments on the second draft of the PSA Rules and setting the same for public consultations on December 2, 2013 in Pasig City for the Luzon stakeholders and on December 5, 2013 in Cebu City for the Visayas and Mindanao stakeholders;

WHEREAS, on various dates, the ERC received comments on the second draft of the PSA Rules from interested parties, namely: a) PHILRECA; b) CEPALCO; c) VECO; d) QPL; e) PSPI; f) NGCP; g) PIPPA; vh) Next Power Consortium, Inc.;v i) SNAP; j) APC; k) PEMC; l) MERALCO; m) DOE; and n) NRECA;

WHEREAS, on January 27, 2014, the ERC issued a Notice of Posting and Public Consultation setting the second draft of the PSA Rules for public consultations on February 18, 20 and 24, 2014 in Davao City, Cebu City and Pasig City for the Mindanao, Visayas and Luzon stakeholders, respectively;

WHEREAS, on February 18, 20 and 24, 2014, the ERC conducted public consultations wherein the comments of the interested partied were discussed;

WHEREAS, the ERC, likewise, conducted Focus Group Discussions (FGDs) with the stakeholders on April 22 to 24, 2014 in Pasig City, May 6 to 8, 2014 in Cebu City, May 13 to 14, 2014 in Cagayan De Oro City and May 20 to 22, 2014 in Pasig City, to thoroughly discuss major issues in relation to the draft PSA Rules, such as: a) **the requirement of Competitive Selection Process (CSP)**; b) the proposed PSA template; c) the joint filing of PSA applications by the DUs and generation companies (GenCos); and d) the "walk-away" provision in the PSA, and the ERC likewise set the deadline for the submission of additional comments or position papers for May 30, 2014;

WHEREAS, on various dates, the ERC received position papers/ additional comments from interested parties, namely: a) PIPPA; b) APC; c) Mindanao Coalition of Power Consumers; and d) Association of Mindanao Rural Electric Cooperatives, Inc. (AMRECO);

WHEREAS, Article III of the draft PSA Rules requires the DU to undertake a transparent and competitive selection process before contracting for the supply of electricity to its captive market;

WHEREAS, in October 2014, **the DOE issued for comments its draft Circular on the proposed Demand Aggregation and Supply Auctioning Policy (DASAP)**;

WHEREAS, in the proposed DASAP, all DUS will be mandated to comply with the *auction requirement* prescribed therein and other rules and guidelines as may be prescribed in the implementation of the DASAP;

WHEREAS, by reason of the issuance of the DASAP and pending the finalization thereof, the ERC held in abeyance its action on ERC Case No. 2013-005 RM and final approval of the draft PSA Rules;

WHEREAS, on June 11, 2015, **the Department of Energy (DOE) issued Department Circular No. DC2015-06-008, *Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA)***;

WHEREAS, on October 20, 2015, **the DOE and the ERC approved the issuance of a Joint Resolution embodying their agreement on the CSP**, particularly, **that the ERC shall issue the appropriate regulations requiring the DUs to undertake a CSP for the PSAs they will enter into for the supply to their captive markets**;

WHEREAS, the ERC and the DOE are convinced that there is an advantage to be gained by having a CSP in place, in terms of ensuring transparency in the DUs' supply procurement and providing opportunities to elicit the best price offers and other PSA terms and conditions from suppliers[.][92] (Boldfacing and italicization added)

In stark contrast to the extensive consensus-building which attended the drafting of the 2015 DOE Circular and the CSP Guidelines, the ERC Clarificatory Resolution explicitly admitted that its issuance was *not* accompanied by any public consultation or focus group discussion. Rather, the ERC Clarificatory Resolution was unilaterally issued by the ERC, *without coordinating with DOE*, on the basis of "several letters from stakeholders." The stakeholders had no way of knowing the concerns of their peers as there was no interaction or discussion among the stakeholders.

WHEREAS, since the publication of the CSP [Guidelines] on 06 November 2015, the [ERC] has received several letters from stakeholders which raised issues on the constitutionality of the effectivity of the CSP [Guidelines], sought clarification on the implementation of the CSP and its applicability to the renewal and extension of PSAs, requested a determination of the accepted forms of CSP, and submitted grounds for exemption from its applicability, among others.

WHEREAS, after judicious study and due consideration of the different perspectives raised in the aforementioned letters, with the end in view of ensuring the successful implementation of the CSP for the benefit of consumers, DUs, and GenCos, the [ERC] has resolved to allow a period of transition for the full implementation of the CSP [Guidelines] and, as such, restates the effectivity date of the CSP [Guidelines] to a later date[.][93]

The CSP Guidelines did not, in the words of the OSG, "take effect immediately." Rather, it was the product of years of negotiation. The stakeholders were aware of the contents and the eventual implementation of CSP. Moreover, the CSP

---

[92] CSP Guidelines, Third to Seventeenth Whereas Clauses.

[93] ERC Clarificatory Resolution, Seventh and Eighth Whereas Clauses.

Guidelines, although signed on 20 October 2015, took effect on 7 November 2015, or 18 days after signing.

Why the ERC Gravely Abused its Discretion: Obligations of a Distribution Utility in the Electric Power Industry

The EPIRA divided the electric power industry into four sectors, namely: generation, transmission, distribution, and supply.[94] The distribution of electricity to end-users is a regulated common carrier business requiring a franchise.[95] We reiterate that the EPIRA mandates that a distribution utility has the obligation to supply electricity **in the least-cost manner to its captive market**, subject to the collection of distribution retail supply rate duly approved by the ERC.[96]

Republic Act No. 9209 granted Meralco a congressional franchise to construct, operate, and maintain a distribution system for the conveyance of electric power to the end-users in the cities and municipalities of Metro Manila, Bulacan, Cavite, and Rizal, and certain cities, municipalities, and barangays in Batangas, Laguna, Quezon, and Pampanga. **Meralco's franchise is in the nature of a monopoly because it does not have any competitor in its designated areas.** The actual monopolistic nature of Meralco's franchise was recognized and addressed by the framers of our Constitution, thus:

MR. DAVIDE: x x x

Under Section 15 on franchise, certificate, or any other form of authorization for the operation of a public utility, we notice that the restriction, provided in the 1973 Constitution that it should not be exclusive in character, is no longer provided. Therefore, **a franchise, certificate or any form of authorization for the operation of a public utility may be exclusive in character**.

---

[94] See Republic Act No. 9136, Section 5.

[95] See Republic Act No. 9136, Section 22.

[96] See Republic Act No. 9136, Section 23.

MR. VILLEGAS: I think, yes.

MR. DAVIDE: It may be "yes." **But would it not violate precisely the thrust against monopolies?**

MR. VILLEGAS: The question is, we do not include the provision about the franchise being exclusive in character.

MR. SUAREZ: This matter was taken up during the Committee meetings. **The example of the public utility given was the MERALCO. If there is a proliferation of public utilities engaged in the servicing of the needs of the public for electric current, this may lead to more problems for the nation. That is why the Commissioner is correct in saying that that will constitute an exemption to the general rule that there must be no monopoly of any kind, but it could be operative in the case of public utilities.**

MR. DAVIDE: **Does not the Commissioner believe that the other side of the coin may also be conducive to more keen competition and better public service?**

MR. SUAREZ: **The Commissioner may be right.**

MR. DAVIDE: Does not the Commissioner believe that we should restore the qualification that it should not be exclusive in character?

MR. SUAREZ: In other words, under the Commissioner's proposal, Metro Manila, for example, could be serviced by two or more public utilities similar to or identical with what MERALCO is giving to the public?

MR. DAVIDE: That is correct.

MR. SUAREZ: The Commissioner feels that that may create or generate improvement in the services?

MR. DAVIDE: Yes, because **if we now allow an exclusive grant of a franchise, that might not be conducive to public service**.

MR. SUAREZ: We will consider that in the committee level.

MR. MONSOD: With the Commissioner's permission, may I just amplify this.

MR. VILLEGAS: Commissioner Monsod would like to make a clarification.

MR. MONSOD: I believe the Commissioner is addressing himself to a situation where it lends itself to more than one franchise. **For**

example, electric power, it is possible that within a single grid, we may have different distribution companies. So the Commissioner is right in that sense that perhaps in some situations, non-exclusivity may be good for the public. But in the case of power generation, this may be a natural activity that can only be generated by one company, in which case, prohibiting exclusive franchise may not be in the public interest.[97] (Boldfacing added)

Section 5 of Republic Act No. 9209 provides that "[t]he retail rates to [Meralco's] captive market and charges for the distribution of electric power by [Meralco] to its end-users shall be regulated by and subject to the approval of the ERC." As the holder of a distribution franchise, Meralco is obligated to provide electricity **at the least cost** to its consumers. The ERC, as Meralco's rate regulator, approves the retail rates – comprising of power and distribution costs – to be charged to end-users. As we have demonstrated above, both Meralco and the ERC have been remiss in their obligations. Going through competitive public bidding as prescribed in the 2015 DOE Circular is the only way to ensure a transparent and reasonable cost of electricity to consumers.

Lest we forget, the ERC is expressly mandated in Section 43(o) of the EP1RA of "**ensuring that the x x x pass through of bulk purchase cost by distributors is *transparent***." The ERC's postponement of CSP twice, totaling 305 days and enabling **90 PSAs** in various areas of the country to avoid CSP for **at least 20 years**, directly and glaringly violates this express mandate of the ERC, resulting in the non-transparent, secretive fixing of prices for bulk purchases of electricity, to the great prejudice of the 95 million Filipinos living in this country as well as the millions of business enterprises operating in this country. This ERC action is a most extreme instance of grave abuse of discretion, amounting to lack or excess of jurisdiction, warranting the strong condemnation by this Court and the annulment of the ERC's action.

---

[97] III RECORD, CONSTITUTIONAL COMMISSION 261-262 (13 August 1986).

Absent compliance with CSP in accordance with the 2015 DOE Circular, the PSAs shall be valid only as between the DUs and the power generation suppliers, and shall not bind the DOE, the ERC, and the public for purposes of determining the transparent and reasonable power purchase cost to be passed on to consumers.

On 1 February 2018, the DOE issued Circular No. DC2018-02-0003 entitled "**Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreements for the Captive Market**" **(2018 DOE Circular)**. The DOE prescribed, in Annex "A" of this 2018 DOE Circular, the DOE's own CSP Policy in the procurement of power supply by DUs for their captive market **(2018 DOE CSP Policy)**. Section 16.1 of the 2018 DOE CSP Policy **expressly repealed Section 4 of the 2015 DOE Circular authorizing ERC to issue supplemental guidelines to implement CSP**.

In short, the DOE *revoked* the authority it delegated to the ERC to issue supplemental guidelines to implement CSP, and the DOE itself issued its own guidelines, the 2018 DOE CSP Policy, to implement CSP under the 2015 DOE Circular. This means that the CSP Guidelines issued by the ERC have become *functus officio* and have been superseded by the 2018 DOE CSP Policy. Under its Section 15, the 2018 DOE CSP Policy is expressly made to apply to "**all *prospective* PSAs**." The 2018 DOE Circular, including its Annex "A", took effect upon its publication on 9 February 2018. Thus, the 90 PSAs mentioned in this present case must undergo CSP in accordance with the 2018 DOE Circular, in particular the 2018 DOE CSP Policy prescribed in Annex "A" of the 2018 DOE Circular.

WHEREFORE, the petition for *certiorari* and prohibition is **GRANTED**. The first paragraph of Section 4 of Energy Regulatory Commission Resolution No. 13, Series of 2015 (CSP Guidelines), and Energy Regulatory Commission Resolution No. 1, Series of 2016 (ERC Clarificatory Resolution), are hereby declared **VOID *ab initio***. Consequently, all Power Supply Agreement applications submitted by Distribution Utilities to

the Energy Regulatory Commission on or after 30 June 2015 shall comply with the Competitive Selection Process in accordance with Department of Energy Circular No. DC2018-02-0003 (2018 DOE Circular) and its Annex "A". Upon compliance with the Competitive Selection Process, the power purchase cost resulting from such compliance shall retroact to the date of effectivity of the complying Power Supply Agreement, but in no case earlier than 30 June 2015, for purposes of passing on the power purchase cost to consumers.

SO ORDERED.

Bersamin, C. J., Peralta, del Castillo, Reyes, Jr., J., Hernando, Carandang, and *Lazaro-Javier, JJ.*, concur.

Perlas-Bernabe, J., see separate concurring opinion.

Leonen, J., concur, join *J. Carpio* and *J. Bernabe.*

Gesmundo, J., traveling on official business but left his vote for the opinion of Justice Carpio.

Caguioa and *Reyes, A. Jr., JJ.*, see dissenting opinion.

Jardeleza, J., no part.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur with the *ponencia* to the extent that the ***respondent*** **Energy Regulatory Commission (ERC) gravely abused its discretion when it issued ERC Resolution No. 01, Series of 2016,**[1] **which "restated" the date of effectivity of ERC Resolution No. 13, Series of 2015**,[2] entitled "A Resolution Directing All Distribution Utilities (DUs) to Conduct a Competitive Selection Process [(CSP)] in the Procurement of

---

[1] Entitled "A RESOLUTION CLARIFYING THE EFFECTIVITY OF ERC RESOLUTION NO. 13, SERIES OF 2015," issued on March 15, 2016.

[2] Issued on October 20, 2015.

their Supply to the Captive Market."[3] As will be herein discussed, absent the approval of and coordination with the Department of Energy (DOE), the ERC cannot suspend the effectivity of the CSP, which process was originally mandated under DOE Department Circular No. DC2015-06-0008,[4] entitled "Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA)" (DOE Circular). However, as will be elaborated upon below, I qualify my concurrence in that: (a) only ERC Resolution No. 01, Series of 2016 – and not the first paragraph of Section 4 of ERC Resolution No. 13, Series of 2015 – should be declared null and void; and (b) pursuant to the doctrine of operative fact, the effects of the PSAs already approved prior to the invalidity of ERC Resolution No. 01, Series of 2016, notwithstanding their CSP non-compliance, should be recognized.

As backgrounder, the CSP is essentially a regulation on the procurement of PSAs by the DUs [to ensure] security and certainty of electricity prices of electric power to end-users in the long term.[5] As presently defined in DOE Department Circular No. DC2018-02-0003[6] issued on February 1, 2018:[7]

> 3.8. "*Competitive Selection Process*" or "*CSP*" refers to the process wherein a Generation Company or, in the case of off-grid areas, New Power Provider, is awarded to supply electric power requirements of a DU through transparent and competitive bidding undertaken by a DU or by Aggregated DUs to secure supply of electricity based on the evaluation

---

[3] See *ponencia*, pp. 12-13.

[4] Issued on June 11, 2015.

[5] DOE Circular, Section 1.

[6] Entitled "ADOPTING AND PRESCRIBING THE POLICY FOR THE COMPETITIVE SELECTION PROCESS IN THE PROCUREMENT BY THE DISTRIBUTION UTILITIES OF POWER SUPPLY AGREEMENT FOR THE CAPTIVE MARKET."

[7] Section 3.8 of Department of Energy Circular No. DC2018-02-0003, Annex "A".

> of criteria adopted by the DUs in accordance with the requirements of this Policy. For purposes of, and throughout the Policy, the terms "*Competitive Bidding*" and "*CSP*" shall have the same meaning and shall be used interchangeably.

The CSP traces its roots to the policies mandated under Republic Act No. 9136,[8] otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA). Under the EPIRA, both the DOE and the ERC are authorized by law to issue and implement the proper rules in order to – among other policy objectives – "ensure transparent and reasonable prices of electricity in **a regime of free and fair competition** and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market."[9] In particular, the DOE is tasked to formulate the rules "necessary to implement the objectives of [EPIRA],"[10] whereas "[p]ursuant to Sections 43 and 45 of the [EPIRA], the ERC shall promulgate such rules and regulations as authorized thereby, including but not limited to Competition Rules and limitations on recovery of system losses x x x."[11]

As headlined in this case, the inaugural issuance meant to put the CSP in force is **DOE Department Circular No. DC2015-06-0008**, issued in June 2015. Section 3 thereof pertinently states that "[a]fter the effectivity of this circular [(which was on June 30, 2015 following its publication[12])], **all DUs shall procure PSAs only through CSP** conducted through a Third Party duly recognized by **the ERC and the DOE**."[13] In this regard, the same section provides that "[w]ithin one hundred

---

[8] Entitled "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES," approved on June 8, 2001.

[9] EPIRA, Chapter I, Section 2 (c); emphasis and underscoring supplied.

[10] EPIRA, Chapter III, Section 37 (p).

[11] Section 4 (b), Rule 3 of the EPIRA IRR.

[12] See *ponencia*, p. 5.

[13] Emphases supplied.

twenty (120) days from the effectivity of this Circular, **the ERC and DOE shall jointly issue** the guidelines and procedures for the aggregation of the [uncontracted] demand requirements of the DUs and the process of recognition or accreditation of the Third Party that conducts the CSP x x x."[14]

Related thereto, Section 4[15] of DOE Department Circular No. DC2015-06-0008 confers unto **the ERC the power to issue supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP**. Section 4, however, makes clear that still, the ERC shall exercise such power "upon its determination and in coordination with the DOE."[16] In addition, Section 6[17] of the DOE Circular also provides that monitoring of the compliance with the conditions of the CSPs will be exercised jointly by both the DOE and the ERC.

Based on the foregoing, it is therefore apparent that DOE Circular No. DC2015-06-0008 provides for the adoption of the CSP, but leaves the issuance of **supplemental guidelines and procedures for its design and execution** to the ERC **after** it has coordinated with the DOE.

On October 20, 2015, or within one hundred twenty (120) days from the effectivity of the DOE Circular, the DOE and ERC issued Joint Resolution No. 1, which provides that the ERC, by agreement of the DOE and the ERC, "shall issue the **appropriate regulations to implement the [CSP]**."[18]

---

[14] Emphases and underscoring supplied.

[15] Repealed under Section 16.1 of DOE Department Circular No. DC2018-02-0003.

[16] Underscoring supplied.

[17] Section 6. Monitoring, Enforcement and Compliance. The DOE through the Electric Power Industry Management Bureau (EPIMB), together with the ERC, shall monitor compliance with the conditions of the CSPs and the compliance with the provisions of PSAs.

[18] Joint Resolution No. 1, Section 1; emphasis and underscoring supplied.

Given **(1)** the rule-making authority of the DOE and the ERC under the EPIRA, and **(2)** the circumstantial trajectory of the issuances on the CSP, it is thus fairly apparent that **the term "appropriate regulations" under Section 1 of Joint Resolution No. 1 should only pertain to the supplemental guidelines and procedures for the design and execution of the CSP**[19] **that the ERC is empowered to issue in coordination with the DOE**. To my mind, Section 1 should not be construed as a blanket grant of authority by the DOE to the ERC to issue whatever guidelines the latter deems fit for the implementation of the CSP. *To adopt this latter view would be tantamount to an isolated reading of a provision that is impervious to the context under which it was formulated. Worse, this construction tends to effectively undermine the DOE's role in the process of promulgating rules to advance the EPIRA's policy objectives on fair competition.*

In fact, it deserves pointing out that the ERC issued **Resolution No. 13, Series of 2015 on the same day** (*i.e.*, October 20, 2015) **that Joint Resolution No. 1 was passed**. To recall, ERC Resolution No. 13, Series of 2015 is the resolution whose effectivity was "restated" by the assailed issuance herein, ERC Resolution No. 01, Series of 2016. In the "whereas clauses" of ERC Resolution No. 13, Series of 2015, DOE Circular No. DC2015-06-0008, which had originally set the parameters of authority of the DOE and the ERC anent the implementation of the CSP, was explicitly recognized, *viz.*:

> **WHEREAS**, on June 11, 2015, the Department of Energy (DOE) issued Department Circular No. [DC2015-06-0008], *Mandating All Distribution Utilities to Undergo Competitive Selection Process (CSP) in Securing Power Supply Agreements (PSA)*;
>
> **WHEREAS**, on October 20, 2015, the DOE and the ERC approved the issuance of a Joint Resolution embodying their agreement on the CSP, particularly, that the ERC shall issue the appropriate regulations

---

[19] Notably, however, as discussed in the *ponencia*, this authority has already been revoked under DOE Circular No. DC2018-02-0003; see p. 36 of the *ponencia*.

requiring the DUs to undertake a CSP for the PSAs they will enter into for the supply to their captive market;

WHEREAS, the ERC and the DOE are convinced that there is an advantage to be gained by having a CSP in place, in terms of ensuring transparency in the DUs' supply procurement and providing opportunities to elicit the best price offers and other PSA terms and conditions from suppliers;

x x x x x x x x x

As per its terms, ERC Resolution No. 13, Series of 2015 not only sets the guidelines for the design and execution of the CSP, but also clearly supplements DOE Department Circular No. DC2015-06-0008. Thus, it stands to reason that ERC Resolution No. 13, Series of 2015 is the embodiment of the phrase "appropriate regulations" contemplated under the Joint Resolution issued by both agencies to implement the CSP.

In this case, it is apparent that both the DOE and the ERC are intent on implementing the CSP. **DOE Department Circular No. DC2015-06-0008 already mandated that upon its effeetivity on June 30,2015, all DUs shall procure PSAs only through the CSP.**However, as noted in the *ponencia*, the ERC, unilaterally postponed the date of effectivity of the CSP from June 30, 2015 to November 7, 2015, marking the first postponement by the ERC of the effectivity of the mandatory CSP.[20] This appears to be in pursuance of the first paragraph of Section 4 of ERC Resolution No. 13, Series of 2015, which reads:

Section 4. Applicability. - The CSP requirement herein mandated shall not apply to PSAs already filed with the ERC as of the effectivity of this Resolution [(*i.e.*, November 7, 2015)]. For PSAs already executed but are not yet filed or for those that are still in the process of negotiation, the concerned DUs are directed to comply with the CSP requirement before their PSA applications will be accepted by the ERC.

---

[20] See *ponencia*, p. 24.

The implementation of the CSP requirement was further stalled by the ERC for another five (5) months, particularly, up until April 30, 2016, through the issuance of ERC Resolution No. 01, Series of 2016.[21] The main reason for this subsequent postponement was the "several letters from stakeholders"[22] received by the ERC expressing certain reservations anent the implementation thereof.

As I see it, ERC Resolution No. 01, Series of 2016 cannot qualify as a supplemental guideline for the design and execution of the CSP as contemplated under the ERC's delegated authority pursuant to Section 4 of DOE Department Circular No. DC2015-06-0008. Contrary to the very nature of a supplemental guideline, ERC Resolution No. 01, Series of 2016 does not merely add or clarify the existing regulations on the CSP, but rather completely halts its implementation. Accordingly, it cannot fall under the phrase "appropriate regulations" under Section 1 of Joint Resolution No. 1, as agreed upon by the DOE and the ERC. To reiterate, the ERC was not given sole discretion under Joint Resolution No. 1 to promulgate whatever rules it deems fit to implement the CSP. This is, in fact, further confirmed by the Comment of the DOE itself wherein it denied any responsibility in the ERC's restatement of the CSP's date of effectivity:

> 15. **DOE is not aware of the cut-off date shift.** There is nothing on record that ERC, **contrary to Section 4 of the [2015] DOE Circular**, coordinated with DOE in "restating" the date of the effectivity to a later date, or from 7 November 2015 to 30 April 2016 for a period of one-hundred and seventy-five (175) days.[23]

In fine, since the ERC had no authority to suspend the implementation of the CSP on its own, it gravely abused its discretion in issuing ERC Resolution No. 01, Series of 2016 and hence, ought to be declared void.

---

[21] See *id*.

[22] See 7th Whereas Clause, Resolution No. 01, Series of 2016.

[23] See *ponencia*, p. 26; emphasis supplied.

The *ponencia*, however, proceeds to also invalidate the first paragraph of Section 4 of ERC Resolution No. 13, Series of 2015, as the said provision marked the first postponement of the CSP implementation from June 30, 2015 (as per the original DOE Circular) to November 7, 2015. As the dispositive of the *ponencia* reads:

> **WHEREFORE,** the petition for *certiorari* and prohibition is **GRANTED**. The first paragraph of Section 4 of the Energy Regulatory Commission Resolution No. 13, Series of 2015 (CSP Guidelines), and the Energy Regulatory Commission Resolution No. 1, Series of 2016 (ERC Clarificatory Resolution), are hereby declared **VOID *ab initio***. Consequently, all Power Supply Agreement applications submitted by Distribution Utilities to the Energy Regulatory Commission on or after 30 June 2015 shall comply with the Competitive Selection Process in accordance with the Department of Energy Circular No. DC2018-02-0003 (2018 DOE Circular) and its Annex "A". Upon compliance with the Competitive Selection Process, the power purchase cost resulting from such compliance shall retroact to the date of effectivity of the complying Power Supply Agreement, but in no case earlier than June 30, 2015, for purpose of passing on the power purchase cost to consumers.[24]

Respectfully, I disagree with the holding anent the first paragraph of Section 4 of ERC Resolution No. 13, Series of 2015 because the validity of ERC Resolution No. 13, Series of 2015 was not questioned in the present petition. In any case, it is my view that there was nothing infirm about the failure to implement the CSP by June 30, 2015 and postponing the same to November 7, 2015. This is because the CSP could not have been implemented by the time the original DOE Circular took effect on June 30, 2015 given that there were no proper implementing guidelines at that time. Based on the records, it was only upon the issuance of ERC Resolution No. 13, Series of 2015 (which took effect later on November 7, 2015) that concrete guidelines on the CSP were set. Notably, this latter ERC Resolution was issued on the same day Joint Resolution No. 1 was issued by both the DOE and the ERC, and in this

---

[24] *Id.* at 36.

joint resolution, the authority of the ERC to issue the appropriate guidelines to implement the CSP, *by agreement of the DOE and the ERC*, was recognized. In fact, there is an express statement by the DOE in the original DOE Circular that the ERC was still to issue supplemental guidelines and procedures for the design and execution of the CSP to properly guide the DUs; hence, the immediate effectivity of the CSP requirement could not be reckoned as of June 30, 2015. Accordingly, for these reasons, only ERC Resolution No. 01, Series of 2016 – and not the first paragraph of Section 4 of ERC Resolution No. 13, Series of 2015 – should be declared null and void.

Also, albeit not explicitly expressed in the *ponencia*, I caution against the wholesale invalidation of PSAs which were non-compliant with the CSP requirement at the time the said process should have been carried out, which date the *ponencia* pegs on June 30, 2015. Being in the nature of a selection and qualification requirement, compliance with the CSP to already existing - more so, implemented - PSAs appears to be impossible, unless one invalidates the entire contract. Logically speaking, it is highly impracticable to reverse the consummation of acts already done. This being the case, it may be prudent to recognize the validity of the effects of the PSAs already approved prior to the invalidity of ERC Resolution No. 01, Series of 2016, notwithstanding their CSP non-compliance. Lest it be misunderstood, this does not necessarily mean that the approved PSAs[25] shall be valid and effective for their entire full 20 or 21-year term. The compromise to this matter is to only recognize these contracts' validity up until a new DU, *selected under the applicable CSP process*, has qualified to take-over the obligations for the remaining period in accordance with the appropriate transitory regulations to be issued by the proper governing agency/agencies. To my mind, this approach balances out the legalistic attribution of the questioned issuance with the practical impact that the afore-discussed declaration would have on the power industry and on a larger scale, the consuming public in general.

---

[25] See *id*. at. 29.

ACCORDINGLY, I vote to **GRANT** the petition based on the qualifications stated above. Energy Regulatory Commission Resolution No. 01, Series of 2016 should be declared **INVALID**for having been issued with grave abuse of discretion. Power Supply Agreements approved on or after November 7, 2015, despite non-compliance with the Competitive Selection Process (CSP) requirement, should not *per se* be invalidated, but shall be subject to the appropriate transitory regulations on the CSP to be issued by the proper governing agency/agencies.

DISSENTING OPINION

CAGUIOA, *J.*:

I dissent: for the principal reason that the *ponencia* fails to appreciate — and, in the process, unduly undermines — the singular role and duty of the Energy Regulatory Commission (ERC) to act as the industry's independent regulator that has, under the explicit language of the Electric Power Industry Reform Act of 2001[1] (EPIRA), the exclusive mandate as to the implementation, the specific requirements, and effectivity date, of the Competitive Selection Process (CSP) requirement. The decision here constitutes an unwarranted curtailment of the ERC's powers.

The issuance by the ERC of Resolution No. 1, s. 2016 (Resolution No. 1) creating a transition period for Distribution Utilities (DUs) to comply with the CSP requirement was a reasonable well thought-out response to the various concerns posed by DUs, Generation Companies (GenCos) and electric cooperatives which arose from the immediate implementation of the CSP. Accordingly, this issuance — that sought to correct what the ERC itself subsequently recognized as an untimely and unrealistic immediate imposition of a requirement that could

---

[1] Republic Act No. 9136, entitled "An Act Ordaining Reforms in the Electric Power Industry Amending for the Purpose Certain Laws and For Other Purposes" (EPIRA).

not reasonably be complied with — was not, as it cannot reasonably be categorized as, arbitrary, whimsical or capricious.

Indeed, it is a doctrine of long-standing that courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with regulation of activities coming under the special and technical training and knowledge of such agency.[2] For the exercise of administrative discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation.[3] ***This task can best be discharged by the government agency concerned and not by the courts.***[4]

With due respect, the Court oversteps its bounds when it, as here, annuls acts of regulators acting within the bounds of law and their areas of expertise. In ruling in the manner it did, the *ponencia* not only annulled the acts of the ERC but in fact acted as the regulator itself supplanting its wisdom for that of the agency tasked by law to regulate the energy industry and to assure a steady supply of electricity to the country. The *ponencia*, in essentially disapproving all the 90 Power Supply Agreements (PSAs) that have been submitted to the ERC between June 30, 2015 and April 30, 2016, has effectively imposed an impossible condition on the PSAs — that they should comply with Department of Energy (DOE) Circular No. DC2018-02-0003 (2018 DOE Circular) when all of them had already been negotiated and executed prior to the effectivity of the 2018 DOE Circular. How this unfortunate decision will impact on the country's electricity supply, only time will tell.

---

[2] *Yazaki Torres Manufacturing, Inc. v. Court of Appeals*, 526 Phil. 79, 88 (2006).

[3] *Bureau Veritas v. Office of the President*, 282 Phil, 734, 747 (1992).

[4] *Yazaki Torres Manufacturing, Inc. v. Court of Appeals*, *supra* note 2, at 88.

A backgrounder

To engender transparency and ensure reasonable prices of electricity in a regime of free and fair competition, the DOE, on June 11, 2015, issued DOE Department Circular No. DC2015-06-0008 (DOE Circular), which mandated the conduct of CSP as a prerequisite to the approval of a PSA. The DOE Circular likewise provided that the ERC, "upon its determination and in coordination with the DOE shall issue supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP."[5]

Subsequently, on October 20, 2015, the DOE and ERC jointly issued Joint Resolution No. 1 (Joint Resolution), entitled "*A Resolution Enjoining All Distribution Utilities to Conduct Competitive Selection Process (CSP) in the Procurement of Supply for their Captive Market*." Section 1 provides:

Section 1. Competitive Selection Process. Consistent with their respective mandates, the DOE and ERC recognize that Competitive Selection Process (CSP) in the procurement of PSAs by the DUs engenders transparency, enhances security of supply, and ensures stability of electricity prices to captive electricity end-users in the long-term. **Consequently, by agreement of the DOE and ERC, the ERC shall issue the appropriate regulations to implement the same.** (Emphasis and underscoring supplied)

On the same date, the ERC issued Resolution No. 13, s. 2015 (Resolution No. 13) which provided that, pending the issuance of a prescribed CSP, any DU may adopt any accepted form of CSP subject only to minimum standards to be included in the terms of reference. Resolution No. 13 provided that for "PSAs already executed but are not yet filed or for those that are still in the process of negotiation, the concerned DUs are directed to comply with the CSP requirement before their PSA applications will be accepted by the ERC."[6] It also provided

---

[5] DOE Circular, Sec. 4.

[6] ERC Resolution No. 13, Sec. 4.

that it shall be effective immediately following its publication in a newspaper of general circulation in the Philippines,[7] which publication was done on November 6, 2015.

However, when various concerns were raised by stakeholders, the ERC addressed these concerns by restating or moving the effectivity of the CSP implementation under Resolution No. 13, from November 7, 2015 to April 30, 2016, through the issuance of Resolution No. 1 which it issued on March 15, 2016.

The Petition assails Resolution No. 1 for having allegedly been issued with grave abuse of discretion.

The *ponencia* rules that the ERC committed grave abuse of discretion when it issued Resolution No. 1, and goes even beyond the issues of the petition, by declaring as void *ab initio* the first paragraph of Section 4 of Resolution No. 13. The *ponencia* then directs that all PSAs submitted to the ERC on or after June 30, 2015 should comply with the CSP requirement following 2018 DOE Circular, particularly its Annex "A".

As stated at the outset, and for the reasons itemized below, I dissent.

The present case involves questions of fact not cognizable by this Court

At the outset, it should be pointed out that the present case contains several factual matters that are **not** cognizable by the Court, and which should be threshed out before the appropriate forum. Whether the moving of the effective date of the CSP effectively puts the requirement into a "deep freeze," as maintained by the *ponencia*, is a factual matter that cannot intelligently be resolved by the Court. As to whether the restatement of the effectivity date of the CSP affected, or will continue to affect, the supply of electricity for the entire country is another matter that should be properly ventilated before a court equipped to receive evidence. As well, the problems that the DUs faced in the immediate effectivity of the requirement

---

[7] *Id*.

— which led them to seek exemption from the CSP requirement, and which later on prompted the ERC to issue Resolution No. 1 — are also better appreciated in the context of actual evidence. In addition, whether the restatement of the effectivity date of the CSP was reasonable, or effective in guaranteeing the steady supply of electricity for the entire country is a factual matter that demands the presentation of evidence. All these factual matters need to be addressed before the Court can even begin to determine whether the ERC's act of issuing Resolution No. 1 can be considered to have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

These factual contentions cannot be resolved in the petition at hand which is an ***original*** petition for *certiorari* and prohibition filed ***directly*** to this Court. As the Court *En Banc* recently held in *Gios-Samar, Inc. v. DOTC*[8] (*Gios-Samar*):

> 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* (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, 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 of the lower courts or regulatory agencies.** 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.[9] (Emphasis and underscoring supplied)

---

[8] G.R. No. 217158, March 12, 2019.

[9] *Id.* at 14.

Thus, the *ponencia* committed a grave error in taking cognizance of the petition as it violates the long-standing doctrine of hierarchy of courts — a doctrine that, according to the pronouncement of the Court in *Gios-Samar*, is not simply a matter of policy but is, in fact, a constitutional imperative. This is so because, to borrow the language of the Court in *Gios-Samar*, the Court's "***sole*** role is to apply the law based on the **findings of facts broughtbefore us**."[10] More importantly:

> x x x 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.[11]

The foregoing viewpoint from the lens of due process squarely applies in the present case considering that there are a number of cases, administrative and criminal — some of which have pending incidents before the Court — that are directly intertwined with the facts of the present case. Therefore, a finding that the ERC, as a body, committed grave abuse of discretion based on ***incomplete and contested facts***, would be unfair and would constitute a violation of due process for respondents and the several accused in the said cases.

---

[10] *Id*. at 35-36. Emphasis and underscoring supplied.

[11] *Id*. at 37.

Nature and procedure for approval of PSAs

PSAs are contracts between a DU and a power producer.[12] **PSAs**, which are bilateral power supply contracts, **are made subject to review by the ERC** precisely to promote true market competition and prevent harmful monopoly and market power abuse.[13]

The process to get ERC approval for PSAs, based on the ERC Rules, is as follows:

Even before an application is lodged with the ERC, the DUs and the power producers (or GenCos) have already negotiated and executed material documents that comprise their commercial agreements. In fact, the ERC Rules enumerate the numerous documents and information that should be submitted together with the application,[14] which include the following:

(a) Articles of Incorporation of Generation Company

(b) Securities and Exchange Commission (SEC) Certificate of Registration of the said Articles of Incorporation of Generation Company

(c) Latest General Information Sheet of Generation Company

(d) Board of Investment (BOI) Certificate of Registration of Generation Company

(e) Environmental Compliance Certificate (ECC) issued by the Department of Environment and Natural Resources (DENR) to the Generation Company

(f) Power Supply Agreement/Energy Conversion Agreement Contract (PSA/ECA)

(g) Details of the PSA/ECA

---

[12] ERC RULES OF PRACTICE AND PROCEDURE (ERC RULES), Rule 20(B), Sec. 1.

[13] EPIRA, Sec. 45.

[14] ERC RULES, Rule 20(B), Sec. 2.

1. Executive Summary
2. Sources of Funds/Financial Plans
   - 2.1. Debt/Equity Ratio
   - 2.2. Project Cost
   - 2.3. Annual Interest
   - 2.4. Computation of Return on Investment/ WACC
   - 2.5. Certification from the Bank/Lending Institution specifying the principal amortization, term and interest during the cooperation period of the loan agreement
3. Purchased Power Rate
   - 3.1. Breakdown of the base prices of Operation and Maintenance, Capacity Fee, Fixed Operation Fee, and Energy Fee (provide computations)
   - 3.2. Sample Computation of Power Rates with the supporting documents on the assumptions taken
   - 3.3. If applicable, basis/rationale of indexation and level of indexation
4. Cash flow specifying the following:
   - 4.1. Initial Costs
   - 4.2. Breakdown of Operating and Maintenance xpenses and
   - 4.3. Minimum Energy Off-take (MEOT)

(i) All details on the procurement process of fuel including requests, proposals received, tender offers, etc.

(j) Copy of Related Agreements (i.e. Transmission Wheeling Contract, Fuel Supply Agreements, etc.)

(k) Certificate of Compliance (COC) issued by the ERC pursuant to the Guidelines for the issuance of COC for Generation Companies/Facilities

(l) Certification by NPC on whether or not Transition Supply Contract (TSC) capacity and energy are expected to be available during the contractual period (include relevant supporting documentation, data and analysis supporting each statement)

(m) All relevant technical and economic characteristics of the generation capacity, installed capacity, mode of operation, and dependable capacity of the plant

(n) Details on the procurement process used by the Distribution Utility leading to the selection of the Generation Company including request(s) for proposals, proposal received by the Distribution Utility, tender offers, etc.

(o) Details regarding transmission projects or grid connection projects necessary to complement the proposed generation capacity, including the parties that will develop and/or own such facilities, any costs related to such project, and specification of the parties responsible for recovery of any costs related to such projects

(p) Certification regarding the consistencies and inconsistencies between the proposed generation capacity and the [DOE's] Philippine Development Plan (PDP). Any inconsistency shall be supported by relevant analysis including but not limited to, forecasts and assessment of available generation capacity and technology mix.

(q) Details regarding the load forecast projections in accordance with the latest Distribution Development Plan of the Distribution Utility and the variability of those projections over the proposed contract period, including the estimation of the potential for a reduction in load supplied by the Distribution Utility due to retail competition. Any inconsistency shall be supported by relevant analysis.

(r) If the application is filed later than two years following the effectivity of the Guidelines for the Recovery of Costs for the Generation Component of the Distribution Utilities' Rates, the application must include an alternative Demand Side Management (DSM) program that could be implemented by the Distribution Utilities if approved by the ERC. The

> Distribution Utility shall submit the projected costs and benefits of the DSM program.[15] (Emphasis and underscoring supplied)

The foregoing shows that even before an application for a PSA is submitted for approval, the PSA itself and other supporting agreements have already been meticulously, extensively and heavily negotiated and executed by the DUs and the GenCos. Not only have these documents been executed, but the GenCos and the DUs have already spent considerable money and financial resources to complete the documentation, finalized bank loans for the funding of the project, and registered with several government agencies such as the Securities and Exchange Commission, Board of Investments and the Department of Environment and Natural Resources. **Thus, when the application is lodged, the PSA is already finalized by the parties, and the ERC, as a regulator, comes in and reviews each and every aspect of the transaction and may change or amend aspects of the transaction that will affect consumers.**

In fact, to highlight that the application will not prejudice consumers, the application for approval of PSAs between a DU and GenCos is required to include not only the details on the procurement process used by the DU that led to the selection of the GenCo, including request(s) for proposals, proposals received by the DU, tender offers, etc.,[16] **but also** the stipulations on the pricing, and **a statement of its effect on the overall rates of the applicant-utility once the contract is approved**.[17]

In addition to the foregoing documents, all applications for approval of PSAs must show compliance with the pre-filing requirements[18] before the ERC issues a Notice of Hearing to

---

[15] *Id.*

[16] *Id.*, Rule 20(B), Sec. 2(k).

[17] *Id.*, Rule 20(B), Sec. 1.

[18] *Id.*, Rule 6.

the parties and such other persons that the ERC may designate.[19] Such notice shall be published.[20]

During the hearing, the applicant is then required to present proof of compliance with the jurisdictional requirements of publication and notice to all affected parties.[21]

Pre-trial will then be conducted, which may be immediately after the applicant has submitted its compliance with the jurisdictional requirements.[22] A pre-trial order will then be issued.[23]

Thereafter, public hearings on the applications are conducted.[24]

During the hearings, the applicant presents its witnesses, who will be subject to cross-examination, re-direct examination, and re-cross examination.[25]

It is only after the reception of evidence and compliance with the foregoing requirements does the ERC then issue a decision on the application.[26]

Parties may request for provisional authority together with their application for approval of their PSA. The ERC resolves these requests within 75 days from the filing of the application, and if it issues a provisional authority, the ERC is mandated to start the hearing on the application within 30 days from the issuance of the provisional authority.[27] The ERC then resolves

---

[19] *Id*., Rule 13, Sec. 1.

[20] *Id*., Rule 13, Sec. 4.

[21] *Id*.

[22] *Id*., Rule 16, Sec. 1.

[23] *Id*., Rule 16, Sec. 5.

[24] *Id*., Rule 18, Sec. 1.

[25] *Id*., Rule 18.

[26] *Id*., Rule 20(B).

[27] *Id*., Rule 14, Sec. 3.

the application within 12 months from the issuance of the provisional authority.[28]

CSP is merely a tool; it is only one of the mechanisms to ensure the low cost of electricity

The *ponencia* rules that in the absence of competitive bidding or CSP there is no assurance of the reasonableness of the power rates charged to the consumers.[29]

This is farthest from the truth. With utmost respect to my esteemed colleagues, this is plainly and grievously erroneous.

Pursuant to its power, as provided by the EPIRA, to "[f]acilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs,"[30] and in recognition of the obligation of the DUs to "supply electricity in the least cost manner to its captive market,"[31] the DOE issued the DOE Circular that required all DUs to procure PSAs only through CSP.[32] The DOE Circular explains that CSP "ensures security and certainty of electricity prices of electric power to end-users in the long-term."[33] In fact, one of the DOE Circular's Whereas Clauses invokes the State policy, evinced in the EPIRA, to "ensure transparent and reasonable prices of electricity in a regime of free and fair competition and full public accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market."[34]

---

[28] *Id*.

[29] *Ponencia*, p. 13.

[30] EPIRA, Sec. 37(e)(ii).

[31] *Id*., Sec. 23.

[32] DOE Circular, Sec. 3.

[33] *Id*. Sec. 1.

[34] EPIRA, Sec. 2(c).

From the foregoing, it is true that the CSP was devised to provide electricity in the least-cost manner. However, contrary to the reasoning of the *ponencia*, it is **not** the only manner to achieve a reasonable cost of electricity.

Prior to the CSP requirement, DUs would secure their supply of electricity by entering into bilateral contracts with GenCos and the choice of which GenCo to have business with — or from which it will get their supply — rested on the sole discretion of the DUs. **This did not mean, however, that prior to the CSP requirement, the DUs had unbridled discretion on the price of electricity to impose on consumers.** Far from it. The EPIRA itself provides that DUs "shall have the obligation to supply electricity in the least cost manner to [their] captive market, ***subject to the collection of retail rate duly approved by the ERC***."[35] Further, the ERC was empowered by the EPIRA to review "bilateral power supply contracts" entered into by DUs, **and to likewise *impose price controls* and *order the dissorgement of excess profits*** where, for instance, the DU is found to be engaged in market power abuse or anti-competitive behavior.[36] Thus:

> SECTION 45. *Cross Ownership, Market Power Abuse and Anti-Competitive Behavior.* — No participant in the electricity industry or any other person may engage in any anti-competitive behavior including, but not limited to, cross-subsidization, price or market manipulation, or other unfair trade practices detrimental to the encouragement and protection of contestable markets.
>
> x x x x x x x x x
>
> To promote true market competition and prevent harmful monopoly and market power abuse, the ERC shall enforce the following safeguards:
>
> (a) No company or related group can own, operate or control more than thirty percent (30%) of the installed generating capacity of a grid and/or twenty-five percent (25%) of the national installed

---

[35] *Id*., Sec. 23.

[36] *Id*., Sec. 45.

generating capacity. "Related group" includes a person's business interests, including its subsidiaries, affiliates, directors or officers or any of their relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree;

(b) Distribution utilities may enter into bilateral power supply contracts subject to review by the ERC: *Provided*, That such review shall only be required for distribution utilities whose markets have not reached household demand level. **For the purpose of preventing market power abuse between associated firms engaged in generation and distribution, no distribution utility shall be allowed to source from bilateral power supply contracts more than fifty percent (50%) of its total demand from an associated firm engaged in generation** but such limitation, however, shall not prejudice contracts entered into prior to the effectivity of this Act. An associated firm with respect to another entity refers to any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity; and

(c) For the first five (5) years from the establishment of the wholesale electricity spot market, no distribution utility shall source more than ninety percent (90%) of its total demand from bilateral power supply contracts.

x x x x x x x x x

The ERC shall, *motu proprio*, monitor and penalize any market power abuse or anti-competitive or discriminatory act or behavior by any participant in the electric power industry. Upon finding that a market participant has engaged in such act or behavior, the ERC shall stop and redress the same.Such remedies shall, without limitation, include the imposition of price controls, issuance of injunctions, requirement of divestment or disgorgement of excess profits and imposition of fines and penalties pursuant to this Act.

The ERC shall, within one (1) year from the effectivity of this Act, promulgate rules and regulations providing for a complaint procedure that, without limitation, provides the accused party with notice and an opportunity to be heard. (Emphasis and underscoring supplied)

That the ERC possesses inherent and sufficient powers to control the price of electricity is supported not just by the

foregoing letter of the EPIRA, but also by the following deliberations of the Senate on the said law:

Senator Guingona. What about the term "excess profits"? What does that mean?

Senator Osmeña (J). Mr. President, obviously, if the GENCOs are charging more than what they should, — although I do not see how that could possibly happen, because the line starts actually with 29jj and it says "upon the finding," and there has to be a finding that a market participant has engaged in such act or behavior, meaning anticompetitive or discriminatory act or abuse of market power — the ERC shall stop and redress the same. Such remedies shall, without limitation, include the imposition of price controls, the issuance of injunctions, the requirement of divestment or disgorgement of excess profits and the imposition of fines and penalties.

Those are the remedies that the law allows the regulator to impose in the event that it has a finding of an abuse of market power, anticompetitive behavior or discriminatory action.

Senator Guingona. Supposing that the GENCO, which is owned 30% by a distributor, owns not only the shares of that distributor, but the distributor and the GENCO both commonly own the subtransformer and they enter into a contract at a certain price which is higher than the others. The distributor prefers to buy the electric power from the GENCO because the GENCO is reliable and has shown efficiency in the regular and constant delivery of power service. As a result, it gets more profits. Would that be an excess profit warranting price controls?

Senator Osmeña (J). Mr. President, there are a number of, shall we say, conditions or circumstances that the gentleman is talking about all in one situation. **But the fact is that, the price at which a distribution utility sells to its customers is regulated by the regulatory body. If that distribution utility buys power at a higher rate than the full price, the ERB will not allow it to charge the difference.** ***So, there is a control of how much it can sell this power because that control is coming from the regulatory authority*****.**

The question is whether, hypothetic-ally, a distribution company may choose on the ground of better service or reliability to buy power from a distribution company at a higher cost than its competitor. And the answer to that question is in the affirmative, Mr. President.

If the distribution company makes money in excess of what is generally accepted as the norm of return, then that would be what we call excess profits.

Senator Guingona. **So, the ERC would be in a position to impose price controls?**

Senator Osmeña (J). That is correct, Mr. President. I mean, in an event like that, the ERC, in fact, does impose. That is the very nature of the ERC. Because the approval of the rates on power being sold by a distributor is subject to the approval of the ERC. So, that is price control, Mr. President.

The electricity we buy has to be sold to us at a rate approved by the ERB right now. That is price control.[37] (Emphasis and underscoring supplied

)From the foregoing, it is crystal clear that the ERC holds sufficient power, ***as the independent regulator of the industry***, to ensure that the prices of electricity passed on to the consumers are at a reasonable cost, **even without the conduct of the CSP**.

Indeed, the EPIRA was passed as far back as 2001, or 18 years ago, and the DOE and ERC only conceptualized the CSP in recent years. **Throughout the years that the EPIRA was already in effect, *and while there was still no CSP requirement in place*, the ERC had been continuously doing its mandate of regulating the industry — particularly the DUs — to ensure that the prices passed on to the consumers are at a reasonable cost.**Again, this is supported by the EPIRA itself, as it provides:

SECTION 43. *Functions of the ERC*. — The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

x x x x x x x x x

---

[37] Deliberations of EPIRA, May 30, 2000 Session, pp. 8-10.

(f) **In the public interest, establish and enforce a methodology for setting**transmission and distribution wheeling rates and **retail rates for the captive market of a distribution utility**, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. **The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity.** The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. x x x[38] (Emphasis and underscoring supplied)

In fact, the Implementing Rules and Regulations (IRR) of the EPIRA empowers the ERC **to *constantly* and *continually* monitor and accordingly penalize any anti-competitive act that distorts competition or harms consumers**, thus:

Section 7. ERC Responsibilities.

x x x x x x x x x

(d) ERC shall, *motu proprio*, monitor and penalize any market power abuse or anti-competitive or unduly discriminatory act or behavior, or any unfair trade practice that distorts competition or harms consumers, by any Electric Power Industry Participant. Upon a finding of a *prima facie*case that an Electric Power Industry Participant has engaged in such act or behavior, the ERC shall after due notice and hearing, stop and redress the same. Such remedies shall, without limitation, include the separation of the business activities of an Electric Power Industry Participant into different juridical entities, the imposition of bid or price

---

[38] EPIRA, Sec. 43(f).

> controls, issuance of injunctions in accordance with the Rules of Court, divestment or disgorgement of excess profits, and imposition of fines and penalties pursuant to Section 46 of the Act.[39]

Further, bidding strategies that limit the market participation of a GenCo under conditions that will result in significant increases in market prices are considered anti-competitive behavior and unfair trade practice.[40] ***It is thus totally inaccurate and egregiously wrong to claim that the CSP "is the only way to ensure a transparent and reasonable cost of electricity to consumers."***[41]

Indeed, it bears stressing that the CSP is not required by the EPIRA itself. It is a mechanism which, in the DOE's and ERC's exercise of their wisdom, was envisioned to ***further*** ensure the low cost of electricity.

Stated differently, the CSP requirement is merely a ***policy decision*** by the DOE and implemented by the ERC to ensure the reasonableness of the cost of electricity. **It is only a tool. It is but one of the various means that the ERC may adopt to control the price of electricity and ensure that it is set at a reasonable cost.**

Premature to claim that the CSP has been put into deep freeze

The *ponencia* further rules that (a) postponing the effectivity of the CSP from June 30, 2015 to November 7, 2015 and again postponing the effectivity to April 30, 2016, or by 305 days, allows DUs to avoid the CSP, which took effect on June 30, 2015; and (b) the extension effectively freezes for 20 years the DOE-mandated CSP to the great prejudice of the public. The purpose of the CSP is to compel DUs to purchase their electric power at a transparent, fair, reasonable, and competitive cost,

---

[39] IRR of EPIRA, Rule 11.

[40] *Id*., Rule 11, Sec. 8(e).

[41] *Ponencia*, p. 35.

since this cost is passed on to consumers. The ERC's extension unconscionably placed this purpose in deep freeze for 20 years.[42]

Further, according to the *ponencia*, "[t]he postponement effectively prevented for at least 20 years the enforcement of a mechanism intended to ensure '*transparent and reasonable prices in a regime of free and fair competition*' x x x. In short, in the absence of CSP there is no transparency in the purchase by DUs of electric power, and thus there is no assurance of the reasonableness of the power rates charged to consumers."[43]

The *ponencia* goes further and argues that the non-implementation of the CSP will affect the entire country as there are 83 PSAs filed with the ERC from April 16, 2016 to April 29, 2016, excluding the seven PSAs where Meralco is a contracting party.[44]

I again disagree.

As discussed, the EPIRA and the ERC already have mechanisms **in place *long before* the decision to implement the CSP** to ensure that the public will not be prejudiced.

Here, the ERC has yet to approve the PSAs. In fact, as of the filing of ERC's Comment, none of them had yet been approved.[45] The mere submission of the application for the approvals of the PSAs does not necessarily mean that the PSAs have been approved or will be approved.

Also, even though the PSAs did not undergo the CSP, this will <u>not</u> mean that the public will be prejudiced. The applicant still has to show that the PSA it has entered into will still result in the least cost to its captive market. The ERC will still have to look into the many factors enumerated above,

---

[42] *Id*. at 13.

[43] *Id*.

[44] *Id*., at 8. As stated earlier, this argument is premised on factual assertions that have not been tested in the crucible of trial.

[45] *Rollo*, p. 1210.

including the procurement process of the distribution utility, in order to see how the proposal from the GenCo will be the least costly to its captive market. In fact, one of the first things that the applicant will submit to the ERC is the effect of the contract on the overall rates of the DU.

It is therefore premature, if not outrightly erroneous, to claim that the executions of the PSAs during the transition period have placed the CSP into "deep freeze" for the duration of the PSAs, and that the public will be prejudiced. During the transition period provided by Resolution No. 1, and even before the implementation of the CSP, the ERC, in compliance with its mandate under the EPIRA, has the power — ***nay, the duty*** — to ensure that any bilateral power supply contracts entered into by the DUs will be consistent with their mandate that they supply electricity to their captive market in the least cost manner.

Although the CSP is one manner by which this is attained, its non-application to the PSAs in this case — which, again, have yet to be approved — does not mean that the PSAs would prejudice the public. Once more, the EPIRA and its IRR are clear that acts that harm customers and those that prohibit participation of GenCos to increase market prices are prohibited. **These preceded the institution of the CSP and remain to be in force even if the CSP is implemented. Thus, *with or without the CSP*, the public is protected from practices that harm them or that would result in market increases arising from non-competitive practices.** As stated above, the ERC, among other powers, may direct the disgorgement of excess profits and impose price control mechanisms, all with the objective of ensuring the reasonableness of the price of electricity.

The ERC is an independent regulatory body separate and distinct from the DOE

The *ponencia* rules that the ERC does not have the power to supplant the policies of the DOE[46] and that ERC's powers are

[46] *Ponencia*, p. 16.

limited to the enforcement of rules and regulations of the EPIRA.[47] However, it should be noted that in issuing Resolutions Nos. 13 and 1, the ERC did *not* supplant any policy of the DOE.

First of all, it should be emphasized that the ERC, under the EPIRA, is a purely **independent**regulatory body performing the combined quasi-judicial, quasi-legislative and administrative functions in the electric industry

Section 38 of the EPIRA mandated the creation of an "independent, quasi-judicial regulatory body to be named the Energy Regulatory Commission." **To be sure, one of the most important changes introduced by the EPIRA in the restructuring of the energy industry was the creation of an *independent regulatory body*.** Section 2 of the EPIRA states:

> SECTION 2. Declaration of Policy. — It is hereby declared the policy of the State:
>
> x x x x x x x x x
>
> (j) To establish a **strong** and **purely independent regulatory body** and system to ensure consumer protection and enhance the competitive operation of the electricity market x x x. (Emphasis and underscoring supplied)

The deliberations of the Senate on the EPIRA also reveal that it was the intention of the legislature to create a regulatory body **that is *independent* and *separate from* the DOE**:

> Senator Guingona. I thank the gentleman for that. The Distribution Code, however, shall be prepared by the Energy Regulatory Commission (ERC) and the wheeling rates and connection fees from the residents of the mountaintop will have to be approved by the ERC.
>
> Senator Osmeña (J). That is correct, Mr. President.
>
> Senator Guingona. We were under the impression before when we were deliberating on the Energy Regulatory Authority that it was

---

[47] *Id*. at 21.

the Energy Regulatory Authority that would impose or determine the prices of electricity for distributors.

Senator Osmeña (J). Mr. President, I am sorry for the confusion. When we passed on Second Reading the Energy Regulatory Authority bill, the suggestion, I think, made on the Floor of Sen. Serge Osmeña was that all regulatory bodies would be referred to uniformly. I think we agreed that all of them would be referred to as a commission.

Anyway, Mr. President, whether we call it as a board, a commission or an authority, it is the regulator or the regulatory body.

Senator Guingona. I thank the gentleman for that, Mr. President. But there seems to be some difference because the Energy Regulatory Commission would be under the Department of Energy or attached to it and **our concept of a regulatory body, under the previous interpellations, was that it was going to be an independent body, independent from any department, independent from pressure from the Executive so that it could really fix the rational price for electricity**.

Senator Osmeña (J). Mr. President, in the bill that we have approved on Second Reading on the energy regulatory body — whatever we want to call it — we have provided for as much independence as we could possibly provide. That bill has only been approved precisely on Second Reading so that we may revisit, if we may want to, whatever provisions therein we want now to discuss after having gone through this bill. Because what we have before us is the last bill that we expect to take up in this session.[48] (Emphasis and underscoring supplied)

In *Freedom From Debt Coalition v. ERC*[49] (*Freedom From Debt Coalition*), the Court **already recognized** that the independence of the ERC was part and parcel of the objectives of the EPIRA:

Thus, the EPIRA provides a framework for the restructuring of the industry, including the privatization of the assets of the National

---

[48] Deliberations of EPIRA, May 29, 2000 Session, pp. 31-32.

[49] 476 Phil. 134 (2004).

Power Corporation (NPC), the transition to a competitive structure, and the delineation of the roles of various government agencies and the private entities. The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply. Corollarily, the NPC generating plants have to privatized and its transmission business spun off and privatized thereafter.

In tandem with the restructuring of the industry is the establishment of "a strong and purely independent regulatory body." Thus, the law created the ERC *in place of* the Energy Regulatory Board (ERB).[50] (Emphasis, italics and underscoring supplied)

The intent to *separate* the regulatory body from the DOE is further revealed from an analysis of both the letter of the law and the deliberations of the lawmakers.

Under the EPIRA, the ERC is empowered to perform the following functions:

SECTION 43. *Functions of the ERC*. — The ERC shall promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry. In appropriate cases, the ERC is authorized to issue cease and desist order after due notice and hearing. Towards this end, it shall be responsible for the following key functions in the restructured industry:

(a) Enforce the implementing rules and regulations of this Act;

(b) Within six (6) months from the effectivity of this Act, promulgate and enforce, in accordance with law, a National Grid Code and a Distribution Code which shall include, but not limited to, the following:

(i) Performance standards for TRANSCO O & M Concessionaire, distribution utilities and suppliers: *Provided*, That in the establishment of the performance standards, the nature and function of the entities shall be considered; and

(ii) Financial capability standards for the generating companies, the TRANSCO, distribution utilities and suppliers: *Provided*, That in the formulation of the financial capability

---

[50] *Id*. at 184-185.

standards, the nature and function of the entity shall be considered: *Provided, further*, That such standards are set to ensure that the electric power industry participants meet the minimum financial standards to protect the public interest. Determine, fix, and approve, after due notice and public hearings the universal charge, to be imposed on all electricity end-users pursuant to Section 34 hereof;

(c) Enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;

(d) Determine the level of cross subsidies in the existing retail rate until the same is removed pursuant to Section 74 hereof;

(e) Amend or revoke, after due notice and hearing, the authority to operate of any person or entity which fails to comply with the provisions hereof, the IRR or any order or resolution of the ERC. In the event a divestment is required, the ERC shall allow the affected party sufficient time to remedy the infraction or for an orderly disposal, but shall in no case exceed twelve (12) months from the issuance of the order;

(f) **In the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities.** The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

(i) For purposes of determining the rate base, the TRANS CO or any distribution utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however*, That ERC may give an exemption in case of unusual devaluation: *Provided, further*, That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;

(ii) Interest expenses are not allowable deductions from permissible return on rate base;

(iii) In determining eligible cost of services that will be passed on to the end-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO and distribution utilities including systems losses, interruption frequency rates, and collection efficiency;

(iv) Further, in determining rate base, the TRANSCO or any distribution utility shall not be allowed to include management inefficiencies like cost of project delays not excused by *force majeure*, penalties and related interest during construction applicable to these unexcused delays; and

(v) Any significant operating costs or project investments of the TRANSCO and distribution utilities which shall become part of the rate base shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest.

(g) Three (3) years after the imposition of the universal charge, ensure that the charges of the TRANSCO or any distribution utility shall bear no cross subsidies between grids, within grids, or between classes of customers, except as provided herein;

(h) Review and approve any changes on the terms and conditions of service of the TRANSCO or any distribution utility;

(i) Allow the TRANSCO to charge user fees for ancillary services to all electric power industry participants or self-generating entities connected to the grid. Such fees shall be fixed by the ERC after due notice and public hearing;

(j) Set a lifeline rate for the marginalized end-users;

(k) Monitor and take measures in accordance with this Act to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;

(l) Impose fines or penalties for any non-compliance with or breach of this Act, the IRR of this Act and the rules and regulations which it promulgates or administers;

(m) **Take any other action delegated to it pursuant to this Act;**

(n) Before the end of April of each year, submit to the Office of the President of the Philippines and Congress, copy furnished the DOE, an annual report containing such matters or cases which have been filed before or referred to it during the preceding year, the actions and proceedings undertaken and its decision or resolution in each case. The ERC shall make copies of such reports available to any interested party upon payment of a charge which reflects the printing costs. The ERC shall publish all its decisions involving rates and anti-competitive cases in at least one (1) newspaper of general circulation, and/or post electronically and circulate to all interested electric power industry participants copies of its resolutions to ensure fair and impartial treatment;

(o) **Monitor the activities in the generation and supply of the electric power industry with the end in view of promoting free market competition** and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent, non-discriminatory and that any existing subsidies shall be divided pro-rata among all retail suppliers;

(p) **Act on applications for or modifications of certificates of public convenience and/or necessity, licenses or permits of franchised electric utilities in accordance with law and revoke, review and modify such certificates, licenses or permits in appropriate cases**, such as in cases of violations of the Grid Code, Distribution Code and other rules and regulations issued by the ERC in accordance with law;

(q) Act on applications for cost recovery and return on demand side management projects;

(r) In the exercise of its investigative and quasi-judicial powers, act against any participant or player in the energy sector for violations of any law, rule and regulation governing the same, including the rules on cross-ownership, anti-competitive practices, abuse of market

positions and similar or related acts by any participant in the energy sector or by any person, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted pursuant to this Act;

(s) Inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC;

(t) Perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, distribution utilities which are not publicly listed shall offer and sell to the public a portion not less than fifteen percent (15%) of their common snares of stocks: *Provided, however*, That generation companies, distribution utilities or their respective holding companies that are already listed in the PSE are deemed in compliance. For existing companies, such public offering shall be implemented not later than five (5) years from the effectivity of this Act. New companies shall implement their respective public offerings not later than five (5) years from the issuance of their certificate of compliance; and

(u) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector. (Emphasis and underscoring supplied)

From the foregoing functions, it is unequivocally clear that the EPIRA intended the ERC to be the **body in charge of regulating the participants in the energy sector, particularly the DUs**. In contrast to this regulatory role of the ERC, the functions of the DOE[51] are mainly on policy-making and

---

[51] SECTION 37. *Powers and Functions of the DOE.* — In addition to its existing powers and functions, the DOE is hereby mandated to supervise the restructuring of the electricity industry. In pursuance

direction-setting. That the ERC is the regulator, on the one hand, and that the DOE is the policy-maker, on the other, is evident from the following exchange between Senators John Osmeña and Juan Ponce Enrile:

---

thereof, Section 5 of RA 7638 otherwise known as "The Department of Energy Act of 1992" is hereby amended to read as follows:

"(a) Formulate policies for the planning and implementation of a comprehensive program for the efficient supply and economical use of energy consistent with the approved national economic plan and with the policies on environmental protection and conservation and maintenance of ecological balance, and provide a mechanism for the integration, rationalization, and coordination of the various energy programs of the Government;

(b) Develop and update annually the existing Philippine Energy Plan, hereinafter referred to as 'The Plan', which shall provide for an integrated and comprehensive exploration, development, utilization, distribution, and conservation of energy resources, with preferential bias for environment-friendly, indigenous, and low-cost sources of energy. The plan shall include a policy direction towards the privatization of government agencies related to energy, deregulation of the power and energy industry, and reduction of dependency on oil-fired plants. Said Plan shall be submitted to Congress not later than the fifteenth day of September and every year thereafter;

(c) Prepare and update annually a Power Development Program (PDP) and integrate the same into the Philippine Energy Plan. The PDP shall consider and integrate the individual or joint development plans of the transmission, generation, and distribution sectors of the electric power industry, which are submitted to the Department: *Provided, however*, That the ERC shall have exclusive authority covering the Grid Code and the pertinent rules and regulations it may issue;

(d) Ensure the reliability, quality and security of supply of electric power;

(e) Following the restructuring of the electricity sector, the DOE shall, among others:

(i) Encourage private sector investments in the electricity sector and promote development of indigenous and renewable energy sources;

The President. Senator Enrile is recognized.

Senator Enrile. May I go back to page 3, line 19, DISTRIBUTION CODE.

(ii) Facilitate and encourage reforms in the structure and operations of distribution utilities for greater efficiency and lower costs;

(iii) In consultation with other government agencies, promote a system of incentives to encourage industry participants, including new generating companies and end-users to provide adequate and reliable electric supply; and

(iv) Undertake, in coordination with the ERC, NPC, NEA and the Philippine Information Agency (PIA), information campaign to educate the public on the restructuring of the electricity sector and privatization of NPC assets;

(f) Jointly with the electric power industry participants, establish the wholesale electricity spot market and formulate the detailed rules governing the operations thereof;

(g) Establish and administer programs for the exploration, transportation, marketing, distribution, utilization, conservation, stockpiling, and storage of energy resources of all forms, whether conventional or non-conventional;

(h) Exercise supervision and control over all government activities relative to energy projects in order to attain the goals embodied in Section 2 of RA 7638;

(i) Develop policies and procedures and, as appropriate, promote a system of energy development incentives to enable and encourage electric power industry participants to provide adequate capacity to meet demand including, among others, reserve requirements;

(j) Monitor private sector activities relative to energy projects in order to attain the goals of the restructuring, privatization, and modernization of the electric power sector as provided for under existing laws: *Provided*, That the Department shall endeavor to provide for an environment conducive to free and active private sector participation and investment in all energy activities;

(k) Assess the requirements of, determine priorities for, provide direction to, and disseminate information resulting from energy research and development programs for the optimal development of various forms of energy production and utilization technologies;

"DISTRIBUTION CODE" after the word "CODE" and before the article "a", insert AS PROMULGATED BY THE DEPARTMENT OF ENERGY AND ENFORCED AND IMPLEMENTED BY THE ENERGY REGULATORY AUTHORITY.

Senator Osmeña (J). Mr. President, in TRANSCO and again in the bill on the Energy Regulatory Board — in fact, this came out in our debates — we pointed out the historical situation that the predecessor of the Energy Regulatory Board was the Philippine Public Service Commission created by a Commonwealth Act and it was always the agency that promulgated this. Therefore, we are pursuing that historical situation with respect to the promulgation of the distribution and the grid code, Mr. President.

Senator Enrile. But I wonder whether this factor may tend to reconsider the position of the sponsor, Mr. President. **When the Public Service Commission Act was adopted, we did not have a Department of Energy. Therefore, that function was limited and given to the Public Service Commission. Since we have a Department of Energy that is now tasked to defining policies in the energy sector, I am just wondering whether it is not appropriate at this time to really reflect the presence of the Department of Energy and grant to the Department of Energy the authority and initiative to promulgate the Distribution Code.** And the enforcement and implementation of it shall be done by the Energy Regulatory Authority which is actually the successor of the Public Service Commission.

Senator Osmeña (J). Mr. President, that is a debate that the committee had to face in the process of hearings. **Precisely, we were of the mind that the Department of Energy sets policies.** It prepares the power development plans. It sets goals for the country.

The manner of the regulation of a distribution utility, Mr. President, which is the essence of the distribution code — it tells the distribution utility what it can and what it cannot do — **is a matter that belongs to the Energy Regulatory Board**.

I am sorry but this matter has been a settled issue. I hope Senator Enrile will understand.

Senator Enrile. I thank the distinguished sponsor for that, Mr. President.

If that is the position of the sponsor, Mr. President, I will not insist on my proposed amendment.

The President. Thank you, Senator Enrile.[52] (Emphasis and underscoring supplied)

In the deliberations for another part of the EPIRA, the issue of whether the DOE can dabble in matters referring to distribution and DUs — a matter that is within the exclusive jurisdiction of the ERC — again surfaced:

The President. Senator Guingona is recognized for an anterior amendment.

Senator Guingona. On line 11, after the word "generation" comma(,), insert the word DISTRIBUTION so that it will read: "repair and maintenance of generation, DISTRIBUTION and transmission facilities."

(l) Formulate and implement programs, including a system of providing incentives and penalties, for the judicious and efficient use of energy in all energy-consuming sectors of the economy;

(m) Formulate and implement a program for the accelerated development of non-conventional energy systems and the promotion and commercialization of its applications;

(n) Devise ways and means of giving direct benefit to the province, city, or municipality, especially the community and people affected, and equitable preferential benefit to the region that hosts the energy resource and/or the energy-generating facility: *Provided, however*, That the other provinces, cities, municipalities, or regions shall not be deprived of their energy requirements;

(o) Encourage private enterprises engaged in energy projects, including corporations, cooperatives, and similar collective organizations, to broaden the base of their ownership and thereby encourage the widest public ownership of energy-oriented corporations;

(p) Formulate such rules and regulations as may be necessary to implement the objectives of this Act; and

(q) Exercise such other powers as may be necessary or incidental to attain the objectives of this Act."

[52] Deliberations of EPIRA, June 5, 2000 Session, pp. 56-57.

The President. What does the sponsor say?

Senator Osmeña (J). Mr. President, we would like to read the whole paragraph: "The Power Development Program refers to the indicative plan for managing electricity demands through energy efficient programs and for upgrading, expansion, rehabilitation, repair, and maintenance of generation and transmission facilities formulated and updated yearly by the DOE in coordination with the generation, transmission, and utility companies."

When we add the word DISTRIBUTION, Mr. President, are we, therefore, saying that the PDP is a program which would involve rehabilitation, repair, and maintenance of generation, DISTRIBUTION, and transmission facilities?

Again, Mr. President, I am sorry to state that this is a back-door attempt of the DOE to a covetous desire to take over the promulgation of the distribution rules.

Senator Guingona. This refers to the Power Development Program.

Senator Osmeña (J). Yes, Mr. President, but it says that it provides for the upgrading, expansion, rehabilitation, repair, and maintenance. ***Makikialam na naman sila sa distribution.***

The President. So, the sponsor is not accepting the Guingona amendment?

Senator Osmeña (J). No, Mr. President.

Senator Guingona. May I know the reason again? Because if it is a Power Development Program, I think it is logical to include distribution.

Senator Osmeña (J). Mr. President, power development program....

Senator Guingona. It is only a plan.

Senator Osmeña (J). **One has to appreciate the ingenuity of the bureaucracy. One of the most heated arguments within government agencies on this bill, Mr. President, has been the result of the attempt of the DOE to take over distribution which our committee sat through.**

The PDP is a plan for managing demand through energy-efficient programs. Therefore, Mr. President, by allowing the DOE to plan energy-efficient programs, it intrudes into the functions of the ERB which controls distribution.

Senator Guingona. So, the Power Development Plan will include distribution?

Senator Osmeña (J). Mr. President, **the Power Development Plan** will include upgrading, expansion, rehabilitation, repair and maintenance of generation and transmission facilities. **It is just a plan to make available a certain amount of power. It is not a plan that will tell a distribution company where, how, or in what manner it should do its business.**

Senator Guingona. Yes, but the distribution is regulated, Mr. President. Therefore, if it is to be regulated, it must tell the company what is expected of it as far as standards are concerned.

Senator Osmeña (J). Mr. President, **standards are part and parcel of the responsibility of the ERB which promulgates a distribution code**.[53] (Emphasis and underscoring supplied

Quite evident from the foregoing is the intention of the legislature — reflected in both the letter of the law and the deliberations — to create an independent ERC that is separate from the DOE. Thus, while the DOE validly set the CSP requirement, acting within the scope of its powers as the industry's policy-maker, the EPIRA nonetheless lodges the particulars, *i.e.*, its implementation, the specific requirements, and its effectivity date, among others, to ERC — the industry's independent **regulator**.

Guided by the pronouncement of the Court in *Freedom From Debt Coalition* that "[i]n determining the extent of powers possessed by the ERC, the provisions of the EPIRA must not be read in separate parts"[54] and that "the law must be read in its entirety, because a statute is passed as a whole, and is animated by one general purpose and intent,"[55] **it is therefore unquestionable that EPIRA granted the ERC sufficient powers to set when the players in the energy sector will be bound by the policy set by DOE. This is especially true *in***

---

[53] Deliberations of EPIRA, June 5, 2000 Session, pp. 57-59.

[54] *Supra* note 49, at 196.

[55] *Id*.

this case **when, as will be shown below, the DOE itself did not set the timeframe for the effectivity of the policy it put in place**, and even, in fact, delegated to the ERC the power to issue supplemental guidelines for its implementation.

The ERC has the power to issue the assailed Resolution

As the independent regulator of the industry, the ERC therefore had the power and jurisdiction to state, and restate, the effectivity date of the requirement to undergo the CSP before a PSA between a GenCo and a DU is approved.

In this regard, the *ponencia*, however, rules that as soon as the DOE's Circular became effective on June 30, 2015, the CSP already became effective, so that all PSAs submitted on or after June 30, 2015 are required to undergo the CSP.[56] The *ponencia* further rules that the ERC therefore unilaterally moved the effectivity of the CSP twice — first, when it issued Resolution No. 13 and stated that it would be effective after its publication (it became effective on November 7, 2015) and second, when it issued Resolution No. 1 which moved the effectivity from November 7, 2015 to April 30, 2016.[57] Further, the *ponencia* rules that even if the ERC is empowered to issue the appropriate regulations to implement the CSP,[58] this is limited by the fact that such regulation should be issued in coordination with the DOE.[59]

Justice Bernabe adds, in her Separate Concurring Opinion, that the ERC had no sole discretion under Joint Resolution No. 1 to promulgate whatever rules it deemed fit to implement the CSP.[60] For Justice Bernabe, even if Joint Resolution No. 1 gave the ERC the power to issue the "appropriate guidelines to

---

[56] *Ponencia*, p. 24.

[57] *Id*. at 26.

[58] *Id*. at 27.

[59] *Id*.

[60] *J.* Perlas-Bernabe, Separate Concurring Opinion, p. 5.

implement the [CSP]", the term "appropriate guidelines" refers only to the "supplemental guidelines" that the ERC may issue for the design and execution of the CSP following Section 4 of the DOE Circular.[61] In the same breath, however, Justice Bernabe disagrees with the *ponencia*'s assertion that the CSP became effective on June 30, 2015 because, according to her, the Joint Resolution explicitly recognized the ERC's power to issue the specific guidelines on the CSP, and Resolution No. 13 is not being questioned in this petition thus rendering it impossible for the CSP to be effective by June 30, 2015.[62]

I agree with Justice Bernabe that the CSP could not have been effective by June 30, 2015 because by June 30, 2015, all that was set was only the policy that the CSP would be the mode of procuring PSAs. There were no guidelines yet on how the CSP was to be implemented. Indeed, Resolution No. 13 is not even questioned in this petition and the DOE Circular and the Joint Resolution are both clear in that the ERC still needed to issue the guidelines to implement the CSP, which it did in Resolution No. 13.

I, however, disagree that the ERC was required to coordinate with the DOE in setting the effective date of the implementation of the CSP.

I stress anew that Resolutions Nos. 13 and 1 cannot be said to have amended the DOE Circular **because the latter did not set the effective date or the start of the implementation of the CSP requirement**. The DOE Circular was a mere policy-setting document that put in place the CSP requirement, and it did not require that the CSP must be implemented by June 30, 2015, because by then no CSP guidelines existed. In fact, the effective date of the CSP Guidelines of November 7, 2015 was set only by Resolution No. 13 which, in turn, the ERC could *solely* issue precisely because it was empowered by the law,

---

[61] *Id.* at 4.

[62] *Id.* at 5.

i.e., the EPIRA. The power of the ERC to set the effectivity date was even recognized by the DOE in the Joint Resolution.

When it issued Resolution No. 13, the ERC had yet to realize the effects of an immediate imposition of the CSP requirement. When the ERC subsequently decided to suspend the implementation of the CSP requirement by a few months, through the issuance of Resolution No. 1, in response to various issues raised by the players in the energy industry, it was, therefore, still acting within its powers as granted by the EPIRA, **the exercise of which was not limited or contracted by the issuance of the Joint Resolution**.

There was thus no grave abuse of discretion when Resolutions Nos. 13 and 1 were issued because the ERC was acting within the scope of powers granted to it. It is erroneous to require the ERC to coordinate with, much less to seek the approval of, the DOE in connection with the issuance of Resolutions Nos. 13 and 1. **It simply did not, and does not, need to.**

That the ERC was **not required** to coordinate with the DOE with regard to the date of effectivity of the CSP is fundamentally anchored on the EPIRA which created the ERC **as a body *separate* and *distinct* from the DOE**. Again, at the risk of belaboring the point, even Joint Resolution No. 1 recognized the power of ERC to state and restate the effective date of the CSP through Resolution No. 13, and later on Resolution No. 1.

In sum, it is thus fundamentally erroneous to conclude that the ERC needed to coordinate with the DOE before issuing Resolutions Nos. 13 and 1 when:

(1) The resolutions affect, and deal with, how DUs conduct their business, which is a domain that is within the sole and exclusive jurisdiction of the ERC; and

(2) The ERC's power to issue them on its own was recognized by the Joint Resolution itself.

The grant of rule-making power necessarily includes the power to amend, revise, alter, or repeal the same

Further, in arguing that the ERC committed a grave abuse of discretion in restating the effectivity date of Resolution No. 13, petitioner, in effect, is saying that a body exercising quasi-legislative powers cannot suspend or revoke the rules and regulations it has itself promulgated once it has become effective. It is as if the rules and regulations issued by the ERC become *irrepealable* once issued. This lacks basis, and is undeniably absurd.

The legislative power has been described generally as the power to make, alter, and repeal laws.[63] The authority to amend, change, or modify a law is thus part of such legislative power.[64] It is the peculiar province of the legislature to prescribe general rules for the government of society.[65] However, the legislature cannot foresee every contingency involved in a particular problem that it seeks to address.[66] Thus, it has become customary for it to delegate to instrumentalities of the executive department, known as administrative agencies, the power to make rules and regulations.[67] This is because statutes are generally couched in general terms which express the policies, purposes, objectives, remedies and sanctions intended by the legislature.[68] The details and manner of carrying out the law are left to the administrative agency charged with its implementation.[69]

---

[63] *Yazaki Torres Manufacturing, Inc. v. Court of Appeals*, *supra* note 2, at 89.

[64] *Id.*

[65] *Id.*

[66] *Id.*

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

[68] *Id.* at 90.

[69] *Id.*

If the Congress itself, which possesses plenary legislative powers, cannot pass irrepealable laws,[70] there is more reason then to hold that entities exercising delegated or quasi-legislative powers are also covered by the same proscription.

As earlier established, the ERC has the power to issue rules and regulations as regards the implementation of the CSP. Accordingly, following the doctrine of necessary implication, this grant of express power to formulate implementing rules and regulations must necessarily include the power to amend, revise, alter, or repeal the same.[71] **This is to allow administrative agencies the needed flexibility in formulating and adjusting the details and manner by which they are to implement the provisions of a law, in order to make them more responsive to the times.**[72]

Therefore, the ERC, being vested with the power to promulgate rules and regulations concerning its mandate, is also necessarily vested with the power to amend, revise, alter or repeal the same. Thus, the creation of a transition period is within the powers of the ERC.

Given the foregoing discussion — that ERC had the power to issue Resolutions Nos. 13 and 1, and that this power is anchored on the EPIRA itself — then it cannot be said that the body acted with grave abuse of discretion amounting to lack or excess of jurisdiction. The ERC, as a body made up of its commissioners, thus issued the resolutions *in good faith*, or on the basis of its interpretation of the powers granted to it by the EPIRA.

---

[70] *Kida v. Senate of the Philippines*, 683 Phil. 198, 221 (2012).

[71] *Yazaki Torres Manufacturing, Inc. v. Court of Appeals*, *supra* note 2, at 90.

[72] *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386, 444 (2007).

The restatement of the effectivity date of ERC Resolution No. 13 is reasonable

The OSG asserts that the issuance of Resolution No. 1 was in the exercise of ERC's sound judgment as a regulator and pursuant to its mandate under the EPIRA to "protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power."[73] I agree.

And in the exercise of its regulatory powers, the ERC's restatement of the effectivity date of the CSP implementation cannot be anything but valid. ***The creation of the transition period was done in good faith and was neither whimsical nor capricious — it was prompted by the ERC's receipt of numerous letters from stakeholders posing various concerns.*** Excerpts of some of these letters are as follows:

a. November 25, 2015 letter[74] *of SMC Global Power,* ***which requests that it be allowed to file its PSCs because the requirements imposed pursuant to the CSP implementation were non-existent when its PSCs were evaluated and signed***:

> Upon filing with the ERC, however, our counter-part counsel for the DUs and ECs (Dechavez & Evangelista Law Offices) informed us that even at the pre-filing stage, the ERC rejects applications which do not include the following: DUs/ECs Invitation to Participate and Submit Proposal, DUs/ECs' Terms of Reference, Proposals Received by the DU/EC, tender offers, DU/ECs Special Bids and Awards Committees (SBAC) Evaluation Report, DU Board Resolution confirming the approval of the SBAC Evaluation report and Notice of Award issued by the DU/EC.

---

[73] EPIRA, Sec. 2(f).

[74] *Rollo* (Vol. III), pp. 1237-1238.

It is significant to note that all of these requirements, even the creation of the SBAC, were non-existent when our PSCs were evaluated and signed. x x x

To this end, we respectfully request the consideration of the Honorable Commission to allow us to file, and for the Commission to accept, the applications for approval of the subject PSCs. In our case, mere filing is critical for us to achieve financial close for purposes of funding our power plant project.

The filing of the application will enable us to continue financing the Limay Phase 1 Project, Malita Project and proceed with Limay Phase 2 Project to augment the capacity in the Luzon and Mindanao Grids and prevent the projected shortage in 2017.[75]

b. December 1, 2015 letter[76] *of Philippine Rural Electric Cooperative Association, Inc. (PHILRECA),* ***which requests for exemption from coverage of DOE Circular:***

May we respectfully furnish you a copy of the PHILRECA Board Resolution No. 10-23-2015 "Resolution Requesting the Department of Energy (DOE) and the Energy Regulatory Commission (ERC) to exempt the Southern Philippines Power Corporation (SPPC) and Western Mindanao Power Corporation (WMPC) from the coverage of Department Circular No. DC2015-06-0008".[77]

c. December 10, 2015 letter[78] *of Agusan del Norte Electric Cooperative, Inc. (ANECO),* ***which requests confirmation that any extension of PSAs (or ESAs) previously approved is outside the scope of Resolution No. 13***:

The ESA, as amended and supplemented, will expire on 25 June 2016. Given the power shortage in Mindanao, the

---

[75] *Id*. at 1238.

[76] *Id*. at 1239.

[77] *Id*.

insufficiency of the NPC/PSALM supply, taken together with the continuing demand growth of our end-users, we wish to exercise the option provided under the Amendment to the ESA to extend the Term of our Amended and Supplemented ESA with TMI x x x.

Relating this provision to Reso 13, we are of the impression that Reso 13 may not be strictly applied to ESA extensions, especially considering that the Honorable Commission has already meticulously scrutinized and approved TMI's Fixed O&M, Energy and Fuel Fees, as well as its asset base in determining the Capital Recovery Fee.

x x x x x x x x x

Since Section 4 of the Resolution states that the CSP requirement shall not apply to PSAs (or ESAs) already filed with the ERC, we are of the understanding that an extension of an existing ESA, which is part of the provisions submitted to and has been approved by the ERC, albeit provisionally, is outside the coverage of the present Resolution. Hence, we intend to enter into an extension of our existing ESA with TMI, applying the same methodology and asset base as approved by the Honorable Commission in arriving at the rates. x x x[79]

d. December 14, 2015 letter[80] *of SMC Global Power,* ***which seeks acceptance and approval of PSCs that were signed prior to the issuance of Resolution No. 13***:

Further to our letter dated November 25, 2015, we would like to reiterate our request to the Honorable Commission *En Banc* to accept and allow the filing of Power Supply Contracts (PSC) already signed ***prior*** to its issuance Resolution No. 13, Series of 2015 "A Resolution Directing All Distribution Utilities (DUs) to Conduct Competitive Selection Process (CSP) in the Procurement of Their Supply to the Captive Market."

---

[78] *Id.* at 1242-1243.

[79] *Id.*

[80] *Id.* at 1244-1245.

We wish to stress that in the event the subject PSCs cannot be filed, the Honorable Commission would effectively invalidate the same to the detriment of the contracting parties and the industry. It is significant to note that the Distribution Utilities (DU) and Electric Cooperatives (EC) have carefully evaluated and considered the most advantageous terms and conditions for its consumers prior to signing the subject PSCs.

x x x x x x x x x

Meanwhile, another round of CSP may likely alter the terms of the contract that could prove to be disadvantageous to the DU or EC.

Considering the execution of the PSCs and the stage of their application process prior to the issuance of the CSP requirement, we beg the indulgence of the Honorable Commission *En Banc* to accept the subject PSCs and allow the filing thereof to proceed.[81]

e. December 21, 2015 letter[82] *of Camarines Sur IV Electric Cooperative, Inc. (CASURECO),* ***which asks for an extension to file its joint application***:

On 03 August 2015, CASURECO IV and San Miguel Energy Corporation ("SMEC") entered into a mutual agreement before this Honorable Commission to pre-terminate the Power Supply Contract dated 23 August 2013 between CASURECO IV and SMEC ("SMEC PSC"). As a result of the pre-termination of SMEC PSC, beginning 00:00H of 26 August 2015, SMEC ceased to supply power to CASURECO IV.

x x x Because CASURECO IV received no proposals for its power supply requirements, it began direct negotiations with ULGEI.

x x x x x x x x x

Since CASURECO IV received such letter on 24 September 2015, CASURECO IV and ULGEI had until 23 November 2015 to file a joint-application for the approval of a power

---

[81] *Id.*

[82] *Id.* at 1246-1249.

supply agreement. Due, however, to the extensive negotiations conducted to provide the Franchise Area a competitive and reliable supply of power, and since it will take time to prepare and finalize a power supply agreement, CASURECO IV and ULGEI requested this Honorable Commission for an additional thirty (30) days within which to file a joint-application, or until 23 December 2015.[83]

f. *March 9, 2016 letter*[84] *of Aldan Electric Cooperative Inc. (AKELCO),* ***which poses some queries regarding the CSP requirement***:

We write to advance our queries pertaining to the Competitive Selection Process which is now part of the Power Supply Procurement requirements for all DUs. The related ERC Resolution No. 13 Series of 2015 was already in effect 15 days after its publication last October 20, 2015.

In the case of AKELCO where in previous years, two (2) Power Supply Contracts for base load requirements were already signed by both parties but were not filed with the ERC before the effectivity of the CSP. The queries are as follows:

1. If the Power Supply Contracts that were not filed due to non- compliance to CSP still binding?
2. What are the ERC's recommended modes of CSPs? Is the so- called "Price Challenge" or Swiss Challenge allowed? And,
3. Presuming that some of the stipulated provisions (i.e. date of initial delivery, base load demand requirements) in the said contracts cannot be met due to CSP requirement or already unacceptable to either of the party, can we still re-negotiate the provisions and at the same time introduce the ERC recommended terms of reference?[85]

---

[83] *Id*. at 1246-1247.

[84] *Id*. at 1250.

[85] *Id*.

g. December 15, 2015 letter[86] *of Astronergy Development,* ***which raises the issue of impairment of contracts***:

> We respectfully request a meeting with you at your earliest convenience, so that we can discuss our peculiar situation following the issuance of the Resolution. Our meeting objective is to understand your views regarding the retroactive application of the Resolution and further, to understand how to harmonize Resolution in light of the third party legal opinion we have attached herein for your consideration. Lastly, we hope to be allowed a brief opportunity to present and discuss our views on why the Commission's staff should interpret the Resolution in a manner that is consistent with the Commission's past written responses on RE to the Senate Energy Committee; and the Commission's related Decision relevant to our particular circumstances.
>
> x x x x x x x x x
>
> Section 4 of the Resolution requires the DUs to conduct a CSP for PSAs that have not yet submitted its PSA with the ERC. We believe the result is a retroactive application of the Resolution that impairs our contracts that were entered into in good faith. This creates uncertainties, including the possible revision and rescission of existing binding agreements, which our group of companies, and their shareholders and creditors, are greatly concerned about. There are also specific considerations with each DU: for each PSA we have executed since the application of the Resolution would potentially lead to losses and additional project delay. Any further delay (such as revisiting CSP) would result in a breach of contract for not meeting deadlines.[87]

It bears stressing that these concerns were recognized to be reasonable and legitimate concerns by the DOE itself as shown by the act of the DOE of endorsing one of these letters to the ERC. On January 18, 2016, the DOE endorsed for the ERC's consideration to allow Abra Electric Cooperative (ABRECO)

---

[86] *Id.* at 1251-1252.

[87] *Id.*

to directly negotiate with a power supplier, albeit without following the CSP requirement.[88] The DOE explained that the said request for endorsement was made in consideration of ABRECO's situation as an ailing electric cooperative and to prevent its vulnerability to volatile wholesale electricity spot market (WESM) prices given that its supply is sourced from it.[89]

The *ponencia* views this letter as a confirmation that the DOE directed the ERC to take action on the matter and that it did not foreclose the ERC from directing ABRECO to undertake a Swiss challenge, a form of public bidding where an original proponent's offer is opened to competitive bids but the original proponent may counter match any superior offer.[90]

To my mind, this letter from the DOE is not, as the *ponencia* says, an admission of the need to coordinate with the DOE. Rather, this letter is in fact a recognition by the DOE that the power of whether to exempt an entity from the CSP is lodged solely with the ERC. That the DOE was clearly requesting the ERC and not directing it is seen from a plain reading of the letter where the DOE stated: "x x x thus, we are endorsing for ERC's consideration x x x."[91] This is a clear admission by the DOE that it is only the ERC which has the power to determine whether a certain energy sector player, such as ABRECO, may be exempted from the requirement of the CSP.

Confronted with these concerns, the ERC deemed it wise to restate the effectivity of the CSP implementation. Thus, the restatement of the effectivity date of the CSP implementation from November 7, 2015 to April 30, 2016, virtually creating a transition period of five (5) months, was deemed by the ERC a long enough period to allow fruition of the PSAs at the throes of perfection or those already executed but not yet filed, and

---

[88] *Rollo* (Vol. IV), p. 1516.

[89] *Id.*

[90] *Ponencia*, p. 28.

[91] *Rollo* (Vol. IV), p. 1516.

short enough to block those PSAs which were still too early in the negotiation or so far from execution.[92] The ERC found that granting a period of transition would avoid the risk of inconsistency in resolving the individual requests for exemptions sought by DUs, GenCos and electric cooperatives — **while, at the same, *ensuring a steady electric supply for the period covered by the different calls for the CSP exemption***.[93]

And, as the regulator, ERC had full knowledge and complete sense of the difficulty of adding a new requirement to an application for the approval of a PSA when the DUs and the GenCos had already executed their PSAs. ***In fact, requiring a CSP would most likely have resulted in the undoing of heavily and lengthily negotiated and executed agreements over which many computations and projections had already been done.***

A review of the requirements enumerated above shows that in addition to the executed PSA, the parties are required to disclose their sources of funding, a sample computation of power rates, and even a breakdown of operating and maintenance expenses. **The undoing of a PSA and a re-negotiation of its terms will affect these figures and may even result in the replacement of the GenCos. The DUs will have to start from scratch as a result of the directive to comply with the CSP.** Again, these cannot be done at a whim or in a span of a few days. And this realization was the *animus* for the creation of the transition period — to make the CSP applicable only to those PSAs that are still being negotiated as the parties to these PSAs have yet to conclude loan agreements for the financing of the project, they may adjust their projections on how the contract will affect the cost of electricity, and adjust their projected operating and maintenance expenses.

---

[92] *Rollo* (Vol. III), pp. 1208-1209.

[93] *Id*. at 1206.

This is the reason why the recommendation of Justice Bernabe, *i.e.*, for the creation of transitory regulations so that the PSAs shall become effective only when a new PSA is executed after following the CSP, is not feasible. These PSAs were heavily negotiated and loans and projections have already been made following the terms reflected in the PSAs. All of these PSAs will be undone should the parties thereto be now required to undergo CSP.

Further, Resolution No. 1 did not only restate the effectivity date of the CSP implementation, it likewise already addressed certain concerns raised by these stakeholders. The ERC, in said resolution, clarified certain compliance requirements on the other forms of CSP as provided in Resolution No. 13. It further resolved that the PSAs with provisions allowing automatic renewal or extension of their term, whether or not such renewal or extension requires the intervention of the parties, may have one (1) automatic renewal or extension for a period not exceeding one (1) year from the end of their respective terms, provided that these PSAs were approved by the ERC before the effectivity of Resolution No. 1; if not, then automatic renewal clauses or extension of the PSAs shall no longer be permitted.

The *ponencia*, however, reasons that the extension was not necessary because "the issuance of the 2015 DOE Circular and of the CSP Resolution was not conjured on a whim"[94] and that "the DOE has conducted a series of nationwide public consultations on the proposed policy on competitive procurement of electric supply for all electricity end-users."[95]

It must be pointed out, however, that the public consultations and focus-group discussions referred to by the ponencia were in relation to the draft "*Rules Governing the Execution, Review, and Evaluation of Power Supply Agreements entered into by Distribution Utilities for the Supply of Electricity to their Captive Market*" (PSA Rules). Quoted below is the Whereas Clause of

---

[94] *Ponencia*, p. 30.

[95] *Id*. at 31.

Resolution No. 13 relied on by the *ponencia*[96] in arguing that public consultations were conducted:

WHEREAS, the ERC, likewise, conducted Focus Group Discussions (FGDs) with the stakeholders on April 22 to 24, 2014 in Pasig City, May 6 to May 8, 2014 in Cebu City, May 13 to 14, 2014 in Cagayan De Oro City and May 20 to 22, 2014 in Pasig City, to thoroughly discuss major issues in relation to the **draft PSA Rules**, such as: **a) the requirement of Competitive Selection Process (CSP);** b) the proposed PSA template; c) the joint filing of PSA applications by the DUs and generation companies (GenCos); and d) the "walk-away" provision in the PSA, and the ERC likewise set the deadline for the submission of additional comments or position papers for May 30, 2014.[97] (Emphasis and underscoring supplied)

The Court can take judicial notice[98] of the fact that up to the present, the said PSA Rules are still in draft form. In fact, comments on the draft PSA Rules are still being received by the ERC,[99] and a public consultation on the draft was just concluded by the ERC on October 15, 2018.[100]

---

[96] *Id*. at 32.

[97] Resolution No. 13, 9th Whereas Clause.

[98] RULES OF COURT, Rule 129, Section 1 provides:

SECTION 1. *Judicial notice, when mandatory*. — **A court shall take judicial notice**, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, **the official acts of the legislative, executive and judicial departments of the Philippines**, the laws of nature, the measure of time, and the geographical divisions. (Emphasis and underscoring supplied)

[99] See Comments Received on the Draft PSA Rules, ERC Case No. 2018-0002-RM, *available at* http://www.erc.gov.ph/ContentPage/51512 (last accessed November 9, 2018).

[100] See 15 October 2018 PubCon on PSA Rules, *available at* http://erc.gov.ph/ContentPage/51514 (last accessed November 9, 2018).

Therefore, while it is true that the CSP requirement was not totally unexpected, the DUs cannot, however, be expected to comply with the said requirement that was made effective ***immediately***. While consultations were indeed made regarding the CSP requirement, these consultations were in the context of the draft PSA rules ***that have not been made effective yet***; hence, it is understandable that the DUs were still negotiating their PSAs under the old framework where the CSP was not yet required.

To stress, the DUs cannot be expected to follow a rule that was not yet in place. In other words, it was but natural for the DUs to have pending PSA negotiations that did not go through the CSP when the CSP requirement was made effective all of a sudden.

Thus, it is clear that the issuance of Resolution No. 1 was not, as it cannot reasonably be categorized as, arbitrary, whimsical or capricious. **The creation of a transition period, together with the clarifications provided in Resolution No. 1, constitutes a reasonable well thought-out response to the various concerns posed by DUs, GenCos and electric cooperatives.**

Indeed, it is worth repeating that there is a doctrine of long-standing that courts will not interfere in matters that are addressed to the sound discretion of the government agency entrusted with regulation of activities coming under the special and technical training and knowledge of such agency.[101] For the exercise of administrative discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation.[102] ***This task can best be discharged by the government agency concerned and not by the courts.***[103]

---

[101] *Yazaki Torres Manufacturing, Inc. v. Court of Appeals*, supra note 2, at 88.

[102] *Bureau Veritas v. Office of the President*, supra note 3, at 747.

[103] *Yazaki Torres Manufacturing, Inc. v. Court of Appeals*, *supra* note 2, at 88.

To be sure, the interpretation of an administrative government agency, which is tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts.[104] The reason behind this rule was explained in *Nestle Philippines, Inc. v. Court of Appeals*,[105] in this wise:

> The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. v. Commissioner of Customs*[106] the Court stressed **that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon**. The courts give much weight to contemporaneous construction because of the respect due the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are the drafters of the law they interpret.[107] (Emphasis supplied)

Thus, I submit anew that the Court stepped out of bounds in annulling the acts of a regulator acting within the bounds of law and its area of expertise. Indeed, this sends a chilling effect on all regulators. This is true in this case because the acts of the ERC have been made the basis of administrative and criminal complaints.

While an action by an administrative agency may be set aside by the judicial department, it must only be done if there is abuse

---

[104] *Melendres, Jr. v. Commission on Elections*, 311 Phil. 275, 291 (1999)

[105] 280 Phil. 548 (1991).

[106] 140 Phil. 20, 26 (1969).

[107] *Nestle Philippines, Inc. v. Court of Appeals*, *supra* note 105, at 556-557.

of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.[108] There is no such situation here. There is no cogent reason to hold that the ERC acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

DISSENTING OPINION

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

The *ponencia* declared the first paragraph of Section 4 of Energy Regulatory Commission (ERC) Resolution No. 13, Series of 2015, and ERC Resolution No. 1, Series of 2016, as null and void. As a result, all Power Supply Agreement (PSA) applications submitted by Distribution Utilities (DUs) on or after June 30, 2015, should be subject to the Competitive Selection Process (CSP) in accordance with the Department of Energy (DOE) Circular No. DC2015-06-0008.

With due respect, I disagree with the said ruling.

The ERC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.

According to Rule 65 of the Rules of Court, for a petition for *certiorari* to lie, it must be proven that the tribunal, board, or officer exercising judicial or quasi-judicial functions has acted (1) without or in excess of its or his jurisdiction, or (2) with grave abuse of discretion amounting to lack or excess of jurisdiction.[1] In the same Rule, it was also provided for that a petition for prohibition will lie when the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are (1) without or in excess of its or his jurisdiction, or (2) with grave abuse

---

[108] *Melendres, Jr. v. Commission on Elections*, *supra* note 104, at 292.

[1] Rules of Court (1997), Rule 65, Sec. 1.

of discretion amounting to lack or excess of jurisdiction.[2] In both instances, there should be no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[3]

But while the Rules of Court zeroes in on tribunals, boards, or officers exercising judicial or quasi-judicial functions for petitions for *certiorari*, and tribunals, corporations, boards, officers or persons, whether exercising judicial, quasi-judicial or ministerial functions, for petitions for prohibition, the Court has, time and again, ruled that the same remedies extend to any act of grave abuse of discretion amounting to lack or excess of jurisdiction of any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[4]

In this case, the ERC is an independent quasi-judicial body that has regulatory powers[5] for the purpose of promoting competition, encouraging market development, ensuring customer choice and penalizing abuse of market power in the restructured electricity industry.[6] In appropriate cases, the ERC is also authorized to issue cease and desist orders after due notice and hearing.[7] Indeed, any issue on ERC's action of promulgating ERC Resolution No. 1 is cognizable by the Court through a petition for *certiorari* or prohibition, but only if ERC has acted (1) without or in excess of its jurisdiction, or (2) with grave abuse of discretion amounting to lack or excess of jurisdiction.

As earlier mentioned, ERC has not committed any of these two acts.

---

[2] Rules of Court (1997), Rule 65, Sec. 2.

[3] *Id.*

[4] *Umali v. JBC*, G.R. No. 228628, July 25, 2017, 832 SCRA 194, 223-224.

[5] R.A. No. 9136 (2001), Sec. 38.

[6] R.A. No. 9136 (2001), Sec. 43.

[7] *Id.*

To begin with, there is no doubt that the ERC has the power to promulgate rules and regulations that concern the exercise of its mandate. In issuing ERC Resolution No. 1, ERC acted within its jurisdiction.

According to the case of *Alliance for the Family Foundation, Philippines, Inc., (ALFI) v. Garin*,[8] the powers of an administrative body are classified into two fundamental powers: quasi-legislative and quasi-judicial. Quasi-legislative power—that which is relevant in this case—has been defined as "the authority delegated by the lawmaking body to the administrative body to adopt rules and regulations intended to carry out the provisions of law and implement legislative policy."[9] It is in the nature of subordinate legislation, which is "designed to implement a primary legislation by providing the details thereof."[10]

The ERC is granted this quasi-legislative power by no less than Sections 43 (Functions of the ERC) and 45 (Cross Ownership, Market Power Abuse And Anti-Competitive Behavior) of R.A. No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA).[11] In fact, EPIRA's implementing rules and regulations (IRR) specified this rule-making power in stating:

Section 4. Responsibilities of the ERC.

x x x x x x x x x

(b) Pursuant to Sections 43 and 45 of the Act, **the ERC shall promulgate such rules and regulations as authorized thereby**, including but not limited to Competition Rules and limitations on recovery of system losses, and shall impose fines or penalties for any non-compliance with or breach of the Act, these Rules and the rules and regulations which it promulgates or administers.[12]

---

[8] G.R. Nos. 217872 & 221866, April 26, 2017, 825 SCRA 191.

[9] *Id*. at 209.

[10] *Id*. at 209-210.

[11] R.A. No. 9136 (2001).

[12] Rules and Regulations to Implement Republic Act No. 9136, Entitled "Electric Power Industry Reform Act of 2001" (2001), Sec. 4 (b).

This rule-making power by the ERC is further defined, at least insofar as the CSP implementation is concerned, in Sections 3 and 4 of DOE Circular No. DC2015-06-0008. This circular granted unto the DOE and the ERC the power to jointly issue the "guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP." It also empowered the ERC, "upon its determination and in coordination with the DOE [to] issue supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP." The provisions read:

Section 3. Standard Features in the Conduct of CSP. After the effectivity of this Circular, all DUs shall procure PSAs only through CSP conducted through a Third Party duly recognized by the ERC and the DOE. In the case of ECs, the Third Party shall also be duly recognized by the National Electrification Administration (NEA).

x x x x x x x x x

Within one hundred twenty (120) days from the effectivity of this Circular, the ERC and DOE shall jointly issue the guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP as hereto provided. x x x

Section 4. Supplemental Guidelines. To ensure efficiency and transparency of the CSP Process [sic], the ERC, upon its determination and in coordination with the DOE shall issue supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP. The supplemental guidelines should ensure that any CSP and its outcome shall redound to greater transparency in the procurement of electric supply, and promote greater private sector participation in the generation and supply sectors, consistent with the declared polices under the EPIRA.[13]

On October 20, 2015, almost four (4) months after the issuance of DOE Circular No. DC2015-06-0008 and pursuant to the

---

[13] *Rollo*, Vol. 1, pp. 40-43.

mandate of its provisions, the DOE and the ERC issued Joint Resolution No. 1, "*A Resolution Enjoining All Distribution Utilities To Conduct Competitive Selection Process (CSP) In The Procurement of Supply For Their Captive Market*."[14] In this Joint Resolution, **the DOE and the ERC agreed that it is the ERC which shall issue the appropriate regulations to implement the CSP**. Section 1 of Joint Resolution No. 1 provides:

> **Section 1. Competitive Selection Process.** Consistent with their respective mandates, the DOE and ERC recognize that Competitive Selection Process (CSP) in the procurement of PSAs by the DUs engenders transparency, enhances security of supply, and ensures stability of electricity prices to captive electricity end-users in the long-term. **Consequently, by agreement of the DOE and ERC, the ERC shall issue the appropriate regulations to implement the same.**[15] (Emphasis supplied)

Thus, while the language of DOE Circular No. DC2015-06-0008 empowers the DOE and the ERC jointly to issue the relevant guidelines in the implementation of the CSP, in turn, the DOE, through Joint Resolution No. 1, gave its concurrence to and duly empowered the ERC to act and to issue the appropriate regulations.

On the strength of the provisions of the EPIRA, EPIRA's IRR, DOE Circular No. DC2015-06-0008, and Joint Resolution No. 1, the ERC thence promulgated ERC Resolution No. 13, as well as the assailed ERC Resolution No. 1. These resolutions contained the relevant rules and regulations that govern the implementation of the CSP policy of the government—a power which has been specifically delegated to the ERC and to no other. Notably, none of the parties in this case challenged this power. In fact, this authority was recognized by the DOE in its Letter dated January 18, 2016 when it requested the ERC to

---

[14] Department of Energy and Energy Regulatory Commission, October 20, 2015.

[15] *Id*.

allow an electric cooperative to directly negotiate with a power supplier despite the CSP requirement.[16]

In the *ponencia*, however, it was stated that the ERC had no authority to issue ERC Resolution No. 1, because the ERC cannot *unilaterally* restate the effectivity of its earlier resolution for doing so violates DOE Circular No. DC2015-06-0008. It was likewise explained therein that "the DOE Circular [No. DC2015-06-0008] **specifically stated** that **the ERC's power to issue CSP guidelines and procedures should be done in coordination with the DOE**." That the ERC "restated" the date of effectivity unilaterally is, according to the *ponencia*, an "amendment" of DOE Circular No. DC2015-06-0008, which the ERC could not do. The *ponencia*further held that the ERC is empowered only to issue "supplemental guidelines and procedures" as this is the only power granted by Section 4 of DOE Circular No. DC2015-06-0008 to the ERC.

Likewise, the *ponencia* declared that ERC Resolution No. 1 is void because it was issued without the concurrence of the DOE, and as such, it was in excess of ERC s rule-making power.

Finally, the *ponencia* further launched a full discourse on the power of the DOE *vis-a-vis* the power of the ERC, such that, it argued that, it is the former which formulates the policies, rules, regulations, and circulars concerning the energy sector, and the latter should **only**enforce and implement the same. The opinion likewise quoted in its entirety Section 43 of the EPIRA (enumerating the powers of the ERC) and stated that nothing therein could "supplant" the policies, rules, regulations, or circulars prescribed by the DOE.

The *ponencia*, however, fails to consider the clear mandate of DOE Circular No. DC2015-06-0008 and Joint Resolution No. 1.

First, it is not correct to summarily state that the ERC's power is limited to the implementation of a policy dictated by the

---

[16] AIE's Manifestation and Motion for Early Resolution dated November 16, 2018, Annex 3.

ERC. It could not be any clearer when Section 3 of DOE Circular No. DC2015-06-0008, as quoted above, specifically stated that "the ERC and DOE shall **jointly**issue the guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP as hereto provided." This is not a case where the DOE issues a policy and then the ERC implements the policy. As can be read in Section 3, the matter of formulating the guidelines, as well as the rules of procedure for its implementation, falls on **both** the DOE and the ERC.

Second, this joint authority, as it were, is further clarified by Joint Resolution No. 1 where the DOE specifically delegated unto the ERC the power to issue the appropriate regulations to implement the CSP. At the risk of sounding repetitive, this could only mean that, contrary to the *ponencia*, the DOE and the ERC already have a "coordination" with regard to their duties of implementing the CSP, and the **DOE already authorized the ERC to perform this duty**. Again, the ERC in this case is not a mere implementing agency, rather, it is the main agency tasked and empowered to lay the ground for the new selection process, the same being the agency which has the direct contact with the affected stakeholders of the energy sector.

Indeed, even the *ponencia* recognized this when it was mentioned that:

> Joint Resolution No. 1 (Joint Resolution), executed by the DOE and the ERC on 20 October 2015, reiterated that **the ERC shall issue the appropriate regulations to implement the CSP**. x x x (Emphasis and underscoring supplied)

Third, it is also misplaced to say that the ERC has no power at all to formulate the rules and regulations concerning the CSP because, according to the *ponencia*, the same power does not appear in the enumeration of the ERC's functions in Section 43 of the EPIRA. But paragraph (m) of the same section in fact authorizes the ERC to:

> (m) Take any action delegated to it pursuant to this Act;

This function, taken together with the DOE and ERC's joint authority accorded by Section 3 of DOE Circular No. DC2015-06-0008 and the specific delegation in Section 1 of Joint Resolution No. 1, is more than enough to dispel any accusation of impropriety or any lack of authority to the ERC's issuance of the assailed resolution. In the language of Section 43 of the EPIRA, the ERC did not "supplant" the policies, rules, regulations, or circulars prescribed by the DOE, instead, the ERC merely accepted the action "delegated" to it pursuant to DOE Circular No. DC2015-06-0008 and Joint Resolution No. 1.

Finally, it must also be emphasized that Joint Resolution No. 1 speaks of the "**appropriate regulations**," and not merely of "guidelines and procedures" or of "supplemental guidelines" to implement the CSP. As a regulatory agency, one which is "vested with jurisdiction to regulate, administer or adjudicate matters affecting substantial rights and interests of private persons, the principal powers of which are exercised by a collective body, such as a commission, board or council,"[17] the ERC clearly is empowered to promulgate the assailed resolution.

To be sure, in promulgating ERC Resolution No. 13, as well as ERC Resolution No. 1, the ERC acted *within* its jurisdiction.

This said, the focus of this Dissenting Opinion now shifts to whether or not the ERC, in promulgating the assailed resolution, acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Again, the Court answers in the negative.

The term grave abuse of discretion has a specific meaning. It has been defined as the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law.[18] According to the case

---

[17] Exec. Order No. 292 (1987), Sec. 2(11).

[18] *Fajardo v. Hon. Court of Appeals, et al.*, 591 Phil. 146, 153 (2008).

of *John Dennis G. Chua v. People of the Philippines*,[19] citing *Yu v. Judge Reyes-Carpio, et al.*[20]

> [a]n act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."[21] (Citations omitted)

"For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross."[22]

In this instance, the ERC has sufficiently established that "restating" the effectivity of ERC Resolution No. 13 at a later date is not exercised whimsically or capriciously. Neither is it an arbitrary exercise of power by reason of passion or hostility. Indeed, its issuance is clearly not without basis. In fact, the Court finds that the ratiocination put forth by the Office of the Solicitor General (OSG) is reasonable to justify ERC's action.

First, the implementation of ERC Resolution No. 13 caused an avalanche of concerns and confusion from the stakeholders of the industry regarding the actual implementation of the provisions of the resolution, so much so that a multitude of DUs, mostly electric cooperatives, sought for an exemption from the guidelines in the resolution. There was a real possibility that the implementation of ERC Resolution No. 13 would invariably render nugatory the already pending negotiations among the DUs and generation companies. This fact is proven from the letters sent by SMC Global Power dated November

---

[19] G.R. No. 195248, November 22, 2017, 846 SCRA 74.

[20] 667 Phil. 474 (2011).

[21] *Id*. at 481-482.

[22] *Supra* note 18, at 153.

25, 2015 and December 14, 2015, Philippine Rural Electric Cooperative Association, Inc. dated December 1, 2015, Agusan Del Norte Electric Cooperative, Inc. dated December 10, 2015, Camarines Sur IV Electric Cooperative, Inc. dated December 21, 2015, and Aklan Electric Cooperative, Inc. dated March 9, 2016.[23]

A reading of these letters confronted the ERC with probabilities of discontinuance in the financing of projects during their implementation stage,[24] aggravation of power shortages,[25] confusion of ERC Resolution No. 13's applicability on PSAs already filed with the ERC,[26] disenfranchisement of Power Supply Contracts (PSCs) which have already been signed but were still unfiled to the ERC prior to the effectivity of ERC Resolution No. 13,[27] and the reality of the necessity of sufficient period within which to complete the applications which are still governed by the rules prior to ERC Resolution No. 13.[28]

All these concerns were presented to the ERC, which then, by its mandate, acted accordmgly. There is wisdom in the OSG's assertion that by granting a period of transition, the ERC would avoid the risk of inconsistency in resolving individual requests for exemptions sought by the DUs, generation companies, and electric cooperatives, while at the same time, it would secure the steady supply of electricity for the same period.[29]

The *ponencia* mistakenly characterizes ERC's "restatement" of the effectivity of Resolution No. 1 as an "amendment" to DOE Circular No. DC2015-06-0008. The *ponencia* stated that ERC extended the CSP's implementation twice, totaling 305 days, which should not be allowed by the Court.

---

[23] *Rollo*, Vol. II, pp. 1201-1206.

[24] *Id*. at 1202.

[25] *Id*.

[26] *Id*. at 1203.

[27] *Id*. at 1204, 1206.

[28] *Id*. at 1205.

[29] *Id*. at 1206.

But this kind of interpretation with regard to the nature of implementing rules and regulations, specifically in this case, disavows the very purpose for which implementing rules and regulations are created.

One, it is a blatant error to state that ERC Resolution No. 13 already "amended" DOE Circular No. DC2015-06-0008 (the first "amendment" according to the *ponencia*). While it is true that DOE Circular No. DC2015-06-0008 took effect on June 30, 2015, **the enforcement of the CSP was not to take effect until after 120 days therefrom**. This is because Section 3 of the same circular categorically provided for a 120-day period for the promulgation of the CSP guidelines and procedures. It said:

> **Section 3. Standard Features in the Conduct of CSP.** After the effectivity of this Circular, all DUs shall procure PSAs only through CSP conducted through a Third Party duly recognized by the ERC and the DOE. In the case of ECs, the Third Party shall also be duly recognized by the National Electrification Administration (NEA).
>
> x x x x x x x x x
>
> **Within one hundred twenty (120) days from the effectivity of this Circular, the ERC and DOE shall jointly issue the guidelines and procedures** for the aggregation of the un-contracted demand requirements of the DUs and the process for the recognition or accreditation of the Third Party that conducts the CSP as hereto provided. x x x (Emphasis and underscoring supplied)

By promulgating Joint Resolution No. 1 and ERC Resolution No. 13 on October 20, 2015, less than 120 days from the effectivity of DOE Circular No. DC2015-06-0008, both the DOE and ERC merely followed Section 3 thereof. There was no first "amendment" in this case as the ponencia concluded, and the Court should not rush into ascribing grave abuse of discretion on the part of ERC for performing its mandate.

Two, it will be absurd to require stakeholders in the energy sector to comply with a new procurement method at the very moment of the circular's promulgation when there is yet no implementing rules and regulations that would guide them on

the methodologies of its implementation. In DOE Circular No. DC2015-06-0008, CSPs to be undertaken by DUs are couched in principles, rather than procedure. Section 1 states:

Section 1. General Principles. Consistent with its mandate, the DOE recognizes that Competitive Selection Process (CSP) in the procurement of PSAs by the DUs ensures security and certainty of electricity prices of electric power to end-users in the long-term. Towards this end, all CSPs undertaken by the DUs shall be guided by the following principles:

(a) Increase the transparency needed in the procurement process in order to reduce risks;

(b) Promote and instill competition in the procurement and supply of electric power to all electricity end-users;

(c) Ascertain least-cost outcomes that are unlikely to be challenged in the future as the political and institutional scenarios should change; and

(d) Protect the interest of the general public.

Section 3 of the same circular is not any clearer. It provides:

Section 3. Standard Features in the Conduct of CSP. After the effectivity of this Circular, all DUs shall procure PSAs only through CSP conducted through a Third Party duly recognized by the ERC and the DOE. In the case of ECs, the Third Party shall also be duly recognized by the National Electrification Administration (NEA).

Under this Circular, CSPs for the procurement of PSAs of all DUs shall observe the following:

(a) Aggregation for un-contracted demand requirements of DUs;

(b) Annually conducted; and

(c) Uniform template for the terms and conditions in the PSA to be issued by the ERC in coordination with the DOE.

x x x x x x x x x

If the enforcement of the CSP began on June 30, 2015, as was posited in the *ponencia*, how should the Third Party mentioned in the section conduct the CSP? What are the parameters? What are the required documents/uniform templates

to be submitted? What are the deadlines? More to the point, who are these Third Parties? How can they be recognized by the ERC and the DOE? By the National Electrification Administration?

This is why there was wisdom in the DOE's imposition of a period prior to the enforcement of the CSP. The reasons are obvious: (a) the agency tasked to draft the implementing rules and regulations must be accorded reasonable time within which to draft the same; and (b) the same agency must balance the implementation of the new policy over the already existing ones so as to ascertain continuous and unabated service to the public.

To this end, the action of the ERC in issuing ERC Resolution No. 1, rather than subvert the intentions of EPIRA, allowed the smooth transition of one procurement method to be utilized by the Government to another new method. Thus, the "restatement" of the effectivity of the CSP in ERC Resolution No. 1 is not an "amendment" but a carefully studied enforcement of the very same mandate reposed upon the ERC.

Second, ERC did not "evade" its positive duty as provided for in the Constitution, the EPIRA, DOE Department Circular No. DC2015-06-0008, or ERC Resolution No. 13 as the petitioners would like the Court to believe. The petitioners stretch the interpretation of these laws and issuances by their insinuations that "restating" the effectivity of ERC Resolution No. 13 is already tantamount to evasion of duties.

I could not subscribe to this interpretation.

The petitioners did not convincingly show any action by the ERC that negated any provision of the Constitution, the EPIRA, or any of the resolutions mentioned. No action has been indicated to have disregarded CSP procedure. In fact, ERC Resolution No. 13, the very resolution that the petitioners assert to have been violated, has been in effect since April, 2016. As discussed earlier, the issuance of ERC Resolution No. 1 is a by-product of the concerns of the DUs, generation companies, and electric cooperatives. **The Court could not dictate upon the ERC the time upon which the effectivity of ERC Resolution No. 13 should begin. This is a policy decision that rests solely on**

the ERC. This being the case, I find no illicit connection—as the petitioners have proved no illicit connections—between ERC Resolution No. 1 and the submission by the respondents of their PSAs prior to the given deadline.

If anything, what the petitioners ask of the Court is for the latter to substitute its own wisdom to that of ERC's actions as the main administrative agency clothed with expertise to decide on the effectivity of its own rules. This, the Court could not do. As has been repeatedly mentioned herein, ERC's action on merely "restating" the date of effectivity of ERC Resolution No. 13—its own resolution that has been in effect since April, 2016—has not been shown to have been promulgated with grave abuse of discretion amounting to lack or excess of jurisdiction.

Third, it must also be emphasized that ERC Resolution No. 1 enjoys a strong presumption of its validity. In *Spouses Dacudao v. Secretary Gonzales*,[30] Chief Justice Lucas P. Bersamin reiterated the Court's ruling in *ABAKADA Guro Party List (formerly AASJS), et al. v. Hon. Purisima, et al.*[31] where the Court extended the presumption of validity to legislative issuances as well as to rules and regulations issued by administrative agencies. *ABAKADA Guro Party List* said:

> Administrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect, Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself. As such, they have the force and effect of law and enjoy the presumption of constitutionality and legality until they are set aside with finality in an appropriate case by a competent court[32].

Moreover, the ERC, being envisioned to be "a strong and purely independent regulatory body,"[33] is "vested with broad

---

[30] 701 Phil. 96 (2013).

[31] 584 Phil. 246 (2008).

[32] *Id* at 283.

[33] Sec. 2(j), R.A. No. 9136.

regulatory and monitoring functions over the Philippine electric industry to ensure its successful restructuring and modernization."[34] The burden of proving that the presumption of validity should be disregarded rests solely on the petitioners. For the reasons already mentioned above, I believe that the petitioners failed on this purpose. Thus, as the ERC has been "provided by the law with tools, ample wherewithal, and considerable latitude in adopting means that will ensure the accomplishment of the great objectives for which it was created [its actions should similarly be] accorded by the Court the greatest measure of presumption of regularity in its course of action and choice of means in performing its duties[.]"[35]

Finally, anent the petitioners' prayer to require the ERC to disapprove the PSAs already submitted before it for the private respondents' failure to conduct CSP or for the possibility of "freezing" the CSP procedure for 20 years, I believe that the Court must once again rule against the petitioners and for the respondents.

In truth, the approval or disapproval of the PSAs have heretofore been pending before the ERC.[36] Considering that the ERC is not guilty of any grave abuse of discretion amounting to lack or excess of jurisdiction in issuing ERC Resolution No. 1, the Court should not substitute its judgment on PSA applications which are not yet acted upon. It is worth stressing that the Court could only discharge such actions if, in approving or disapproving the PSA applications, the ERC acted (1) without or in excess of jurisdiction, or (2) with grave abuse of discretion amounting to lack or excess of jurisdiction. For the moment, such action of the ERC, if ever it would act in that manner, is still in the realm of conjecture and deserves scant consideration.

---

[34] *Chamber of Real Estate and Builders' Associations, Inc. v. Energy Regulatory Commission (ERC) et al.*, 638 Phil. 542, 546 (2010).

[35] *The Province of Agusan Del Norte v. The Commission on Elections (COMELEC), et al.*, 550 Phil. 271, 281 (2007).

[36] *Rollo*, Vol. II, pp. 1188-1189.

ACCORDINGLY, I vote to **DISMISS** the petition for *certiorari* and prohibition.

FIRST DIVISION

[A.C. No. 8907. June 03, 2019]

SPOUSES EDUARDO AND MYRNA VARGAS, SPOUSES GENE AND ANNABELLE VARGAS, SPOUSES BASILIO AND SALOME BORROMEO, CELESTIAL VARGAS A.KA. "BOT-CHOKOY", CHARLIE ABARIENTOS Y VARGAS, MARK CELESTIAL Y VARGAS, SIMEON PALMIANO Y AUTOR, SPOUSES JOHN DOE (ROMY ABARIENTOS) AND SALITA ABARIENTOS, AND SPOUSES MARIO AND JOY SANCHEZ, ALL REPRESENTED BY NESTOR D. VARGAS, THEIR JOINT ATTORNEY- IN-FACT, *complainants, vs.* **ATTY. ARIEL T. ORIÑO,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; A LAWYER'S NEGLIGENCE WITH THE LEGAL MATTER ENTRUSTED TO HIM BY HIS CLIENT WARRANTS THE IMPOSITION OF DISCIPLINARY ACTION.— Canon 18 of the CPR provides that a lawyer shall serve his client with competence and diligence, while Rule 18.03 thereof explicitly decrees that a lawyer ought not to neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. Verily, Rule 18.03 of the CPR is a basic postulate in legal ethics. x x x In the case at bar, it is undisputed that a lawyer-client relationship was created when respondent lawyer agreed to accept the complainants' case and, in consideration thereof, received from complainants payment in cash and in kind. x x x In the present

> case, respondent lawyer failed to serve complainants with industry and diligence. He neglected the legal matter entrusted to him. x x x Respondent lawyer's acts, which the IBP-BOG correctly found as violative of Rule 18.03, Canon 18 of the CPR, warrant the imposition of disciplinary action. However, in accordance with prevailing jurisprudence, the Court increases the recommended penalty to suspension from practice of law for one (1) year.

R E S O L U T I O N

DEL CASTILLO, *J.*:

In the instant administrative case, complainants charge Atty. Ariel T. Oriño (respondent lawyer) of violating the Lawyer's Oath and Canon 18 of the Code of Professional Responsibility (CPR).

In a verified Complaint[1] filed before this Court on March 3, 2011, complainants, represented by their attorney-in-fact Nestor D. Vargas,[2] alleged that they were the defendants in Civil Case No. 1424 for Forcible Entry and Damages with Prayer for Temporary Restraining Order and/or Preliminary Injunction, entitled *Marivic M. Testa, et al. v. Spouses Eduardo and Myrna Vargas, et al.*, lodged before the Municipal Circuit Trial Court (MCTC) of Libmanan-Cabusao, Camarines Sur. According to complainants, they were initially represented by a lawyer from the Public Attorney's Office (PAO) who later moved to withdraw his appearance from the case.[3] Complainants, thereafter, hired a substitute lawyer in the person of respondent lawyer.

Complainants alleged that respondent lawyer entered his appearance as their counsel in said ejectment case at the time the MCTC had already appointed a commissioner to conduct

---

[1] *Rollo*, pp. 1-22.

[2] See Joint Special Power of Attorney dated December 9, 2010; *id*. at 64-67.

[3] *Id*. at 5.

a relocation survey of the lot in dispute and set the hearing on March 12, 2010 on the Commissioner's Report with due notice to the parties and their respective counsels. However, respondent lawyer failed to appear during the hearing on March 12, 2010 despite notice to him, while complainants were present in court. Subsequently, the MCTC issued an Order dated March 12, 2010, copy received by respondent lawyer on March 18, 2010 as per the return slip on record, directing the parties through counsel to submit their respective position papers within 10 days from receipt thereof. However, respondent lawyer failed to prepare and submit complainants' position paper. As a result, the MCTC rendered its judgment against complainants. Thereafter, respondent lawyer filed a notice of appeal dated June 7, 2010. The appeal was heard before the Regional Trial Court (RTC) of Libmanan, Camarines Sur, Branch 57 which issued an Order dated July 2, 2010 directing complainants to file their memorandum within 15 days from receipt thereof. However, respondent lawyer again failed to file said memorandum despite receipt of said Order on July 12, 2010. Thus, in its Order dated August 17, 2010, the RTC dismissed complainants' appeal for failure to file said memorandum.

Complainants alleged that the following constitute serious neglect of duty: (1) respondent lawyer's failure to attend the March 12, 2010 hearing on the Commissioner's Report which resulted to the failure to cause the marking and submission of evidence for complainants in said ejectment case, (2) respondent lawyer's failure to submit the position paper for complainants in said ejectment case which resulted to complainants' defeat in the MCTC, and (3) on appeal to the RTC, respondent lawyer's failure to file memorandum for complainants which resulted to the dismissal of said appeal. In the course of hiring respondent lawyer, complainants claimed that they paid respondent lawyer the amount of ₱20,000.00 as acceptance fee, ₱1,500.00 as appearance fee, and live chickens and root crops. Further, when complainants asked respondent lawyer why he did not submit the aforesaid position paper, respondent lawyer simply replied, "*Hindi ko na sinagot dahil talo na kayo sa forcible entry. Sa lupa na lang kayo maghabol*."

The Court required respondent lawyer to comment on the complaint.[4]

In his Comment,[5] respondent lawyer countered that he was a known politician in Libmanan, Camarines Sur and he accepted complainants' case because some of the complainants were his supporters when he ran for the positions of Provincial Board Member and for Mayor; that, upon review of the forcible entry case, he believed that it was a frivolous and weak suit, which was why he informed complainants of his intention to withdraw from the case. Respondent lawyer nonetheless admitted that his desire to file a formal written withdrawal as counsel was overtaken by his activities during the 2010 elections. Moreover, respondent lawyer claimed that, although he did draft the position paper for complainants, he did not finish it because complainants were "uncooperative" and could not provide him with sufficient data. Respondent lawyer admitted that he, indeed, received chickens and root crops, but denied receiving ₱20,000.00 from complainants. With regard to his alleged quoted utterances in Tagalog, respondent lawyer claimed that he rarely spoke in Tagalog as he was a Bicolano.

In a Resolution[6] dated June 25, 2012, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation by the IBP-Commission on Bar Discipline (CBD).

Report and Recommendation of the Investigating Commissioner[7]

The IBP-CBD, through its Investigating Commissioner, found respondent lawyer liable for violation of Rule 18.03, Canon 18 of the CPR. It held that respondent lawyer should have exerted the same competence and diligence required of a

---

[4] See Notice of Resolution dated March 30, 2011; *id*. at 71.

[5] See Answer/Comment dated January 2, 2012; *id*, at 82-94.

[6] *Id*. at 97.

[7] *Id*. at 245-251; penned by Commissioner Leilani R. Vizconde-Escueta.

lawyer regardless of the amount or the kind of payment complainants were able to give him. Respondent lawyer should have attended the March 12, 2010 hearing and he should have filed the position paper and memorandum (of appeal) for complainants. Due to his failure to file a position paper, the MCTC rendered its decision based only on the adversary's position paper. Similarly, due to his failure to file a memorandum (of appeal), the RTC dismissed complainants' appeal. Evidently, these acts demonstrated negligence on the part of respondent lawyer. Thus, the Investigating Commissioner recommended the suspension of respondent lawyer from the practice of law for six (6) months with a warning that the commission of the same or similar act or acts shall be dealt with more severely.

Resolution of the IBP-Board of Governors (BOG)[8]

The IBP-BOG adopted the afore-stated report and recommendation in its Resolution No. XXII-2017-1202 dated June 17, 2017.

Issue

The lone issue is whether respondent lawyer violated Canon 18 of the CPR.

Our Ruling

The Court adopts the findings and recommendation of the IBP-BOG but modifies the recommended penalty.

Canon 18 of the CPR provides that a lawyer shall serve his client with competence and diligence, while Rule 18.03 thereof explicitly decrees that a lawyer ought not to neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Verily, Rule 18.03 of the CPR is a basic postulate in legal ethics. In *Vda. de Enriquez v. San Jose*,[9] the Court said:

---

[8] See Notice of Resolution; *id*. at 243-244.

[9] 545 Phil. 379b 0 (2007).

[W]hen a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting the latter's rights. Failure to exercise that degree of vigilance and attention expected of a good father of a family makes the lawyer unworthy of the trust reposed in him by his client and makes him answerable not just to his client but also to the legal profession, the courts and society. **Until the lawyer's withdrawal is properly done, the lawyer is expected to do his or her best for the interest of the client.**[10] (Emphasis ours)

In the case at bar, it is undisputed that a lawyer-client relationship was created when respondent lawyer agreed to accept the complainants' case and, in consideration thereof, received from complainants payment in cash and in kind.

The case of *Samonte v. Jumamil*[11] teaches "that a lawyer-client relationship commences when a lawyer signifies his agreement to handle a client's case and accepts money representing legal fees from the latter." Once a member of the Bar agrees to provide his legal services to a client, but does not perform or deliver as promised, then he reneges upon the oath he took as a lawyer. Moreover, it has been held that the mere failure of the lawyer to perform the obligations due to his client is considered *per se* a violation of the lawyer's oath.[12] Indeed, lawyers are duty bound to attend to their client's cause with diligence, care and devotion, whether they accept it for a fee or for free, so much so that a lawyer's neglect of a legal matter entrusted to him constitutes inexcusable negligence for which he must be held administratively liable.[13]

Li the present case, respondent lawyer failed to serve complainants with industry and diligence. He neglected the legal matter entrusted to him. Respondent lawyer claimed that he decided to withdraw from the aforesaid ejectment case, because, in his view, the case was unmeritorious. However, he admitted

---

[10] *Id.* at 383-384.

[11] A.C. No. 11668, July 17, 2017, 831 SCRA 180, 186.

[12] *Nebreja v. Reonal*, 730 Phil. 55, 61 (2014).

[13] *Agot v. Rivera*, 740 Phil. 393, 400 (2014).

that he failed to formally withdraw as counsel for complainants allegedly due to his hectic schedule during the 2010 elections. He also admitted that he failed to file the aforesaid position paper with the MCTC. After the MCTC rendered a decision adverse to complainants, respondent lawyer filed a notice of appeal, however, he failed to file the memorandum of appeal before the RTC for complainants. Consequently, the RTC dismissed complainants' appeal. Respondent lawyer clearly fell short of the circumspection and diligence required of those privileged to practice law. He attributed his shortcomings as a lawyer to his being a politician. The Court finds such reason unacceptable, if not a display of insolence and arrogance.

In *In Re: Vicente Y. Bayani*,[14] the Court reminded lawyers that their actions or omissions are binding on their clients and that they are expected to be acquainted with the rudiments of law and legal procedure, and that anyone who deals with them has the right to expect not just a good amount of professional learning and competence but also a whole-hearted fealty to their client's cause.[15]

Respondent lawyer's acts, which the IBP-BOG correctly found as violative of Rule 18.03, Canon 18 of the CPR, warrant the imposition of disciplinary action. However, in accordance with prevailing jurisprudence, the Court increases the recommended penalty to suspension from practice of law for one (1) year.[16]

WHEREFORE, respondent Arty. Ariel T. Oriño is found **GUILTY** of violating Rule 18.03, Canon 18 of the Code of Professional Responsibility. He is hereby **SUSPENDED**from the practice of law for a period of one (1) year effective upon his receipt of this Resolution with a stern **WARNING** that a repetition of the same or similar wrongdoing will be dealt with more severely.

Let a copy of this Resolution be attached to respondent's personal record with the Office of the Bar Confidant and copies

---

[14] 392 Phil. 229 (2000).

[15] *Id.* at 231-232.

be furnished to all chapters of the Integrated Bar of the Philippines and to all courts of the land.

SO ORDERED.

Bersamin, C. J., Jardeleza, and *Gesmundo, JJ.*, concur.

Carandang, J., on official leave.

FIRST DIVISION

[A.M. No. MTJ-19-1925. June 03, 2019]
(Formerly OCA IPI No. 17-2937-MTJ)

MADELINE TAN-YAP, *complainant, vs.* **HON. HANNIBAL R. PATRICIO, PRESIDING JUDGE, MUNICIPAL CIRCUIT TRIAL COURT (MCTC), PRESIDENT ROXAS-PILAR, CAPIZ,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; CONDUCT UNBECOMING OF A JUDICIAL OFFICER; A JUDGE'S ACT OF INTERFERING WITH THE IMPLEMENTATION OF A LAWFUL COURT ORDER THROUGH THREATS AND INTIMIDATION, AND USING HIS TITLE GIVING THE APPEARANCE OF IMPROPRIETY, CONSTITUTE CONDUCT UNBECOMING OF A JUDICIAL OFFICER.— The OCA was correct in saying that respondent judge effectively took the law into his own hands, when he stopped the implementation of the writ of execution using threats and intimidation. Needless to say, he also clearly failed to accord due respect to legal processes. While it may be true that respondent judge did not employ actual force in its literal sense

---

[16] *Hipolito v. Atienza*, A.C. No. 7359 (Notice), June 19, 2017.

when he stopped the implementation of the writ of execution, the threats he uttered (that something untoward might happen if the writ of execution were carried out) effectively prevented or stopped the carrying out of the writ of execution. It has been held that: "Such threat of violence is absolutely unbecoming [of] a judge who is expected to display proper decorum." x x x All told, respondent judge violated Canon 2, Sections 1 and 2, and Canon 4, Sections 1 and 2, of the New Code of Judicial Conduct for the Philippine Judiciary x x x. With respect to respondent judge's act of assisting his wife in preparing a motion to intervene in Civil Case No. V-09-11 and affixing his signature thereon, the Court agrees with respondent judge that the same does not constitute private practice of law. x x x To be sure, it does not escape the Court's attention that the title "Judge" is appended to respondent judge's name appearing on the motion to intervene. x x x Since respondent judge was asking for relief from the RTC through the subject motion, he should not have used therein his title "Judge". For even if he did not intend to take undue advantage of his title, it nevertheless gave the appearance of impropriety considering the circumstances of the case. The same may be construed as an attempt "to influence or put pressure on a fellow judge (the Presiding Judge of the RTC handling Civil Case No. V-09-11) by emphasizing that he himself is a judge and is thus is in the right."

2. ID.; ID.; REQUIRED TO ALWAYS BE TEMPERATE, PATIENT AND COURTEOUS, BOTH IN CONDUCT AND IN LANGUAGE.— It bears stressing that a judge "must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint. He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of gravitas which means that a magistrate should not descend to the level of a sharp-tongued, ill-mannered petty tyrant by uttering harsh words, snide remarks and sarcastic comments. He is required to always be temperate, patient and courteous, both in conduct and in language." Likewise, as a holder of a judicial office that commands respect, respondent judge should accord respect to another officer of the court, a sheriff who is implementing a writ of execution. x x x" Certainly, a judge who falls short of the ethics of the judicial office tends to diminish the people's respect for the law and legal processes. He also fails to observe and maintain the esteem due to the courts and to judicial officers."

3. REMEDIAL LAW; RULES OF COURT; DISCIPLINE OF JUDGES; UNBECOMING CONDUCT; CONSIDERED A LIGHT CHARGE; PENALTY IN CASE AT BAR.— Under Sections 10 and 11, Rule 141 of the Rules of Court, unbecoming conduct is a light charge which is sanctioned by any of the following: (1) a fine of not less than ₱1,000.00 but not exceeding ₱10,000.00 and/or; (2) censure; (3) reprimand; and (4) admonition with warning. Considering, however, that respondent judge was herein found guilty of three counts of Conduct Unbecoming of a Judicial Officer, and considering further that he was already previously adjudged guilty of gross ignorance of the law, manifest bias, and partiality in MTJ-13-1834 (*Carbajosa v. Judge Hannibal R. Patricio*) wherein he was meted out a fine of ₱21,000.00, the Court believes that respondent judge ought to be meted out a fine in the amount of ₱40,000.00, with stern warning that a repetition of the same or similar act shall be dealt with more severely.

APPEARANCES OF COUNSEL

Eduardo S. Fortaleza for complainant.
Vila Villa Setias & Alimodian Law Offices for respondent.

R E S O L U T I O N

DEL CASTILLO, *J.*:

This administrative complaint stemmed from a Complaint for Recovery of Possession and Damages filed by Nemesio Tan (Tan), father of complainant Madeline Tan-Yap (complainant), against Robenson Benigla (Benigla), father-in-law of respondent Judge Hannibal R. Patricio, docketed as Civil Case No. V-09-11 of the Regional Trial Court (RTC) of Capiz. In the said case, the parties entered into a Compromise Agreement which was approved by the RTC. The pertinent portions thereof read:

x x x x x x x x x

2) That [Benigla] admits [Tan's ownership of] Lots 703 and 706, both of Pilar Cadastre, the properties subject of the above-entitled case;

3) That, the parties agreed to cause the relocation of the properties involved to determine the exact location of the cockpit and other structures subject matter of the complaint;

4) That, the (costs or expenses for the) relocation shall be borne by the parties pro[-]rata;

x x x x x x x x x

6) That, the parties shall peacefully cooperate in the conduct of the relocation survey;

7) That, in case the relocation survey will show that the cockpit and the other structures constructed are inside the properties owned by [Tan], [Benigla] shall voluntarily remove the same immediately and return possession thereof to [Tan], however, if said cockpit and structures are outside of Lots 703 and 706, [Tan] shall seek the dismissal of the above- entitled case;

8) That, failure of any of the parties to comply with the terms and conditions of this compromise agreement shall entitle the aggrieved party to file an ex-parte motion for execution;

x x x x x x x x x[1]

Complainant alleged that, pursuant to the said court-approved compromise agreement, the trial court issued an order directing a private surveying company to conduct a relocation survey on Lot Nos. 703 and 706. After the survey was done, it was found that the cockpit lay inside Lot No. 706. Benigla, however, questioned this finding claiming that the private surveyor who conducted the survey was not a licensed geodetic engineer. He, thus, asked the trial court to designate a surveyor from the Department of Environment and Natural Resources. This motion was, however, denied, as well as the motion for reconsideration. Aggrieved, Benigla filed a *certiorari* petition before the Court of Appeals (CA). However, the CA did not grant Benigla's prayer for the issuance of a temporary restraining order; thus, complainant filed a Motion for Execution of the Judgment which was granted by the trial court. Accordingly, a Writ of Execution

[1] *Rollo*, p. 39.

was issued on February 6, 2015 and, together with a Demand for Compliance/Delivery of Possession, the same was served upon Benigla on February 26, 2015.

In the morning of March 10, 2015, Sheriff IV Romeo C. Alvarez, Jr. (Sheriff Alvarez) and Process Server Edgar Dellava (Process Server Dellava), both of the RTC of Capiz, Branch 19, went to the premises of Lot Nos. 703 and 706 for the final implementation of the writ of execution. However, they were met by respondent judge who told them that he would not allow the fencing of Lot Nos. 703 and 706. Respondent judge claimed that he and his wife, Ruby Benigla Patricio (Ruby), actually own the adjoining Lot No. 707, and not his father-in-law, Benigla. Respondent judge allegedly lamented that he and Ruby were not impleaded as defendants in Civil Case No. V-09-11 notwithstanding the fact that they owned the adjoining Lot No. 707, consequently, they were not notified of the relocation survey that was conducted on Lot Nos. 703 and 706. Respondent judge thus suggested that, if Sheriff Alvarez and his men were to push thru with the implementation of the writ of execution, "something untoward might happen." Respondent judge then declared that he would file a manifestation before the trial court as regards the situation at hand. Because of these, Sheriff Alvarez and Process Server Dellava, along with the men who were supposed to fence Lot Nos. 703 and 706, left the premises.

In his Report of March 13, 2015,[2] Sheriff Alvarez mentioned that during the confrontation with respondent judge, a host of motorcycle-riding men started going back and forth in the premises. This fact, coupled by respondent judge's statement that "*kung padayonon nyo, basi maghinagamo*" (if you continue with the implementation, something untoward might happen), impressed upon Sheriff Alvarez and his companions that their security was at risk; hence, they decided to just leave the place.

After this, respondent judge's wife, Ruby, filed with the RTC a Motion to Intervene and Opposition to the Implementation of the Writ of Execution and Issuance of Writ of Demolition[3]

---

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

dated March 16, 2015. In the filing of this motion, Ruby was assisted by respondent judge himself, who affixed his signature above the printed name "JUDGE HANNIBAL R. PATRICIO" on page three of the said motion.

Nevertheless, the RTC denied this motion for lack of merit in an Order[4] dated March 24, 2015.

Given these facts, complainant contended that respondent judge violated the New Code of Judicial Conduct: (1) when he unduly intervened in the implementation of the writ of execution; (2) when he threatened Sheriff Alvarez and the latter's companions and stopped them from carrying out the writ of execution; (3) when he assisted his wife Ruby in filing a motion to intervene in Civil Case No. V-09-11; and (4) when he abandoned his work station on the day of the supposed implementation of the writ of execution.

In his Comment,[5] respondent judge denied the accusations against him. He claimed that the intended fencing of Lot Nos. 703 and 706 pursuant to the writ of execution would have prejudiced him and his wife insofar as their Lot No. 707 was concerned; that the sketch plan on which the relocation and fencing would be based was incorrect and invalid because on its face, it omitted to show that Lot Nos. 706 and 703 were bounded or surrounded by Lot No. 707; that this was the reason why he believed that the implementation of the writ of execution and the intended relocation and fencing of Lot Nos. 703 and 706 would have resulted in the encroachment on their Lot No. 707; that his action was justified under Article 429 of the Civil Code under which the owner of a thing has the right to exclude any person from the enjoyment and disposal thereof, and under which the owner may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

---

[3] *Id.* at 60-63.

[4] *Id.* at 64.

[5] *Id.* at 67-85.

Respondent judge denied that he threatened to stop Sheriff Alvarez from implementing the writ of execution; that all he did was to engage Sheriff Alvarez in a conversation, that is, by "*telling, arguing, and asking the sheriff to afford him and his wife the time (until Friday or March 13, 2015) for him and his wife to be able to file the proper manifestation in court with respect to their rights over Lot No. 707, Pilar Cadastre, that would be affected or encroached upon by the relocation and fencing of Lot Nos. 706 and 703 x x x.*"[6] Respondent judge claimed that Sheriff Alvarez in fact did not mention in his report that he (respondent judge) threatened Sheriff Alvarez or would have inflicted bodily harm upon him; that he even assured Sheriff Alvarez that, should it be confirmed that no encroachment would result from the fencing of Lot Nos. 703 and 706, he himself (respondent judge) would help in putting up said fence; that his statement that "*trouble might ensue should Sheriff Alvarez proceed with the implementation*'' was not synonymous with the use of brute force. In fine, respondent judge insisted that he was only trying to protect his and his wife's proprietary rights, and that he never acted beyond the bounds of the law.

Respondent judge added that he and his wife were entitled to their day in court and it was this fact that prompted him to assist his wife in preparing and filing the motion to intervene; that the assistance he provided his wife was anchored on their interest in Lot No. 707, and not on any intention on his part to engage in the private practice of law. Respondent judge denied that he abandoned his post on the day of the supposed implementation of the writ of execution since he was on sick leave that day.

Report and Recommendation of the Office of the Court Administrator (OCA)

In its Report and Recommendation,[7] the OCA found that respondent judge improperly interfered with the implementation

---

[6] *Id.* at 76; italics supplied.

[7] *Id.* at 152-159.

of the writ of execution and that this interference constituted conduct unbecoming of a judicial officer, *viz.*:

> In the instant case, there was a valid writ of execution to be implemented. Respondent Judge Patricio committed an unlawful act when he interfered with the final implementation of the writ. Such act was improper for the esteemed office of a magistrate of the law and is tantamount to x x x conduct unbecoming a judicial officer. He practically took the law into his own hands when he stopped the implementation of the writ invoking his proprietary rights. As a judge, respondent Judge Patricio should be familiar with the laws and the appropriate legal remedies to protect his and his wife's right[s] over Lot No. 707, which was allegedly encroached [upon] by plaintiff Tan. Respondent Judge Patricio's defense that he merely asserted his right to prevent the encroachment, invasion, and usurpation of Lot No. 707 owned by him and his wife cannot justify his assailed action. He should have realized that the public would expect him to act in a manner reflecting the dignity and integrity of a judge. His demeanor as a judge should always be with utmost circumspection.[8]

Even then, the OCA recognized respondent judge's intention to protect his and his wife's property rights, thus:

> Still, respondent Judge Patricio cannot be completely faulted for protecting his and his wife's proprietary rights. This is but human nature. Such action cannot be considered grossly repugnant. Thus, while he was previously penalized for another infraction, a fine of P20,000.00 is the appropriate penalty after taking into account the attendant circumstances.[9]

Thus, the OCA recommended that:

1. the instant administrative complaint be RE-DOCKETED as a regular administrative matter; and
2. Presiding Judge Hannibal R. Patricio, Municipal Circuit Trial Court, President Roxas-Pilar, Capiz, be FINED in the amount of ₱20,000.00 for violation of Canon 4, Section 1 of the New Code of Judicial Conduct for the Philippine Judiciary,

---

[8] *Id.* at 158.

[9] *Id*.

with a WARNING that a repetition of the same or any similar act would be dealt with more severely.[10]

The Court's Ruling

The Court agrees with the findings and recommendation of the OCA but modifies its recommended penalty.

To recall, respondent judge was charged with the following: (1) that he unduly intervened in or interfered with the implementation of the writ of execution; (2) that he resorted to threats and intimidation to stop the implementation of the writ of execution; (3) that he assisted his wife in filing a motion to intervene in Civil Case No. V-09-11; and (4) that he abandoned his work station on the day of the supposed implementation of the writ of execution.

At the outset, the Court finds no merit to the charge that respondent judge abandoned his work station on March 10, 2015 since a Certification[11] from the Office of Administrative Services of the OCA shows that he was on sick leave that day.

Nevertheless, the Court holds that the other charges have been substantiated. Respondent judge did not deny his presence at the premises of the properties subject of Civil Case No. V-09-11 on March 10, 2015. Respondent judge also admitted that he prevented the fencing of Lot Nos. 703 and 706 because he believed that the sketch plan on which the fencing of these said properties would be based was erroneous for failing to indicate on its face that Lot Nos. 703 and 706 were bounded by Lot No. 707 which he says was owned by him and his wife Ruby, on account of which a possible encroachment on their property might have resulted if the fencing would have pushed through.

The Court finds respondent judge's rationalization of his actions unacceptable.

---

[10] *Id*. at 158-159.

[11] *Id*. at 146.

One thing is clear - the implementation was pursuant to the lawful order of the RTC in Civil Case No. V-09-11. While respondent judge might have some misgivings on the accuracy of the sketch plan, he of all people should have known that, under the circumstances, he could not insist on his opinion about the sketch plan as the same had already been submitted to, evaluated, and passed upon by the court. As a judge, he should know that it was incumbent upon him to resort to suitable judicial remedies that he could avail of, and not to interfere with the implementation of a lawful order of the court through recourse to an unwarranted shortcut.

Respondent judge's reliance on Article 429[12] of the Civil Code is misplaced. The doctrine of "self-help" enunciated in this article applies only when the person against whom the owner has the right to use force (in order to exclude the former from the latter's property) is really an "aggressor."[13] In this case, Sheriff Alvarez was not an aggressor, as indeed he could not have been one, because as an officer or agent of the court, he was simply carrying out his official duty to implement the writ of execution covering Lot Nos. 703 and 706. The OCA was correct in saying that respondent judge effectively took the law into his own hands, when he stopped the implementation of the writ of execution using threats and intimidation. Needless to say, he also clearly failed to accord due respect to legal processes.

While it may be true that respondent judge did not employ actual force in its literal sense when he stopped the implementation of the writ of execution, the threats he uttered (that something untoward might happen if the writ of execution

---

[12] Art. 429. The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

[13] Paras, Edgardo, L., Civil Code of the Philippines, Annotated, Volume II, Sixteenth Edition (2008), p. 146.

were carried out) effectively prevented or stopped the carrying out of the writ of execution. It has been held that: "Such threat of violence is absolutely unbecoming [of] a judge who is expected to display proper decorum."[14] It bears stressing that a judge "must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint. He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of gravitas which means that a magistrate should not descend to the level of a sharp-tongued, ill-mannered petty tyrant by uttering harsh words, snide remarks and sarcastic comments. He is required to always be temperate, patient and courteous, both in conduct and in language."[15] Likewise, as a holder of a judicial office that commands respect, respondent judge should accord respect to another officer of the court, a sheriff who is implementing a writ of execution.

All told, respondent judge violated Canon 2, Sections 1 and 2, and Canon 4, Sections 1 and 2, of the New Code of Judicial Conduct for the Philippine Judiciary which provide, *viz.*:

CANON 2
Integrity

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

x x x x x x x x x

---

[14] *Jabon v. Judge Usman*, 510 Phil. 513, 543 (2005).

[15] *Tormis v. Judge Paredes*, 753 Phil. 41, 54 (2015).

CANON 4
Propriety

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

Canons 1 and 11 of the Code of Professional Responsibility mandate:

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

CANON 11 – A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS."

"Certainly, a judge who falls short of the ethics of the judicial office tends to diminish the people's respect for the law and legal processes. He also fails to observe and maintain the esteem due to the courts and to judicial officers."[16]

With respect to respondent judge's act of assisting his wife in preparing a motion to intervene in Civil Case No. V-09-11 and affixing his signature thereon, the Court agrees with respondent judge that the same does not constitute private practice of law. In *Office of the Court Administrator v. Judge Floro, Jr.*, we held:[17]

---

[16] *Dee C. Chum & Sons, Inc. v. Judge Peralta*, 603 Phil. 94, 103 (2009).

[17] 520 Phil. 590 (2006).

x x x [W]hat is envisioned by 'private practice' is more than an isolated court appearance, for it consists in frequent customary action, a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer. In herein case, save for the 'Motion for Entry of Judgment,' it does not appear from the records that Judge Floro filed other pleadings or appeared in any other court proceedings in connection with his personal cases. It is safe to conclude, therefore, that Judge Flora's act of filing the motion for entry of judgment is but an isolated case and does not in any wise constitute private practice of law. Moreover, we cannot ignore the fact that Judge Floro is obviously not lawyering for any person in this case as he himself is the petitioner.[18]

To be sure, it does not escape the Court's attention that the title "Judge" is appended to respondent judge's name appearing on the motion to intervene. The Court has already stated that:

While the use of the title ['Judge' or 'Justice'] is an official designation as well as an honor that an incumbent has earned, a line still has to be drawn based on the circumstances of the use of the appellation. While the title can be used for social and other identification purposes, it cannot be used with the intent to use the prestige of his judicial office to gainfully advance his personal, family or other pecuniary interests. Nor can the prestige of a judicial office be used or lent to advance the private interests of others, or to convey or permit others to convey the impression that they are in a special position to influence the judge. To do any of these is to cross into the prohibited field of impropriety.[19]

Since respondent judge was asking for relief from the RTC through the subject motion, he should not have used therein his title "Judge". For even if he did not intend to take undue advantage of his title, it nevertheless gave the appearance of impropriety considering the circumstances of the case.[20] The same may be construed as an attempt "to influence or put pressure

---

[18] *Id*. at 636.

[19] *Ladignon v. Judge Garong*, 584 Phil. 352, 357-358 (2008).

[20] *Id*. at 358.

on a fellow judge (the Presiding Judge of the RTC handling Civil Case No. V-09-11) by emphasizing that he himself is a judge and is thus is in the right."[21]

Indeed, the aforementioned inappropriate actions of respondent judge constitute Conduct Unbecoming of a Judicial Officer. Under Sections 10 and 11, Rule 141 of the Rules of Court, unbecoming conduct is a light charge which is sanctioned by any of the following: (1) a fine of not less than ₱1,000.00 but not exceeding ₱10,000.00 and/or; (2) censure; (3) reprimand; and (4) admonition with warning. Considering, however, that respondent judge was herein found guilty of three counts of Conduct Unbecoming of a Judicial Officer, and considering further that he was already previously adjudged guilty of gross ignorance of the law, manifest bias, and partiality in MTJ-13-1834 (*Carbajosa v. Judge Hannibal R. Patricio*)[22] wherein he was meted out a fine of ₱21,000.00, the Court believes that respondent judge ought to be meted out a fine in the amount of ₱40,000.00, with stern warning that a repetition of the same or similar act shall be dealt with more severely.

As final note: it may not be amiss to state that a judge should so behave at all times as to promote public confidence in the integrity of the judiciary, and avoid impropriety and appearance of impropriety in all activities.[23] "His personal behavior, not only while in the performance of official duties but also outside the court, must be beyond reproach, for he is the visible personification of law and justice."[24]

WHEREFORE, respondent Judge Hannibal R. Patricio of the Municipal Circuit Trial Court, President Roxas-Pilar, Capiz, is hereby found **GUILTY** of three counts of Conduct Unbecoming of a Judicial Officer for which he is imposed a

---

[21] *Office of the Court Administrator v. Judge Floro, Jr.*, *supra* note 19 at 636-637.

[22] See Decision dated October 2, 2013 in said case.

[23] *Atty. Molina v. Judge Paz*, 462 Phil. 620, 629 (2003).

[24] *Id*.

FINE of ₱40,000.00, with **WARNING** that a repetition of the same or any similar act would be dealt with more severely.

SO ORDERED.

Bersamin, C.J., Jardeleza, and *Gesmundo, JJ.*, concur.

Carandang, J., on official leave.

SECOND DIVISION

[G.R. No. 192472. June 3, 2019]

NORA ALVAREZ AND EDGAR ALVAREZ, *petitioners, vs.* **THE FORMER 12TH DIVISION, COURT OF APPEALS, SPOUSES ALEJANDRO DOMANTAY AND REBECCA DOMANTAY, AND THE PRESIDING JUDGE HERMOGENES C. FERNANDEZ, OF BRANCH 56 OF THE REGIONAL TRIAL COURT (RTC), SAN CARLOS CITY, PANGASINAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT; GROUNDS; ANNULMENT OF JUDGMENT IS AN EXTRAORDINARY REMEDY THAT IS EQUITABLE IN CHARACTER AND PERMITTED ONLY IN EXCEPTIONAL CASES, AND IT IS A RECOURSE THAT PRESUPPOSES THE FILLING OF A SEPARATE AND ORIGINAL ACTION FOR THE PURPOSE OF ANNULLING OR A AVOIDING A DECISION IN ANOTHER CASE.—** Annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled was rendered. It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case. It is not a continuation

or progression of the same case, as in fact the case it seeks to annul is already final and executory, but rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases. Annulment of judgment, as provided for in Section 2, Rule 47 of the 1997 Rules of Court, is based only on the grounds of extrinsic fraud and lack of jurisdiction. x x x Jurisprudence, however, recognizes lack of due process as an additional ground to annul a judgment.

2. ID.; ID.; ID.; A PETITION FOR ANNULMENT OF JUDGMENT MAY NOT BE OUTRIGHTLY DISMISSED ON A VERY STRICT INTERPRETATION OF TECHNICAL RULES; CASE AT BAR.— Under Section 5, Rule 47 of the Rules of Court, it is incumbent that when a court finds no substantial merit in a petition for annulment of judgment, it may dismiss the petition outright but the "specific reasons for such dismissal" shall be clearly set out. Here, the allegations in the petition clearly set forth the ground of the RTC's lack of jurisdiction over the persons of petitioners. x x x Should the allegation of lack of jurisdiction be proven, then this would constitute a serious ground that could affect the validity of the Court's judgment. x x x The CA, instead, outrightly dismissed the petition based on technical grounds. x x x The rule is that jurisdiction of the court over the person of the defendant or respondent cannot be acquired notwithstanding his knowledge of the pendency of a case against him unless he was validly served with summons. The Court has emphasized the importance of service of summons in order to acquire jurisdiction over the person of the defendant. x x x [T]he instant Petition for Annulment of Judgment was anchored on lack of jurisdiction over the persons of the petitioners. x x x [O]n the bases of the allegations in the petition as well as the appropriate supporting documents, there is a prima facie case of annulment of judgment that could warrant the CA's favorable action. The bottom line is that if the allegations in the Petition for Annulment of Judgment turned out to be true, then the RTC Decision would be void and the CA would have been duty-bound to strike it down. Thus, the CA has exceeded the bounds of its jurisdiction when it outrightly dismissed the Petition on a very strict interpretation of technical rules. The Court finds it more prudent to remand the case to the CA for further proceedings to first resolve the x x x jurisdictional issue.

APPEARANCES OF COUNSEL

Larry Gabriel Ramos & Maria Teresa Morales for petitioners.
Ramos Law Office for private respondents.

D E C I S I O N

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

This resolves the Petition for *Certiorari* under Rule 65 of the 1997 Rules of Court assailing the December 16, 2009[1] and April 21, 2010[2] Resolutions issued by the former 12th Division of the Court of Appeals (CA), which respectively dismissed the Petition for Annulment of Judgment filed by petitioners and denied the latter's Motion for Reconsideration, in CA-G.R. SP No. 111420.

The case arose from a Petition for Consolidation of Ownership filed by private respondent spouses Alejandro and Rebecca Domantay over a parcel of land covered by TCT No. 128750 (subject land) before the Regional Trial Court (RTC), San Carlos City, Pangasinan, Branch 56. It was alleged in the said petition that on April 14, 1983, the former owners, spouses Nicanor Alvarez and Juanita de Guzman (spouses Alvarez) executed a Deed of Sale with Right to Repurchase over the subject land and that their heirs and assigns failed to repurchase it.

Petitioner Nora Alvarez (one of the defendants in the case) and some other defendants were never served with summons. Having failed to file their Answer, defendants were declared in default and private respondents Domantay were allowed to adduce evidence ex-parte.

Meanwhile, the heirs of spouses Alvarez (cousins of petitioners) filed a Motion for Leave to Intervene alleging that

---

[1] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Mario L. Guariña III and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 40-43.

[2] *Id*. at 45.

they are the lawful owners and actual possessors of the subject land. The motion was denied.

On December 18, 2007, a Decision[3] was rendered by the RTC ordering the registration of the consolidated ownership of the petitioners spouses Alejandro and Rebecca Domantay over the subject land.

Petitioners Nora Alvarez and Edgar Alvarez (who was not impleaded as party-defendant in the case) filed a Motion to Set Aside Judgment By Way of Special Appearance on November 13, 2008. No resolution was as yet been issued resolving the said Motion. Upon verification of the status of their motion, petitioner Nora discovered that there was already an Entry of Final Judgment[4] on the case (for consolidation of ownership). This prompted the petitioners to file a Petition for Annulment of Judgment[5] before the Court of Appeals grounded on lack of jurisdiction over their person.

On December 16, 2009, public respondent Court of Appeals issued the now assailed resolution dismissing the Petition for Annulment of Judgment. The dismissal was anchored on two grounds: (a) for failure to attach certain documents, to wit: Petition for Consolidation of Ownership, Deed of Sale with Right to Repurchase, Motion for Leave to Intervene, and the Motion to Set Aside Judgment By Way of Special Appearance; and (b) for failure of the petitioners to act immediately to have the case dismissed and that they did not resort to ordinary remedies of appeal, new trial, petition from relief from judgment and any other remedies.

Petitioners filed a Motion for Reconsideration, submitting with it the required documents mentioned by the CA in its December 16, 2009 Resolution. On April 21, 2010, the CA issued a resolution denying petitioners' Motion for Reconsideration.

---

[3] Penned by Presiding Judge Hermogenes C. Fernandez; *id*. at 71-72.

[4] *Id*. at 75.

[5] *Id*. at 46-64.

Dissatisfied, petitioners filed the instant Petition for Certiorari on the following grounds, to wit:

> I. The Honorable Court of Appeals gravely abused its discretion amounting to lack or excess of jurisdiction in dismissing the Petition for Annulment of Judgment filed before it on the ground that certain documents to support the action were not submitted and that "ordinary" remedies or actions were not resorted to by petitioners;
>
> II. The respondent Court of Appeals gravely abused its discretion amounting to lack or excess of jurisdiction when it contravened the decided cases of the Honorable Supreme Court that prior availment of the "Ordinary remedies" of appeal, petition for relief, new trial is not required where absence of jurisdiction over the person of the defendant is in issue;
>
> III. The Honorable Court of Appeals gravely abused its discretion amounting to lack or excess of jurisdiction in denying the Motion for Reconsideration and therefore affirming the dismissal earlier made despite petitioners' submission of the documents that the Honorable Court of Appeals was looking for. It also gravely abused its discretion when it refused to recognize why resort to the "ordinary remedies" was not available and is not necessary[.][6]

It must be clarified at the outset that the instant petition is one for *certiorari* under Rule 65 of the 1997 Rules of Court, and thus, this Court is limited only to inquire on whether or not respondent CA acted without jurisdiction or with grave abuse of discretion in dismissing the Petition for Annulment of Judgment.

---

[6] *Id*. at 19.

Annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled was rendered.[7] It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case.[8] It is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory, but rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases.[9]

Annulment of judgment, as provided for in Section 2, Rule 47 of the 1997 Rules of Court, is based only on the grounds of extrinsic fraud and lack of jurisdiction. Thus:

> Sec. 2. *Grounds for annulment*. — The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.
>
> Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

Jurisprudence, however, recognizes lack of due process as an additional ground to annul a judgment.[10]

Under Section 5, Rule 47[11] of the Rules of Court, it is incumbent that when a court finds no substantial merit in a petition for annulment of judgment, it may dismiss the petition outright but the "specific reasons for such dismissal" shall be clearly set out.[12]

---

[7] *Islamic Da'wah Council of the Philippines v. Court of Appeals*, 258 Phil. 802, 808 (1989).

[8] *Frias v. Alcayde*, G.R. No. 194262, February 28, 2018.

[9] *Id*.

[10] *Id*.

[11] SEC. 5. *Action by the Court.* — Should the court find no substantial merit in the petition, the same may be dismissed outright with specific reasons for such dismissal.

Should *prima facie* merit be found in the petition, the same shall be given due course and summons shall be served on the respondent.

[12] *Castigador v. Nicolas,* 705 Phil. 306, 310 (2013).

Here, the allegations in the petition clearly set forth the ground of the RTC's lack of jurisdiction over the persons of petitioners. It was alleged that petitioner Nora Alvarez was never personally served with summons and petitioner Edgar Alvarez, who is one of the heirs of the spouses Alvarez was not impleaded as party-defendant in the case.

Should the allegation of lack of jurisdiction be proven, then this would constitute a serious ground that could affect the validity of the Court's judgment. The Court explained the effect if the judgment rendered IS one without jurisdiction, thus:

> x x x Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the persons of the defending party or over the subject matter of the claim. In case of absence or lack of jurisdiction, a court should not take cognizance of the case. Thus, the prevailing rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void. It is not a decision in contemplation of law and, hence, it can never become executory. It also follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*.[13] (Citation omitted)

The CA, instead, outrightly dismissed the petition based on technical grounds.

First, the CA did not give due course to the petition as it is not compliant with Section 4, Rule 47 of the Rules of Court, for failure of the petitioners to attach with their petition, documents supporting their cause of action. True, owing to the exceptional character of the remedy of annulment of judgment, the limitations and guidelines set forth by Rule 47 should be strictly complied with.[14] A petition for annulment which ignores or disregards any of these limitations and guidelines cannot prosper.

---

[13] *Sebastian v. Spouses Cruz*, 807 Phil. 738, 743 (2017).

[14] *Aquino v. Tangkengko*, 793 Phil. 715, 721 (2016).

A perusal of the petition would reveal that petitioners annexed therein the following documents: (a) the assailed RTC Decision dated December 18, 2007;[15] (b) Transfer Certificate of Title No. 128750[16] proving that their predecessors were the former registered owners thereof; (c) petitioner Edgar Alvarez's Certificate of Live Birth[17] proving filiation to the former owners of the subject land; (d) proof of receipt[18] by petitioner Nora Alvarez of the RTC Decision; (e) RTC Order[19] dated December 10, 2008, submitting for resolution petitioners' "Motion to Set Aside Judgment by Way of Special Appearance"; (f) Entry of Final Judgment of the RTC Decision;[20] (g) Summons;[21] and (h) Sheriff's Return.[22]

Not satisfied with the foregoing documents, the CA dismissed the petition and mentioned the specific documents which were lacking. In their motion for reconsideration, petitioners submitted the said lacking documents, specifically: (a) the Petition for Consolidation of Ownership,[23] (b) two copies of the Deed of Sale with Right to Repurchase;[24] (c) a Copy of the Motion for Leave to Intervene;[25] and the (d) Motion to Set Aside Judgment By Way of Special Appearance.[26] Without determining whether said additional documents are relevant or not, it is more prudent for the CA to have reconsidered their ruling of dismissal when

---

[15] *Rollo*, pp. 65-66.

[16] *Id*. at 67-69.

[17] *Id*. at 70.

[18] *Id*. at 72.

[19] *Id*. at 73.

[20] *Id*. at 75.

[21] *Id*. at 76.

[22] *Id*. at 77.

[23] *Id*. at 90-92.

[24] *Id*. at 95-96.

[25] *Id*. at 97 98.

[26] *Id*. at 99-102.

petitioners submitted the documents which were said to be lacking thereby substantially complying with what was required of them.

Second, the CA dismissed the petition for failure to avail first the remedies of new trial, appeal, petition for relief from judgment or other appropriate remedies. If these remedies were not availed of, petitioners must allege in their petition that said ordinary remedies are no longer available through no fault on their part; otherwise, the petition will be dismissed. It bears to stress that these mandatory requirements apply only when the ground for the petition for annulment of judgment is extrinsic fraud. If the petition for annulment of judgment is based on lack of jurisdiction, petitioners need not allege that the ordinary remedies of new trial, reconsideration or appeal were no longer available through no fault on their part. As held by this Court:

> In a case where a petition for the annulment of a judgment or final order of the RTC filed under Rule 47 of the Rules of Court is grounded on lack of jurisdiction over the person of the defendant/respondent or over the nature or subject of the action, the petitioner need not allege in the petition that the ordinary remedy of new trial or reconsideration of the final order or judgment or appeal therefrom ate no longer available through no fault of her own. This is so because a judgment rendered or final order issued by the RTC without jurisdiction is null and void and may be assailed any time either collaterally or in a direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked, unless barred by laches.[27] (Citations omitted)

Third, in attempting to resolve the merits of the petition, the CA found it unbelievable that petitioners were not aware of the filing of the case against them as in fact, before Entry of Judgment of the RTC's Decision, petitioners filed with the RTC a Motion to Set Aside Judgment By Way of Special Appearance. Petitioners claimed that they only knew of the case, when the RTC Decision was served on them. At the time they filed the Motion to Set Aside Judgment By Way of Special Appearance, no entry of judgment was known to them.

---

[27] *Ancheta v. Ancheta*, 468 Phil. 900, 911 (2004): also cited in *City of Taguig v. City of Makati*, 787 Phil. 367, 397 (2016).

The rule is that jurisdiction of the court over the person of the defendant or respondent cannot be acquired notwithstanding his knowledge of the pendency of a case against him unless he was validly served with summons.[28] The Court has emphasized the importance of service of summons in order to acquire jurisdiction over the person of the defendant. Thus:

> x x x ***The service*** *of summons upon the defendant becomes an important element in the operation of a court's jurisdiction upon a party to a suit, as service of summons upon the defendant is the means by which the court acquires jurisdiction over his person. Without service of summons, or when summons are improperly made, both the trial and the judgment, being in violation of due process, are null and void, unless the defendant waives the service of summons by voluntarily appearing and answering the suit.*
>
> When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. This is not, however, always the case. Admittedly, and without subjecting himself to the court's jurisdiction, *the defendant in an action can, by special appearance object to the court's assumption on the ground of lack of* ***jurisdiction***. If he so wishes to assert this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court, otherwise, he shall be deemed to have submitted himself to that jurisdiction.[29] (Citation omitted)

As can be gleaned from the petitioners' Motion to Set Aside Judgment By Way of Special Appearance,[30] they consistently maintained that the RTC did not acquire jurisdiction over their persons, due to invalid and improper service of summons (for petitioner Nora Alvarez) and failure to implead one of the heirs in the case (for petitioner Edgar Alvarez). It was notable from the said motion that it was filed by way of special appearance, that is, to question only the jurisdiction of the Court over their persons. No other affirmative relief was being sought. Hence,

---

[28] *Frias v. Alcayde, supra* note 8.

[29] *Id*., citing *Guiguinto Cooperative, Inc. (GUCCI) v. Torres,* 533 Phil. 476, 488-489 (2006)

[30] *Supra* note 26.

the said filing of the Motion cannot be considered as a voluntary submission to the jurisdiction of the RTC. The Court explained:

> As a general rule, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. Thus, it has been held that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration is considered voluntary submission to the trial court's jurisdiction. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.[31] (Citations omitted)

To repeat, the instant Petition for Annulment of Judgment was anchored on lack of jurisdiction over the persons of the petitioners. Annexed to the said petition are the following documents: (a) the assailed RTC Decision dated December 18, 2007; (b) Transfer Certificate of Title No. 128750; (c) petitioner Edgar Alvarez's Certificate of Live Birth; (d) proof of receipt by petitioner Nora Alvarez of the RTC Decision; (e) RTC Order dated December 10, 2008, submitting for resolution petitioners' "Motion to Set Aside Judgment by Way of Special Appearance"; (t) Entry of Final Judgment of the RTC Decision; (g) Summons; and (h) Sheriff's Return. Added to these are the following documents appended in the Motion for Reconsideration: (a) the Petition for Consolidation of Ownership, (b) two copies of the Deed of Sale with Right to Repurchase; (c) a Copy of the Motion for Leave to Intervene; and the (d) Motion to Set Aside Judgment By Way of Special Appearance. Thus, on the bases of the allegations in the petition as well as the appropriate supporting documents, there is a prima facie case of annulment of judgment that could warrant the CA's favorable action.

The bottom line is that if the allegations in the Petition for Annulment of Judgment turned out to be true, then the RTC Decision would be void and the CA would have been duty-

---

[31] *Interlink Movie Houses, Inc. v. Court of Appeals*, G.R. No. 203298, January 17, 2018.

bound to strike it down.[32] Thus, the CA has exceeded the bounds of its jurisdiction when it outrightly dismissed the Petition on a very strict interpretation of technical rules. The Court finds it more prudent to remand the case to the CA for further proceedings to first resolve the above-discussed jurisdictional issue.[33]

WHEREFORE, the petition is hereby **GRANTED**. The Resolutions dated December 16, 2009 and April 21, 2010 of the Court of Appeals in CA-G.R. SP No. 111420 are **SET ASIDE**. **ACCORDINGLY**, the instant case is **REMANDED** to the Court of Appeals for further proceedings.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe*, and *Lazaro-Javier, JJ.*, concur.

Caguioa, J., on official leave.

THIRD DIVISION

[G.R. No. 193398. June 3, 2019]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner, vs.* **HONORABLE OMBUDSMAN MA. MERCEDITAS N. GUTIERREZ, RAFAEL A. SISON, JOSE R. TENCGO, JR., DONALD G. DEE, DEWEY DEE, PEDRO AGUIRRE, INOCENCIO FERRER, YOSHIHINO NAKAMURA, SADAO NAKANO, KEN KIKUTANI, ICHIRO UTAKE, EMIGDIO TANJUATCO, CESAR RECTO, AND JOHN/JANE DOES,** *respondents.*

---

[32] *Coombs v. Castañeda*, 807 Phil. 383, 393-394 (2017).

[33] *Sebastian v. Spouses Cruz*, *supra* note 13, at 746.

SYLLABUS

1. **POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; PROSECUTORIAL POWERS; THE SUPREME COURT DOES NOT INTERFERE WITH THE OMBUDSMAN'S DETERMINATION OF PROBABLE CAUSE EXCEPT ONLY WHEN TAINTED WITH GRAVE ABUSE OF DISCRETION; GRAVE ABUSE OF DISCRETION, DEFINED.—** The Office of the Ombudsman is given a wide latitude of discretion when exercising its prosecutorial powers. Thus, this Court avoids intruding on its determination of probable cause. x x x Only when tainted with grave abuse of discretion will this Court reverse the Office of the Ombudsman's finding of probable cause. Here, grave abuse of discretion means that public respondent's exercise of judgment or power was so capricious and whimsical, or arbitrary and despotic, as to amount to a lack or excess of jurisdiction. Its act must have been "so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law." x x x Here, x x x public respondent did not act with grave abuse of discretion in finding no probable cause. x x x Public respondent considered all the evidence in determining whether there is probable cause to charge respondents with violating the Anti-Graft and Corrupt Practices Act. It did not act whimsically or capriciously so as to amount to grave abuse of discretion. Hence, this Court affords great respect to and will not interfere with its finding of probable cause.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT): VIOLATION OF SECTION 3(e); ELEMENTS.—** The elements of the offense in Section 3(e) [of the Anti-Graft and Corrupt Practices Act] are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident

bad faith or gross inexcusable negligence.

3. **ID.; ID.; VIOLATION OF SECTION 3(g); ELEMENTS.—** [T]he elements of the offense in Section 3(g), are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the Government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the Government.

4. **ID.; ID.; VIOLATION OF SECTION 3(e); ELEMENT OF MANIFEST PARTIALITY, EVIDENT BAD FAITH, OR GROSS INEXCUSABLE NEGLIGENCE; NOT DULY ESTABLISHED IN CASE AT BAR FOR THE QUESTIONED LOANS WERE APPROVED AND GRANTED AFTER EXTENSIVE EVALUATION AND IN THE EXERCISE OF SOUND BUSINESS DISCRETION.—** In *Presidential Commission on Good Government v. Office of the Ombudsman*, this Court held that there is no element of manifest partiality, evident bad faith, or gross inexcusable negligence when the questioned loans were approved after a careful evaluation and study x x x. This Court also held that not only must the losses be proved, but must have also been unavoidable x x x. Here, the Office Correspondences show that these loans were granted for an envisioned rehabilitation of Continental Manufacturing. Thus, there is no showing that respondents acted with manifest partiality, evidence bad faith, or gross inexcusable negligence. The loans were approved and granted after the consideration of the financial situation, extensive evaluation of the terms and conditions, and several securities for the accommodation requested. They were granted in the exercise of sound business discretion.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Federico N. Alday, Jr. for respondent *Jose R. Tengco Jr.*
Suarez & Narvasa Law Firm for respondent *Donald G. Dee.*
The Law Firm Of Tanjuatco & Partners for *Emigdio G. Tanjuatco, Sr.*

D E C I S I O N

LEONEN, *J.*:

The Office of the Ombudsman's determination of probable cause is accorded great respect in the absence of any grave abuse of discretion.

This Court resolves a Petition for Certiorari[1] seeking to reverse and set aside the Office of the Ombudsman's June 28, 2006 Resolution[2] and January 28, 2009 Order[3] dismissing the Presidential Commission on Good Government's Affidavit-Complaint[4] for lack of probable cause. The Office of the Ombudsman ruled that the various loans and guaranty accommodations granted by the Development Bank of the Philippines (Development Bank) to Continental Manufacturing Corporation (Continental Manufacturing) were not behest loans. It found no probable cause to charge respondents for violating Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.[5]

---

[1] *Rollo*, pp. at 3-39. Filed under Rule 65 of the Rules of Court.

[2] *Id*. at 40-71. The Resolution was penned by Graft Investigation and Prosecution Officer II Marilou B. Ancheta-Mejica, reviewed by PIAB-D Acting Director Adoracion A. Agbada, and approved by Ombudsman Ma. Merceditas N. Gutierrez on October 14, 2008, with the recommendation of PAMO Assistant Ombudsman Pelagio S. Apostol.

[3] *Id*. at 72-80. The Order was penned by Graft Investigation and Prosecution Officer II Rachel T. Cariaga-Favila, reviewed by PIAB-D Acting Director Marilou B. Ancheta-Mejica, and approved by Deputy Ombudsman for Luzon Mark E. Jalandoni on June 11, 2010, with the recommendation of PAMO Assistant Ombudsman Jose T. De Jesus, Jr.

[4] *Id*. at 223-234.

[5] *Id*. at 415-416. According to respondent Donald Dee in his Comment, Continental Manufacturing was founded in 1952. It started as a small thread winding company with an initial paid-up capital of ₱1,000.00, marketing the brands "Cococo" and "Lily" sewing threads. In 1964, the company started producing acrylic yarns after acquiring the exclusive right to manufacture it under the trade name "Vonnel" from Mitsubishi Rayon Company, Ltd. It

Development Bank had initially granted Continental Manufacturing a loan amounting to ₱43,586,693.93, with a collateral worth ₱43,063,077.08.[6]

On March 10, 1981, Development Bank granted Continental Manufacturing another credit facility amounting to ₱28 million. The credit facility was approved under Development Bank Resolution No. 864. Later, the credit facility was increased to ₱30 million.[7]

Allegedly, when this credit facility was granted, Continental Manufacturing had been undergoing financial problems.[8]

Later, Development Bank issued Board Resolution No. 1278, granting Continental Manufacturing an interim currency loan worth US$2 million to pay its overdue obligations to its suppliers.[9]

In 1982, under Board Resolution No. 3144, Development Bank also guaranteed Continental Manufacturing's ₱25 million obligation to Citibank.[10]

When the loans matured, Continental Manufacturing was unable to pay its obligations. Though Development Bank foreclosed the mortgages, the proceeds were still insufficient. As of the sheriff's sale on May 31, 1984, the collateral for Continental Manufacturing was appraised at ₱71,123,700.00, while its obligations with Development Bank totaled ₱260,722,218.00. As of September 30, 1985, Continental Manufacturing's obligations ballooned to ₱309,726,928.00.[11]

---

established two (2) plants to manufacture the yarns. In 1971, Continental Manufacturing entered a joint venture with Japanese partners Mitsubishi Rayon Co. Ltd., Mitsubishi Corporation and Marubeni Corporation.

[6] *Id*. at 42.

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

[8] *Id*. at 42.

[9] *Id*.

[10] *Id*. at 43.

[11] *Id*. at 11 and 189.

On December 8, 1986, Proclamation No. 50 was issued to facilitate the rehabilitation of certain financial institutions. Following this, Development Bank transferred its rights, interests, and assets in Continental Manufacturing to the government through a Deed of Transfer dated February 27, 1987.[12]

On March 14, 1989, Development Bank bought back the Continental Manufacturing account from the government through a Deed of Reconveyance.[13] The offer to retrieve was approved by the Asset Privatization Trust on March 25, 1988 and by the Committee on Privatization on June 23, 1988. Development Bank later remitted the total retrieval price of ₱198,399,177.00 to the Asset Privatization Trust.[14]

On October 8, 1992, Administrative Order No. 13 was issued, creating the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans (Committee on Behest Loans).[15] It was tasked with making an inventory of behest loans, determining parties involved, and recommending the appropriate action that the government should take to recover the loans:[16]

> 1) the loan was undercollateralized; 2) the borrower corporation was undercapitalized; 3) a direct or indirect endorsement by a high government official, like the presence of marginal notes; 4) the stockholders, officers or agents of the borrower corporation were identified to be cronies; 5) a deviation of the loan from the purpose intended; 6) the use of corporate layering; 7) the non-feasibility of the project; and 8) an unusual speed in releasing the loan.[17]

---

[12] *Id.* at 11.

[13] *Id.* at 219-222.

[14] *Id.* at 44.

[15] *Id.* at 43.

[16] *Id.* at 1140.

[17] *Id.* at 62. Memorandum Order No. 61 (1992), Sec. 1. Broadening the Scope of the Ad-Hoc Fact Finding Committee on Behest Loans Created Pursuant to Administrative Order No. 13, Dated 8 October 1992.

After its investigation, the Committee on Behest Loans finished its 17th Fortnightly Report[18] dated November 29, 1993, where it determined that the accommodations granted to Continental Manufacturing were behest loans.[19]

The 17th Fortnightly Report read:

A. Based on the criteria set by the Ad Hoc Committee, the following corporations were found to possess positive characteristics of behest loans:

. . . . . .

5. CONTINENTAL MANUFACTURING CORPORATION

. . . . . .

A preliminary investigation should be conducted to determine the existence of a probable cause to prosecute administratively and criminally the government officials and private individuals who participated in the grant of the irregular loans. . . .

. . . . . .

An Executive Summary on each of the above accounts is hereto attached for immediate reference.[20]

The Executive Summary of the 17th Fortnightly Report read:

A. CORPORATIONS WITH POSITIVE FINDINGS:

. . . . . .

5. CONTINENTAL MANUFACTURING CORPORATION

The loan account was undercapitalized on the 12th loan in 1981 and undercollateralized on the 13th loan in 1985. Mr. Dewee (sic) Dee, President and General Manager of the company is a known crony of the Marcos administration. The account was retrieved by DBP in March 14, 1989 being a performing asset.[21]

---

[18] *Id*. at 86-95.

[19] *Id*. at 43-44.

[20] *Id*. at 86-88.

[21] *Id*. at 89.

On November 28, 2003, the Presidential Commission on Good Government filed before the Office of the Ombudsman an Affidavit-Complaint[22] for violation of Section 3(e)[23] and (g)[24] of the Anti-Graft and Corrupt Practices Act, as amended.

The Affidavit-Complaint was filed against Development Bank's high- ranking officials, including: (1) Acting Chairman Rafael E. Sison (Sison); (2) Executive Officer Rodolfo D. Manalo (Manalo); and (3) Governor Jose R. Tengco (Tengco), as well as John/Jane Does. Also included as respondents were Continental Manufacturing's officers and directors, namely: (1) Rufino E. Deeunhong (Deeunhong); (2) Dewey Dee (Dewey); (3) Donald Dee (Donald); (4) Pedro Aguirre (Aguirre); (5) Inocencio Ferrer (Ferrer); (6) Yoshihino Nakamura (Nakamura); (7) Sadao Nakano (Nakano); (8) Ken Kikutani (Kikutani); (9) Ichiro Utake (Utake); (10) Emigdio Tanjuatco (Tanjuatco); and (11) Cesar Recto (Recto).[25]

Citing the 17th Fortnightly Report, the Presidential Commission on Good Government alleged that when the initial loan of ₱43,586,696.93 was granted, Continental Manufacturing's total loan obligation from its creditors became ₱635.8 million, while its total assets only amounted to ₱314 million. It also claimed that the collateral for the loan with Development Bank was

---

[22] *Id.* at 223-234.

[23] Republic Act No. 3019 (1960), Sec. 3(e) provides:

> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[24] Republic Act No. 3019 (1960), Sec. 3(g) provides:

> (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

[25] *Rollo*, p. 41.

only ₱43,063,077.00. Despite Continental Manufacturing's poor financial standing and already undercollateralized existing loan, Development Bank again issued in its favor an additional P28 million worth of credit facility, and again an interim currency loan of US$ 2 million.[26]

Of the respondents, only Manalo, Tanjuatco, Tengco, and Donald filed Counter-Affidavits.[27]

In its June 28, 2006 Resolution,[28] the Office of the Ombudsman dismissed the Complaint for lack of probable cause.

Convinced that the credit facility and guaranty granted to Continental Manufacturing were not behest loans,[29] the Office of the Ombudsman found that the 17th Fortnightly Report only made sweeping generalizations that the loans were undercollateralized and that the government was unduly injured when Development Bank failed to recover the entire obligation after foreclosure.[30]

The Office of the Ombudsman lent credence to Development Bank's explanation that the loan accommodations were granted to Continental Manufacturing to allow it to recover from a financial crisis after its then president, Dewey, left on January 9, 1981.[31] It found that Development Bank granted the credit facilities for Continental Manufacturing to be able to sustain its operations and prevent the dislocation of its employees. It noted that the capital requirements were to be endorsed under the Emergency Rehabilitation Fund of the Central Bank.[32] It also noted that Development Bank's guaranty of Continental

---

[26] *Id.* at 226-227.

[27] *Id.* at 45 and 1146.

[28] *Id.* at 40-71.

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

[30] *Id.* at 63.

[31] *Id.* at 64.

[32] *Id.* at 65.

Manufacturing's obligation to Citibank was conditioned on Citibank's mortgage of properties in favor of Development Bank. Thus, it found that the loans could not have been undercollateralized.[33]

Moreover, the Office of the Ombudsman held that there was no proof to substantiate the allegation that respondents were granted accommodations because they had close ties with then President Ferdinand Marcos (Marcos).[34]

The Office of the Ombudsman also held that Continental Manufacturing's request for loan accommodations had been subjected to intensive studies and evaluation. It noted that the securities were identified and the terms and conditions of the loan accommodations were clearly stated in the Development Bank's Office Correspondences. It concluded that respondents exercised sound business judgment and their acts were in accordance with acceptable banking practices.[35]

The Office of the Ombudsman further determined that there was no indication of any criminal design or collusion to cause undue injury to the government. It held that there was no evidence of any unwarranted benefit granted in favor of Continental Manufacturing or of any transaction that is illegal, irregular, or grossly disadvantageous to the government.[36]

Finally, the Office of the Ombudsman noted that Development Bank's charter under Republic Act No. 85 mandates it to grant credit facilities for the rehabilitation of agriculture and industry. Thus, it is presumed to have performed its duties regularly. In any case, the Office of the Ombudsman held that Continental Manufacturing's account was fully paid.[37]

---

[33] *Id.* at 66.

[34] *Id.*

[35] *Id.* at 66-67.

[36] *Id.* at 67.

[37] *Id.* at 67-69.

The Presidential Commission on Good Government moved for reconsideration, but its Motion was denied by the Office of the Ombudsman's January 28, 2009 Order.[38] Hence, it filed this Petition,[39] including the Office of the Ombudsman as a respondent.

After requiring the parties to file their respective Comments and Reply, this Court directed them to file their Memoranda.[40]

Petitioner questions public respondent's dismissal of its Complaint, insisting that the accommodations granted to Continental Manufacturing are behest loans.[41] It reiterates that the evidence and reports showed that the loans were approved, facilitated, and released despite being undercollateralized.[42]

Petitioner further claims that public respondent only considered the Executive Summary of the 17th Fortnightly Report but disregarded the other documents that it submitted, including the Committee on Behest Loans' Terminal Report and the Development Bank's Board Resolutions.[43]

Petitioner contends that public respondent gravely abused its discretion in ignoring the Committee on Behest Loans' recommendations. It argues that the Committee's findings deserve credence and respect, as it was formed precisely to determine the existence of behest loans. As such, public respondent should not have substituted its own judgment over matters that the law has entrusted to the Committee's technical training and knowledge. Petitioner argues that the Committee's findings should have been conclusive and not subjected to judicial review absent any showing of fraud, imposition or mistake, or error of judgment.[44]

---

[38] *Id.* at 72-80.

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

[40] *Rollo*, p. 1070. While this case is pending, respondent Tanjuatco died.

[41] *Rollo*, p. 1155.

[42] *Id.* at 1158.

[43] *Id.* at 1156.

[44] *Id.* at 1157-1158.

Moreover, petitioner argues that it has established a well-founded belief that the transactions were grossly disadvantageous to the government. Despite this, public respondent allegedly required it to present proof of guilt beyond reasonable doubt, which is tantamount to grave abuse of discretion.[45]

Public respondent, petitioner claims, acted as a judge and a trier of facts in evaluating the evidence and probative value of the reports before trial on the merits.[46]

Petitioner further notes that public respondent manifested bias in respondents' favor when it affirmed their defenses despite not having appended or presented documents to support their claims.[47]

Respondents, on the other hand, insist on the Complaint's dismissal.[48]

Public respondent argues that petitioner failed to show that it committed grave abuse of discretion in issuing the assailed Resolution and Order.[49] Moreover, it claims that in insisting on the findings of the Committee on Behest Loans, petitioner raises questions of fact improper in a petition for certiorari, where a party can only raise errors of jurisdiction or allege grave abuse of discretion.[50]

Public respondent further asserts that there was no sufficient basis to characterize the loans and accommodations granted to Continental Manufacturing as behest loans.[51]

Public respondent reiterates that the only evidence presented by petitioner was the 17th Fortnightly Report, which only made

---

[45] *Id*. at 1159-1161.

[46] *Id*. at 1158.

[47] *Id*. at 1156.

[48] *Id*. at 1073, 1223, and 1194.

[49] *Id*. at 1225.

[50] *Id*. at 1224.

[51] *Id*. at 1226.

sweeping generalizations that: (1) the loans were undercollateralized; (2) there was undue injury to the government when Development Bank failed to recover the entire obligation after foreclosure; and (3) Continental Manufacturing was given unwarranted benefits and accommodations disadvantageous to the government. Public respondent maintains that there is no evidence to prove these allegations, or that the transactions were irregular or illegal.[52]

Public respondent also claims that according to records, Continental Manufacturing requested loans for rehabilitation after having suffered a financial crisis in January 1981, around the time that its then President Dewey left the company.[53]

Public respondent denies that it usurped the functions of the Sandiganbayan in dismissing the Complaint. It posits that it is constitutionally mandated to exercise its investigatory and prosecutorial powers, which can only be done by examining the parties' allegations and their supporting evidence. It claims that the correctness of its determination is not a matter that the trial court may pass upon.[54]

Insisting on its broad discretion to determine the existence of probable cause, public respondent cites this Court's policy not to interfere with its finding of probable cause without good and compelling reasons for finding of grave abuse of discretion.[55] It maintains that without grave abuse of discretion, its dismissal of the Complaint for lack of probable cause should be respected.[56]

Respondents Donald and Tengco raise similar arguments. They stress that in the absence of grave abuse of discretion,[57]

---

[52] *Id*.

[53] *Id*. at 1227. Executive Summary pertaining to the account of Continental Manufacturing and Development Bank's recommendations for approval of the credit facilities and financing.

[54] *Id*. at 1228-1230.

[55] *Id*. at 1230.

[56] *Id*. at 1231.

[57] *Id*. at 1076 and 1205-1206.

public respondent's exercise of its independent discretion in determining probable cause should be respected.[58] Similarly, they argue that there is no good and compelling reason for this Court to interfere with public respondent's findings.[59]

Respondent Donald further insists that public respondent "fairly, equitably, correctly[,] and objectively evaluated the evidence[.]"[60] He claims that weighing the evidence is necessary in preliminary investigations and is part of public respondent's functions to determine a *prima facie* case before filing a case in court.[61] He further points out that petitioner contradicts itself in arguing that public respondent should not have evaluated the evidence, but at the same time asserting that it failed to consider the evidence it adduced.[62] Private respondent Tengco adds that petitioner failed to substantiate its claim that public respondent ignored the supporting documents attached to its Affidavit-Complaint.[63]

Citing public respondent's finding, respondent Tengco insists that the allegations for the crime charged are too general and sweeping,[64] with no supporting evidence other than the 17th Fortnightly Report, which only stated that the loans were undercollateralized and that the government was unduly injured.[65] Respondents Donald and Tengco insist that "sufficient properties were required as collateral to guarantee the ... loans and guaranty[.]"[66]

---

[58] *Id*. at 1075, 1081, and 1201-1202.

[59] *Id*. at 1107.

[60] *Id*. at 1207.

[61] *Id*. at 1205-1206.

[62] *Id*. at 1206.

[63] *Id*. at 1096.

[64] *Id*. at 1107.

[65] *Id*. at 1083.

[66] *Id*. at 1097.

Moreover, Respondents Donald and Tengco assert that petitioner failed to substantiate all the elements of Section 3(e) and (g) of the Anti- Graft and Corrupt Practices Act.[67]

For Section 3(e), they claim that petitioner did not show evidence that the loan grant unduly favored Continental Manufacturing or its stockholders or officials.[68] Respondent Tengco points out that evident bad faith, manifest partiality, or gross inexcusable negligence was not specifically averred or proven.[69] They further assert that no injury exists since Development Bank's account with Continental Manufacturing has been fully paid and settled.[70]

Respondents Dee and Tengco further claim that petitioner allegedly failed to prove that Continental Manufacturing performed acts that unduly influenced Development Bank.[71] Additionally, there was no proof that the accommodation had been granted because of Marcos,[72] pointing out that the parties close or associated with the former president or his family were not specified.[73]

Respondents Dee and Tengco claim that petitioner itself has admitted that Continental Manufacturing had settled its obligations to Development Bank. They state that in 1989, the corporation fully paid the bank ₱198,399,177.00, after which the Asset Privatization Trust then transferred back to Development Bank all its rights to and titles and interests in the account of Continental Manufacturing.[74] This was evidenced

---

[67] *Id*. at 1208-1210.

[68] *Id*. at 1082, 1102, and 1210.

[69] *Id*. at 1085 and 1 097.

[70] *Id*. at 1074, 1083, 1102, and 1210-1211.

[71] *Id*. at 1082 and 1210.

[72] *Id*. at 1088, 1091, and 1210.

[73] *Id*. at 1091.

[74] *Id*. at 1086 and 1199.

by the: (1) Deed of Conveyance dated March 14, 1989 between Asset Privatization Trust and Development Bank;[75] and (2) the Deed of Transfer dated March 15, 1989, where both parties expressly agreed that due to the transfer, Continental Manufacturing's obligation to Development Bank was deemed settled and paid.[76]

Respondent Tengco further argues that the obligation Continental Manufacturing transferred to the national government in February 1987 was only ₱183,074,000.00, and the Deed of Reconveyance dated March 14, 1989 reveals that this account was fully paid and settled in the amount of ₱198,399,177.00. This shows that Development Bank even earned ₱2,210,000.00 as an investment banker. Thus, there could not have been any loss, damage, or injury caused to it.[77]

For Section 3(g), respondents Dee and Tengco assert that petitioner did not substantiate its claim that the loans or any contract was grossly disadvantageous to the government.[78] They maintain that there was no proof of criminal design, conspiracy, connivance, or collusion to cause injury.[79]

---

[75] *Id*. at 1086; and 1199.

It states that APT has "irrevocably and unconditionally forever waived and relinquished all its rights, title and interest in and to the CMC account and acknowledged and confirmed that the reconveyance of the CMC account herein made (to and in favor of DBP) is deemed a complete satisfaction and settlement of the CMC Account with APT."

[76] *Id*. at 368-370 and 1087.

The Deed of Transfer states: 3. For and in consideration of the services rendered by DBP as investment banker/broker in connection with the retrieval of the CMC Account from APT, YVRI (Donald Dee) paid DBP on April 18, 1988 the amount of TWO MILLION TWO HUNDRED TEN THOUSAND PESOS (₱2,210,000.00) which DBP acknowledged receipt hereof[.]

[77] *Id*. at 1092.

[78] *Id*. at 1083, 1085, 1102, and 1207.

[79] *Id*. at 1083, 1207, and 1209-1210.

Respondent Tengco claims that petitioner failed to specify Development Bank's exact participation in committing the alleged crimes.[80] He points out that it was not specifically alleged which among the bank's Board of Governors were present in the meetings that approved the loans and accommodations in Continental Manufacturing's favor.[81]

Moreover, respondents Donald and Tengco posit that the loans were granted after due evaluation, with sound business judgment, and in accordance with its mandate, official functions, and acceptable banking practice.[82] Petitioner, they claim, failed to prove otherwise.[83]

Respondent Donald explains that he sought loans and accommodations from Development Bank to continue Continental Manufacturing's operations, meet its client's requirements, and prevent its employees' dislocation.[84] Respondent Tengco claims that the accommodations are forms of emergency rescue assistance granted after considering the following circumstances: (1) several business enterprises and industries' dependence on Continental Manufacturing's acrylic yarn; (2) the business enterprises and industries' capacity to generate foreign exchange earnings; and (3) the stoppage of Continental Manufacturing's operations, which will cause the dislocation of 27,000 workers.[85]

Respondent Donald alleges that in exchange for the loan accommodations, he offered Development Bank the management of Continental Manufacturing and the assignment of export proceeds for the servicing of the loans.[86] Furthermore, he claims

---

[80] *Id*. at 1082 and 1102.

[81] *Id*. at 1074.

[82] *Id*. at 1082, 1085, 1098, 1102, and 1207.

[83] *Id*. at 1083 and 1102.

[84] *Id*. at 1196.

[85] *Id*. at 1090.

[86] *Id*. at 1196.

that before the loans were approved, the studies and evaluation had been exhaustive and intensive, with sound recommendations to ensure that Development Bank's interests were protected.[87] These may allegedly be seen in Development Bank's Office Correspondences,[88] which laid out the terms and conditions of the loans and specifically identified the securities.[89]

Respondent Donald further claims that per Development Bank's Office Correspondence dated October 6, 1982, Development Bank guaranteed Continental Manufacturing's loan with Citibank. This was because Citibank manifested that it was willing to hold foreclosing the mortgaged assets if Development Bank would issue a guaranty to restructure Continental Manufacturing's outstanding principal obligations.

Thus, Development Bank allegedly agreed to the guaranty because: (1) its collateral position on its financial exposures to Continental Manufacturing will improve by ₱19.1 million because of Citibank's surrender of the mortgaged properties amounting to ₱44.1 million and the loan of ₱25 million; (2) Development Bank's liability is only contingent on its books against hard assets, which had values sufficient to back up the guaranty liability making it a paper transaction with no immediate cash outlay from Development Bank; and (3) Development Bank also gained control over Continental Manufacturing's subsidiaries in issuing the guaranty.[90]

Respondent Tengco also argued that the loans and guaranty were also audited and found regular by the Central Bank of the Philippines (now BSP) and the Commission on Audit.[91] He explains that petitioner's figures on Continental Manufacturing's obligations to Development Bank were increased because of

---

[87] *Id*. at 1097 and 1207.

[88] These correspondences were dated March 10, 1981, March 18, 1981, and October 6, 1982.

[89] *Rollo*, p. 1207.

[90] *Id*. at 1198-1199.

[91] *Id*. at 1097-1098

the peso devaluation,[92] which was not within the latter's control.[93] Moreover, respondents Dee and Tengco claim that when Development Bank granted the loans and accommodations, it managed Continental Manufacturing, and thus, controlled the latter's Board of Directors, Management, and Executive Committee.[94] It also developed a rehabilitation plan with third parties.[95]

Finally, respondent Tengco argues that without contrary evidence, the presumption of regularity in the performance of duties should apply.[96] Thus, their acts should be presumed regular and performed in good faith.[97] He further argues that directors who act in good faith and within the scope of authority on behalf of the corporation do not become personally liable for the corporation's acts.[98] In any case, since there was no injury caused, petitioner is left with no cause to file its Complaint.[99]

For this Court's resolution is the issue of whether or not public respondent Office of the Ombudsman gravely abused its discretion when it found that the loans granted to Continental Manufacturing Corporation were not behest loans, thus finding no probable cause to charge respondents with violating the Anti-Graft and Corrupt Practices Act.

This Court dismisses the Petition. Public respondent's finding of probable cause is entitled to great respect.

The Office of the Ombudsman is given a wide latitude of discretion when exercising its prosecutorial powers. Thus, this

---

[92] From ₱7.50/US$1.00 to ₱18.65/US$1.00.

[93] *Rollo*, p. 1091.

[94] *Id*. at 1091 and 1196.

[95] *Id*. at 1197.

[96] *Id*. at 1085.

[97] *Id*. at 1098.

[98] *Id*. at 1099.

[99] *Id*. at 1087.

Court avoids intruding on its determination of probable cause. In *Ramiscal, Jr. v. Sandiganbayan*: [100]

> As the final word on the matter, the decision of the panel of prosecutors finding probable cause against petitioner prevails. This Court does not ordinarily interfere with the Ombudsman's finding of probable cause. The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints. As this Court succinctly stated in *Alba v. Hon. Nitorreda*:
>
> Moreover, this Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory powers. Otherwise stated, it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.
>
> In *Ocampo, IV v. Ombudsman*, the Court explained the rationale behind this policy, thus:
>
> The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the pmt of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[101] (Citations omitted)

Only when tainted with grave abuse of discretion will this Court reverse the Office of the Ombudsman's finding of probable cause.

---

[100] 645 Phil. 69 (2010) [Per *J*. Carpio, Second Division].

[101] *Id*. at 81-82.

Here, grave abuse of discretion means that public respondent's exercise of judgment or power was so capricious and whimsical, or arbitrary and despotic, as to amount to a lack or excess of jurisdiction. Its act must have been "so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[102] This Court has explained:

> Ordinarily, the Court does not interfere with the Ombudsman's determination of the existence or non-existence of probable cause. The rule, however, does not apply if there is grave abuse of discretion, or if the action is done in a manner contrary to the dictates of the Constitution, law or jurisprudence. In these exceptional cases, the Ombudsman's action becomes subject to judicial review.
>
> The Ombudsman, in dismissing a complaint — whether for want of palpable merit or after the conduct of a preliminary investigation — carries the duty of explaining the basis for his action; he must determine that the complainant had failed to establish probable cause.
>
> The probable cause that a complainant has to establish need not be based on clear and convincing evidence of guilt or evidence of guilt beyond reasonable doubt. It simply implies probability of guilt and requires more than a bare suspicion but less than evidence that would justify a conviction. A finding of probable cause need only rest on evidence showing that more likely than not, a crime has been committed and was committed by the suspects.[103] (Citations omitted)

In the past, this Court has reversed the Office of the Ombudsman's finding of probable cause and found that it gravely abused its discretion when it required more than the required quantum of evidence to find probable cause. In the 2009 case of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[104] this Court noted that the conflicting accounts of the parties will be better ventilated in a full-blown trial:

---

[102] *Domondon v. Sandiganbayan*, 384 Phil. 848, 857 (2000) [Per *J.* Buena, Second Division].

[103] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 650 Phil 22, 32-33 (2010) [Per *J.* Brion, Third Division].

[104] 603 Phil. 18 (2009) [Per *J.* Carpio Morales, Second Division].

The duty of the Ombudsman in the conduct of a preliminary investigation is to establish whether there exists probable cause to file an information in court against the accused. Considering the quantum of evidence needed to support a finding of probable cause, the Court holds that the Ombudsman gravely abused his discretion when he found such to be lacking here.

Preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence only as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof. The validity and merits of a party's accusation or defense, as well as admissibility of testimonies and evidence, are better ventilated during the trial proper:

In the proceedings before the Ombudsman, the Committee and spouses Romualdez presented conflicting accounts. . . . Clearly, these conflicting claims of the parties should be resolved in a full-blown trial.

. . . . . .

It bears stressing that a finding of probable cause needs only to rest on evidence showing that more likely than not, a crime was committed and was committed by the suspects.[105] (Citations omitted)

In the same case, this Court also ruled that the findings of the Committee on Behest Loans are entitled to great weight and respect:

It behooves the Ombudsman, while he asks the Court to respect his findings, to also accord a proper modicum of respect towards the expertise of the Committee, which was formed precisely to determine the existence of behest loans. Considering the membership of the Committee — representatives from the Department of Finance, the Philippine National Bank, the Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation and even DBP itself — its recommendation should be given great weight. No doubt, the members of the Committee are experts in the field of banking. On account of their special knowledge and expertise, they are in a better position to determine whether standard banking practices are followed

---

[105] *Id*. at 35-37.

in the approval of a loan or what would generally constitute as adequate security for a given loan. Absent a substantial showing that their findings were made from an erroneous estimation of the evidence presented, they are conclusive and, in the interest of stability of the governmental structure, should not be disturbed.[106] (Citations omitted)

However, in the 2010 case of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[107] the Office of the Ombudsman was found to have gravely abused its discretion for immediately dismissing the Complaint with only one (1) paragraph despite voluminous exhibits. There, the Office of the Ombudsman took against the petitioner its failure to provide copies of the resolutions approved by the bank officers and directors, which showed that they were responsible for the processing and approval of the loans.[108] It did not discuss whether the questioned transactions bore the characteristics of a behest loan and whether the respondents were guilty of violating Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act. The elements of the offenses were not examined.[109]

Here, however, public respondent did not act with grave abuse of discretion in finding no probable cause.

Public respondent found no probable cause in this case, lending more credence to Development Bank's explanation that the loans were granted in the exercise of sound business judgment and subjected to intensive studies and evaluation. This was allegedly evidenced by Development Bank's Office Correspondences, which laid out the terms and conditions of each loan accommodation. Public respondent also ruled that there was no indication of any criminal design or collusion to cause undue injury to the government. It held that there was no evidence of any unwarranted benefit granted in favor of Continental

---

[106] *Id*. at 36.

[107] 650 Phil. 22 (2010) [Per *J*. Brion, Third Division].

[108] *Id*. at 39-40.

[109] *Id*. at 33.

Manufacturing or of any transaction that is illegal, irregular, or grossly disadvantageous to the government.[110]

Respondents do not deny the numbers alleged as to the capital and obligations of Continental Manufacturing. However, they insist that petitioner failed to dispute[111] that the loans were granted after due evaluation, in light of sound business judgment, and in accordance with its mandate, official functions, and acceptable banking practice.[112]

This Court finds that Development Bank's Office Correspondences indeed show that the grant of the questioned loans had been subject to extensive evaluations, several terms and conditions, and the capacity of Continental Manufacturing to earn.

The reasons for the grant of the ₱28 million credit facility in favor of Continental Manufacturing are found in Development Bank's Office Correspondence dated March 10, 1981, which provides:

IV. Recent Developments and Comments

Cognizant of the fact that several business enterprises and industries are dependent on CMC for their acrylic yarn requirements and considering that *these industries are capable of generating foreign exchange earnings of about $250 million annually*, DBP has to take a very active part in sustaining CMC's. . .operations.

It is for this reason that as an initial step for the rehabilitation of CMC and RTMC after the two (2) companies experienced financial setbacks following the departure of Mr. Dewey Dee from the country, DBP took over the management of these two firms on January 1981 and instituted the following program of action:

1. Reorganized firm's Board of Directors by electing six DBP representatives thereto:

. . . . . .

---

[110] *Rollo*, p. 67.

[111] *Id.* at 1083 and 1102.

[112] *Id.* at 1082, 1085, 1098, 1102, and 1207.

2. Elected a new set of corporate officers to actively handle/ manage the affairs of the company:

. . . . . .

3. Created an Executive Committee which will meet in between meetings of the Board of Directors and will exercise the powers of the Board of Director, provided that all matters acted upon by the Executive Committee will be submitted to the Board for ratification.

. . . . . .

4. Hired SGV & Company as external auditors to conduct an audit of CMC's and RTMC's accounting/financial records to have the new management informed of the accurate financial condition of the two companies as of December 31, 1980.

5. Engaged the services of Asian Appraisal Phils., Inc. to re-appraise the assets of CMC and RTMC.

6. Opened a savings deposit account with DBP to take care of day-to-day collections, and a current account with PNB for daily disbursements, in the name of DBP-CMC-RTMC to avoid any possible garnishment of cash.

In the implementation of above action program, it would be necessary to develop a workable rehabilitation program for CMC and RTMC, set up the appropriate financial plans therefor, and have the balance sheets of the two companies reconstructed. These are currently being worked out by DBP, SGV and the creditors of the two companies. Since it may take some time before the financial plans for the two (2) companies may be finalized, we believe it would be justified for DBP to favorably consider meantime firm's request for interim credit facilities. . .

DBP's favorable consideration of this request will enable CMC and RTMC [to] sustain their operations for at least the next three (3) months and thereby forestall employment dislocation for about 27,000 employees of CMC mid its downstream companies, along with the other economic benefits now accruing from the operations of the two (2) companies.

It is however understood that DBP shall complete its studies for the financial rehabilitation of CMC and RTMC aimed principally

at restoring the viability of the two (2) firms, the studies to be subsequently submitted to the Board for its consideration.[113] (Emphasis supplied)

The approval of the same ₱28 million credit facility was subject to the following conditions:

1. Implementation of the proposed accommodation shall be subject to the signing by DBP, CMC and CMC's creditors of the Memorandum of Agreement ... covering the recovery payment priority of CMC's obligations.

2. Above DBP guarantees shall be secured as follows:

   a. By a first mortgage on the assets mentioned under Item II.1 above.b. Bly the joint and several signatures with CMC of Messrs. Donald Deel and Rufino Dee Un Hong; . . . c. Assignment to DBP of the companies' . . . export sales proceeds in amounts sufficient to meet the firm's yearly amortization on the loans.d. By pledge and/or open end mortgage on inventory worth not less than, 40 million (₱28 million for CMC and 12 million . . . for RTMC), consisting of finished goods and raw materials. The inventories will have to be maintained at above level and shall be kept in warehouses to be guarded whenever necessary by DBP's own security guards and/or DBP designated security agencies whose compensation shall be borne by CMC and RTMC. For control purposes, CMC and RTMC shall undertake a yearly physical count of all inventory and shall submit to DBP not later than the 30th day of each succeeding year an annual inventory list duly certified by their respective external auditors. DBP shall also have the option to conduct its own physical inventory count if and when necessary.

3. CMC and RTMC shall pay DBP non-refundable processing fees of ₱28,000 and ₱12,000, respectively.

4. All other terms and conditions of previous DBP Board Resolutions approving various accommodations granted to CMC and RTMC not herein affected shall remain in full force and effect.

---

[113] *Id*. at 160-162.

5. All such positive and negative covenants which may legally be imposed on CMC and RTMC for the protection of DBP shall be included by the Legal Department in the financing agreement.[114]

On the other hand, the US$2 million credit facility was discussed in Office Correspondence dated March 18, 1981, which states:

> DBP may once more favorably consider CMC's requested interim financing of $2 million to enable it to continue and sustain operations up to June 1981 meanwhile that a workable rehabilitation plan is being worked out by DBP, Bancom and Trigon, Inc., the capital requirements therefor to be endorsed under the Emergency Rehabilitation Fund of the Central Bank. We were made to understand that if the matured . . . and those which will mature in March are not properly paid, CMC will lose its network of suppliers or vital raw materials.
>
> To relieve firm of its present financial predicament and at the same time sustain its operations, we are also proposing that in line with DBP's general restructuring program for its problematic accounts, the conversion into 16% preferred shares CMC's past due obligations totalling ₱ 689,741.95 as of February 28, 1981, this to be eventually absorbed and covered under the financial plan to be developed and adopted by DBP for CMC. It is believed that with above financial assistance, CMC will be in a better position to enjoin its other creditors to accept and finally sign the repayment priorities called for in the proposed Memorandum of Agreement o be executed among CMC, DBP and CMC's creditors.[115]

The conditions and securities for the grant of this interim currency loan are listed in *six (6) pages* of Development Bank's Office Correspondence.[116]

Meanwhile, the guaranty of Continental Manufacturing's loan from Citibank was explained in the Office Correspondence dated October 6, 1982:

---

[114] *Id*. at 163-164.

[115] *Id*. at 167.

[116] *Id*. at 170-176.

Owing to the delayed implementation of the financial rehabilitation plan of CMC, Mr. Omar Byron T. Mier, Vice President of Citibank, N.A. in his letter of October 1, 1982 . . . informed us that they have referred their ₱25 million claims against the subject firm to their lawyers to institute foreclosure action if the loan obligations of CMC to them are not settled on or before October 15, 1982.

Under the same letter, Mr. Mier informed us also that Citibank is willing to hold off the foreclosure move if DBP agrees to issue a guaranty for the restructuring of the outstanding principal obligations. In exchange, Citibank will surrender all mortgaged properties to the DBP. In essence, this would be tantamount to an assumption of mortgages through guaranty issuance.

. . . . . .

Comments

. . . . . .

2. The settlement scheme desired by Citibank was taken up by the Executive Committee of CMC on its meeting yesterday afternoon and it was decided that the position of Citibank will be considered favorably provided that the term of restructuring the principal loan obligations of CMC to Citibank shall not be less than seven (7) years including two (2) years grace period on principal and interest. Furthermore, the repayment of the obligations as restructured shall be shared by CMC and its subsidiaries.

. . . . . .

The decision of the Executive committee on the position of Citibank was based on the following considerations:

a. The collateral positions of DBP on its financial exposures to CMC will be improved by ₱19.1 million, computed as follows:

. . . . . .

b. The proposed debt settlement scheme will only result to the creation of a contingent liability in the books of DBP against hard assets with values more than sufficient to back-up the guaranty liability. It is a paper transaction involving no immediate cash outlay on the part of DBP.

c. At present, DBP controls only CMC. By issuing the guaranty to Citibank, DBP will also gain control of CMC's subsidiaries thus having a complete control of the entire yarn manufacturing process of CMC. This control aspect is very important if DBP will opt for foreclosure. As such, it will be easier for DBP to sell the plants of CMC and its subsidiaries since they comprise one entire operation.

d. As discussed and pointed out, there are no better alternatives except the proposal of Citibank, hence the decision of the Executive Committee of CMC to indorse the matter to the DBP.[117]

Development Bank agreed to provide a guaranty for the obligation to Citibank, provided that it will be restructured for a seven (7)-year period, with a two (2)-year grace period on principal and interest. Likewise, the repayment of the restructured obligation would be shared by Continental Manufacturing and its subsidiary companies on a sharing ratio to be imposed later by Development Bank. Furthermore, the properties Citibank would surrender in exchange for the guaranty shall be mortgaged in favor of Development Bank.[118]

For these transactions, respondents were charged with a violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act, which state:

SECTION 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . . . .

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

---

[117] *Id.* at 177-180.

[118] *Id.* at 179-181.

> This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.
>
> . . . . . .
>
> (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The respective elements of the two (2) offenses are:

> The elements of the offense in Section 3(e) are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.
>
> On the other hand, the elements of the offense in Section 3(g), are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the Government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the Government.[119]

In *Presidential Commission on Good Government v. Office of the Ombudsman*,[120] this Court held that there is no element of manifest partiality, evident bad faith, or gross inexcusable negligence when the questioned: loans were approved after a careful evaluation and study:

> Respondent Reyes did not act with manifest partiality, evident bad faith, or inexcusable gross negligence when she made her

---

[119] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 603 Phil. 18, 33-34 (2009) [Per *J*. Carpio Morales, Second Division].

[120] G.R. No. 187794, November 28, 2018, < http://elibrary.juqiciary.gov.ph/thebookshelf/showdocs/1/64814 > [Per *J*. Leonen, Third Division].

recommendations because they were arrived at only after considering Pioneer Glass' capability to pay the loan obligations. Moreover, she also carefully considered how to best protect Development Bank's interests with the appropriate securities from Pioneer Glass to guarantee the loans. In the same manner, Development Bank's board members who relied on her report and recommendation in approving the loan applications also did not act with manifest partiality, evident bad faith, or inexcusable negligence.

. . . . . .

This finds basis in P*residential Commission on Good Government*, which ruled that Development Bank's careful study and evaluation of the loan application negated the existence of manifest partiality, gross inexcusable negligence, or evident bad faith in the eventual approval of the loan application:

> It is clear from the records that private respondents studied and evaluated the loan applications of Bagumbayan before approving them. There is no showing that the DBP Board of Governors did not exercise sound business judgment in approving the loans, or that the approval was contrary to acceptable banking practices at that time. No1 manifest partiality, evident bad faith, or gross inexcusable negligence can, therefore, be attributed to private respondents in approving the loans.[121]

This Court also held that not only must the losses be proved, but must have also been unavoidable:[122]

Section 3, paragraphs (e) and (g) of Republic Act No. 3019 should not be interpreted in such a way that they will prevent Development Bank, through its managers, to take reasonable risks in relation to its business. Profit, which will redound to the benefit of the public interests owning Development Bank, will not be realized if our laws are read constraining the exercise of sound business discretion.

Thus, Section 3(e) requires "manifest partiality, evident bad faith or gross inexcusable negligence" and the element of arbitrariness and malice in taking risks must be palpable. Likewise, there must be a showing of "undue injury" to the government. Section 3(g), on the

---

[121] *Id*.

[122] *Id*.

other hand, requires a showing of a "contract or transaction manifestly and grossly disadvantageous to the [government]."

Definitely, this means that it must not only be proven that Development Bank suffered business losses but that these losses, in the ordinary course of business and with the exercise of sound judgment, were inevitably unavoidable. Public respondent's findings did not transgress these requirements.[123] (Emphasis supplied)

Here, the Office Correspondences show that these loans were granted for an envisioned rehabilitation of Continental Manufacturing.

Thus, there is no showing that respondents acted with manifest partiality, evidence bad faith, or gross inexcusable negligence. The loans were approved and granted after the consideration of the financial situation, extensive evaluation of the terms and conditions, and several securities for the accommodation requested. They were granted in the exercise of sound business discretion.

Public respondent considered all the evidence in determining whether there is probable cause to charge respondents with violating the Anti-Graft and Corrupt Practices Act. It did not act whimsically or capriciously so as to amount to grave abuse of discretion. Hence, this Court affords great respect to and will not interfere with its finding of probable cause.

WHEREFORE, the Petition is **DENIED**. Public respondent Office of the Ombudsman's June 28, 2006 Resolution and January 28, 2009 Order, which dismissed the Presidential Commission on Good Government's Affidavit-Complaint for lack of probable cause, are **AFFIRMED**.

SO ORDERED.

Reyes, A. Jr., Hernando, Lazaro-Javier,* and *Inting, JJ.*, concur.

---

[123] *Id*.

* Designated additional Member as per Raffle dated April 8, 2019.

FIRST DIVISION

[G.R. No. 196637. June 3, 2019]

FAR EAST BANK AND TRUST COMPANY, *petitioner, vs.* **UNION BANK OF THE PHILIPPINES [now substituted by BAYAN DELINQUENT LOAN RECOVERY 1 (SPV-AMC), INC.],** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; *LITIS PENDENTIA*; REQUISITES; *LITIS PENDENTIA* IS ONE OF THE GROUNDS THAT AUTHORIZES A COURT TO DISMISS A CASE *MOTU PROPRIO*.— *Litis pendentia* as a ground for the dismissal of a civil action contemplates a situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. It is one of the grounds that authorizes a court to dismiss a case *motu proprio,* as provided in Sec. 1(e), Rule 16 of the 1997 Rules of Civil Procedure. For *litis pendentia* to exist, the following requisites or elements must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity with respect to the two (2) preceding particulars in the two (2) cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.

2. ID.; ID.; FORUM SHOPPING; EXISTS WHEN THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT OR WHEN A FINAL JUDGMENT IN ONE CASE WILL AMOUNT TO *RES JUDICATA* IN THE OTHER.— Jurisprudence has laid down the test for determining whether a party violated the rule against forum shopping. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other. The requisites of *litis pendentia* not having concurred, and the issues presented in SEC Case No. 09-97-5764 and RTC not being identical, Union Bank is therefore not guilty of forum shopping.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.
Puyat Jacinto & Santos for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal by *certiorari* from the November 15, 2010 Decision[1] and April 19, 2011 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 86172 which reversed and set aside the March 22, 2005 and August 26, 2005 Orders[3] of the Regional Trial Court of Pasig City, Branch 157 (*RTC*) in Civil Case No. 66477.

Antecedents

On September 16, 1997, the EYCO Group of Companies[4] (*EYCO*) and its controlling stockholders, namely Eulogio O. Yutingco, Caroline Yutingco--Yao and Theresa[5] T. Lao (*the Yutingcos*) filed with the Securities and Exchange Commission (*SEC*) a "Petition for the Declaration of Suspension of Payment[s], Formation and Appointment of Rehabilitation Receiveri Committee, Approval of Rehabilitation Plan with

---

[1] *Rollo*, pp. 37-65; penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court), with Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon, concurring.

[2] *Id*. at 67.

[3] *Id*. at 81-84, 86; penned by Judge Esperanza Fabon-Victorino.

[4] Records, p. 1634, Vol. III; Nikon Industrial Corp., Nikolite Industrial Corp., 2000 Industries, Corp., Thames, Phil., Inc., EYCO Properties, Inc., Trade Hope Industrial Corp., First Unibrands Food Corp., Integral Steel Corp., Clarion Printing House, Inc., Nikon Plaza, Inc., and Nikon Land, Inc.

[5] Referred to as Teresa in other parts of the *rollo*.

Alternative Prayer for Liquidation and Dissolution of Corporations" (SEC Case No. 09-97-5764).[6]

On September 19, 1997, a consortium of EYCO's creditors (*Consortium*) composed of 22 domestic banks, including Union Bank of the Philippines (*Union Bank*), convened for the purpose of deciding their options in the event that EYCO and its co-petitioners in SEC Case No. 09-97-5764 would invoke the provisions of Presidential Decree (PD) No. 902-A, as amended. Among the matters agreed upon during said meeting were the engagement of a lawyer to represent the creditors and composition of the management committee from seven banks with the highest exposures.[7]

However, Union Bank, without notifying the members of the Consortium, decided to break away from the group by suing EYCO and the Yutingcos in the regular courts. Among the several suits commenced by Union Bank was Civil Case No. 66477 (*Union Bank of the Philippines v. Eulogio and Bee Kuan Yutingco, Far East Bank and Trust Company and EYCO Properties*) filed in the RTC of Pasig City, Branch 157 on September 26, 1997.[8]

In its Complaint,[9] Union Bank alleged that Spouses Eulogio and Bee Kuan Yutingco (*Spouses Yutingco*) were its debtors by virtue of a Continuing Surety Agreement[10] dated September 12, 1996 to secure credit accommodations amounting to ₱110,000,000.00 granted to Nikon Industrial Corporation, Nikolite Industrial Corporation and 2000 Industries Corporation (collectively known as *NIKON*), which they owned. Upon investigation, Union Bank confirmed that majority of NIKON's

---

[6] See *Union Bank ofthe Philippines v. Court of Appeals, et al*., 352 Phil. 808, 814-815 (1998).

[7] *Id*. at 815-817.

[8] *Id*. at 817.

[9] Records, pp. 2-13, Vol. I.

[10] *Id*. at 16-19.

assets were used to purchase real estate properties through EYCO, purposely to shield NIKON from answering for its debts. EYCO owned condominium units and parking spaces in Tektite Tower and the Strata 200 Building Condominium Project. On September 15, 1997, these properties were sold to herein petitioner, Far East Bank and Trust Company (*FEBTC*).[11]

Union Bank claimed that the sale of the properties was fraudulent and done in bad faith to prevent them from being levied upon; in fact, it was made a day before the Spouses Yutingco and NIKON filed a petition for suspension of payments with the SEC. The total purchase price for the Strata 200 condominium units was ₱32,000,000.00, which was grossly inadequate considering that they were situated in a prime area of Pasig City. In furtherance of its conspiracy with the Spouses Yutingco and NIKON, FEBTC supposedly authorized the purchase of various golf club shares and two more units and parking spaces in the same condominium buildings, assets of EYCO and NIKON registered in their respective names. It is clear that EYCO, in collusion with the Spouses Yutingco and FEBTC, intended to transfer all or nearly all of its properties because of its insolvency or great embarrassment financially. FEBTC, being a vendee in fraud of creditors, was deemed an implied trustee of the properties and should hold them for the benefit of those who are entitled thereto. Union Bank, as unpaid creditor of the true owner of the property, is entitled to nullify the sale in favor of FEBTC.[12]

SEC Case No. 09-97-5764

On September 19, 1997, an Order[13] was issued by the SEC enjoining the disposition of the debtor corporations' properties in any manner except in the ordinary course of business and payment outside of legitimate business expenses during the pendency of the proceedings and suspending all actions, claims

---

[11] *Id*. at 2-7, 20-35.

[12] *Id*. at 7-9.

[13] *Id*. at 476-479.

and proceedings against EYCO until further orders from the SEC.

In an Omnibus Order dated October 27, 1997, the SEC Hearing Panel directed the creation of a Management Committee (*MANCOM*).[14]

Union Bank filed a petition for *certiorari* in the CA (CA-G.R. SP No. 45774) assailing the September 19, 1997 Order declaring the suspension of payments for EYCO and directing the creation of the MANCOM. Union Bank contended that these issuances were premature and would render the motion to dismiss filed before the RTC, in Civil Case No. 66477, as moot. The steering committee of the Consortium composed of the Philippine National Bank, FEBTC, Allied Bank, Traders Royal Bank, Philippine Commercial International Bank, Bank of Commerce and Westmont Bank, were allowed to intervene by the CA. However, in the same decision of the CA, the petition filed by Union Bank was dismissed for failure to exhaust administrative remedies and forum shopping, prompting the latter to seek recourse in this Court (G.R. No. 131729).[15]

On May 19, 1998, this Court promulgated its Decision in *Union Bank of the Philippines v. Court of Appeals, et al.*[16] holding that the SEC's jurisdiction on matters of suspension of payments is confined only to those initiated by corporations, partnerships or associations. Consequently, the SEC exceeded its jurisdiction in declaring the Spouses Yutingco together with EYCO under suspension of payments. Nonetheless, based on our previous ruling in *Modern Paper Products, Inc., et al. v. Court of Appeals, et al.*,[17] the Rules of Court on misjoinder of parties may be applied. Thus, the proper remedy was not to dismiss the entire

---

[14] *Union Bank of the Phils. v. CA*, *supra* note 6 at 819; Records, pp. 1199-1200, Vol. III.

[15] *Id.* at 819-821.

[16] *Id.*

[17] 350 Phil. 402 (1998).

petition for suspension of payments but to dismiss it only as against the party upon whom the tribunal or court cannot acquire jurisdiction. Accordingly, this Court ordered the SEC "to drop from the petition for suspension of payments filed before it the names of Eulogio O. Yutingco, Caroline Yutingco-Yao and Theresa T. Lao without prejudice to their filing a separate petition in the Regional Trial Court."[18]

On December 18, 1998, the SEC issued an Order[19] adopting the Unsolicited Rehabilitation Proposal submitted by Strategies and Alliances Corporation (*SAC*) which was granted a period of six months within which to complete the groundwork for the effective implementation of the early "all-debt payment plan."

As described by the SEC, the SAC plan proposed to settle and extinguish all financial obligations of EYCO to its creditors, secured and unsecured, amounting to P5.2 Billion - P4 Billion by banks and ₱1.2 Billion by non-banks. The repayment of principal and interest thereon on stated due dates were guaranteed to be paid in cash by the Republic of the Philippines through the Home Insurance Guaranty Corporation (*HIGC*).

The SEC Order further barred all creditors from pursuing their respective claims until further orders.

The Consortium appealed the December 18, 1998 Order to the SEC *En Banc*. On September 14, 1999, the SEC *En Banc* rendered its Decision[20] finding the SAC plan not viable and feasible for the rehabilitation of EYCO. Accordingly, the SAC plan and suspension of payment proceedings were ordered terminated, the committees created dissolved and discharged. The SEC further ordered the dissolution and liquidation of the petitioning corporations. Subsequently, a Liquidator was appointed pursuant to the provisions of the Rules of Procedure on Corporate Rehabilitation.[21]

---

[18] *Union Bank of the Phils. v. CA*, *supra* note 6 at 832.

[19] Records, pp. 1399-1413, Vol. III.

[20] *Id.* at 1591-1597.

[21] *Id.* at 1598-1604.

On October 10, 2000, the SEC issued an Order[22] directing all creditors claiming against EYCO to file their formal claims with the Liquidator. It likewise declared that all such claims shall be deemed barred if not filed within 30 days after publication of the said order in two newspapers of general circulation in the Philippines.

Due to disagreement on Liquidator's fee, a Liquidation Committee was formed to assume the duties of the Liquidator originally appointed by the SEC. On May 31, 2001, the said committee was dissolved and the SEC finally appointed Atty. Danilo L. Concepcion (*Atty. Concepcion*) as Liquidator pursuant to the provisions of the Rules of Procedure on Corporate Recovery.[23]

In March 2002, Atty. Concepcion submitted a proposed Liquidation Plan. Finding the said Liquidation Plan meritorious, the SEC approved it on April 11, 2002.[24]

Motions to Dismiss Civil Case No. 66477

The Spouses Yutingco filed a Motion to Dismiss on the ground of pendency of the proceedings in the SEC which had acquired prior jurisdiction over the subject matter of the case.[25]

FEBTC also filed a motion to dismiss on the ground of Union Bank's failure to implead NIKON, which are indispensable parties. Accordingly, the court should suspend the trial until such parties are made either as plaintiffs or defendants. Moreover, since the complaint was for rescission of a contract of sale, it should have expressly alleged that Union Bank had no other legal means to collect its credits. Thus, the complaint failed to state a cause of action. There was also no allegation whether the credit accommodations extended by Union Bank were secured

---

[22] *Id*. at 1598-1599.

[23] *Id*. at 1600-1604.

[24] *Id*. at 1625-1670.

[25] *Id*. at 83-85, Vol. I.

or unsecured. More important, Union Bank had no legal personality to sue for the enforcement of the rights and interests of the creditors as this is vested in the rehabilitation receiver. In view of the pending SEC proceedings, Union Bank had an available remedy by participating therein.[26] In a Manifestation, the Spouses Yutingco adopted the aforesaid arguments of FEBTC.[27]

In its Opposition,[28] Union Bank asserted that *litis pendentia* is not applicable in this case as it is not a party to the SEC proceedings for suspension of payments. Also, there is no identity of causes of action since the present case is founded on Union Bank's right to effect retention lien on the properties of EYCO pursuant to the provisions of the continuing surety agreement executed by the Spouses Yutingco. On the matter of jurisdiction, Union Bank contended that the court has the exclusive authority to hear Civil Case No. 66477.

In their Reply to Opposition,[29] EYCO and Spouses Yutingco reiterated that NIKON are indispensable parties considering that Union Bank claimed that the assets of said corporations were allegedly diverted to purchase real properties "under the name" of EYCO. Union Bank's theory is the true ownership of NIKON of the properties, the same being merely registered under EYCO. NIKON, being the actual sellers, were indispensable parties without whom no final determination of action can be had. Moreover, an action for rescission being subsidiary, cannot be instituted except "when the party suffering damages has no other legal means to obtain reparation of the same." No allegation of unavailability of other remedies was made by Union Bank in its complaint. Lastly, it was reiterated that it was now the SEC- appointed interim receiver who was given specific authority to take custody of all assets of the

---

[26] *Id*. at 511-518.

[27] *Id*. at 507-508.

[28] *Id*. at 521-526, Vol. II.

[29] *Id*. at 549-559.

distressed corporations. Hence, Union Bank should bring its claims before the said receiver.

In a Supplemental Motion to Dismiss,[30] EYCO and Spouses Yutingco averred that Union Bank was guilty of forum shopping and the RTC had no jurisdiction over the subject matter. Union Bank's allegation of fraud was the same claim it made in the motion to dismiss it filed before the SEC. And, not waiting for the SEC to rule on the issue, Union Bank went to the CA in a petition for *certiorari* (CA-G.R. SP No. 45774), in which it again placed in issue the same allegations of fraud raised before the RTC and SEC. Aggravating its act of forum shopping, Union Bank raised the very same issues in the pending civil suits before RTC of Pasig City, Branch Nos. 158 and 159, and RTC of Valenzuela (Civil Case Nos. 66478 and 66479; 5360-V-97). This further shows the other legal remedies being availed of by Union Bank in seeking rescission of the sale of the properties of NIKON. Specifically, Union Bank had a pending collection case before the RTC of Makati City, Branch 148 (Civil Case No. 97-2184). Union Bank knew it could not simultaneously seek rescission and collection, but it did so anyway. Finally, it was emphasized that when PD No. 902-A vested SEC with jurisdiction over petitions for suspension of payments, the law necessarily conferred exclusive jurisdiction to it over all incidents of the petition, including enforcement of claims.[31]

RTC Ruling

On March 22, 2005, the RTC issued an Order[32] granting the motions to dismiss on the ground of *litis pendentia*, as follows:

> It cannot be denied that there is a pending action between the same parties over the same transactions involving the same properties before the instant case was filed. Plaintiff as one of the creditors of defendants is a compulsory party in the Petition for Declaration of

---

[30] *Id.* at 761-774.

[31] *Id.* at 762-768.

[32] *Rollo*, pp. 81-84.

Suspension of Payments, Formation and Appointment of Rehabilitation Receiver/Committee filed by defendants with the SEC on September 16, 1997 or before the institution of instant case on October 16, 1997. By filing a motion to dismiss the petition, plaintiff made itself a party to the case and voluntarily submitted to the jurisdiction of the SEC. Further, it was conceded that among the properties subject of the order of suspension issued by the SEC are the properties subject of the instant controversy. Indubitably, all the elements of *litis pendentia* are present.

It must also be emphasized that even before the instant case was filed, the SEC has already acquired jurisdiction over the petition for declaration of suspension, which jurisdiction has been sustained by no less than the Supreme Court. In fact, the SEC had issued several directives for the rehabilitation of the petitioning corporations with the end in view of settling their obligations to all their creditors, plaintiff included. The actions taken by the SEC, including the issuance of an order of suspension and the creation of the Management Committee were all well in accord with Sec. 5 of P.D. No. 902-A, as amended.

With the MANCOM having been created by order of the SEC, plaintiff has been deprived of legal personality to impugn through the instant case the disposition of the properties in controversy made by defendant EYCO PROPERTIES, INC., which in the first place is not plaintiff's debtor.

Finally, the finding by the Court of Appeals and sustained by the Supreme Court, that plaintiff was guilty of forum shopping, is binding upon this Court.

WHEREFORE, the motions to dismiss separately filed by defendants Spouses Yutingco and EYCO PROPERTIES, INC[.] and FAR EAST BANK and TRUST COMPANY (FEBTC) are hereby [GRANTED]. This case is **DISMISSED**.

SO ORDERED.[33] (italics supplied)

Union Bank's motion for reconsideration was likewise denied under the RTC's Order[34] dated August 26, 2005.

---

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

[34] *Rollo*. p. 86.

CA Ruling

On appeal to the CA, Union Bank argued that there was no *litis pendentia* as it never submitted itself to the jurisdiction of the SEC and even filed a motion to dismiss SEC Case No. 09-97-5764. There was also no identity of parties because Union Bank and the Spouses Yutingco were not parties to the SEC case. Citing this Court's Decision in *Union Bank of the Phils. v. Court of Appeals*,[35] Union Bank pointed out that the Spouses Yutingco were dropped as petitioners in the SEC for lack of jurisdiction over them as individual debtors. Identity of rights asserted and cause of action was likewise lacking because in the present civil action, Union Bank seeks to annul the fraudulent conveyances of real property made by Spouses Yutingco/EYCO to FEBTC, while its cause of action against NIKON was for collection of credit. There can be no *res judicata* since there was no identity of parties, subject matter and causes of action. Besides, the SEC had no jurisdiction over the case for annulment of sale.

By Decision dated November 15, 2010, the CA granted Union Bank's appeal and reversed the assailed orders of the RTC.

First, the CA found that there was no identity of parties between Civil Case No. 66477 and SEC Case No. 09-97-5764. In *Union Bank of the Phils. v. Court of Appeals*[36] this Court ruled that Eulogio O. Yutingco, Caroline Yutingco-Yao and Theresa T. Lao were not proper parties in the SEC case and should be dropped therefrom, not being corporations but individuals. In the case before the RTC, the Spouses Yutingco were sued as sureties for the collection of credit against the debtor companies (*NIKON*).

Second, there was no identity of rights asserted because Union Bank, in its complaint filed in the RTC, prayed for the rescission of the sale of the debtors' properties to FEBTC and reversion of their ownership to NIKON and/or Spouses Yutingco. As

---

[35] *Supra* note 6.

[36] *Id*.

provided in Sec. 19 of *Batas Pambansa (BP) Blg.* 129, actions that are incapable of pecuniary estimation and those involving title of real property are within the exclusive jurisdiction of the RTC. Union Bank's foreclosure suit could therefore proceed, since it is not an *enforcement* of monetary claim but assails the validity of Spouses Yutingco/NIKON's sale of the subject properties of EYCO. There being absolutely no identity of rights asserted and remedies sought in the present case and the SEC case, there was no *res judicata* to speak of.

Further, the appellate court rejected the contention of FEBTC and Spouses Yutingco that the payment of ₱34,270,570.21, representing Union Bank's share from the proceeds of the sale of EYCO's properties, has been approved and the balance of ₱88,975,716.72 has been written off under the SEC-approved Liquidation Plan submitted by SEC-appointed Liquidator Atty. Danilo Concepcion, and that such Liquidation Plan was binding on Union Bank. This was because the Liquidation Plan expressly provided that the parties' waivers and quitclaims shall cause the dismissal of all actions filed by the parties in relation to the SEC case. But FEBTC/Spouses Yutingco failed to show that Union Bank had issued such waiver or quitclaim and accepted the offer of payment. Thus, it cannot be said that Union Bank had accepted the terms of payment and had agreed to cease from pursuing its claims against the debtors.

On the issue of forum shopping, the CA said that a close reading of this Court's decision in *Union Bank of the Phils. v. Court of Appeals*[37] reveals that Union Bank was found guilty of forum shopping for filing a petition for *certiorari* in the CA when its motion to dismiss was still pending before the SEC, the two cases raising the same issues of whether SEC had jurisdiction and whether suspension of payments was proper. The decision did not delve into the complaints filed with the regular courts for rescission of contracts. In any event, Union Bank was not guilty of forum shopping because the elements of *litis pendentia* and *res judicata* were not present.

---

[37] *Id.*

Finally, on the matter of Union Bank's alleged lack of personality to sue, the CA held that while the RTC used such term, the true reason for dismissal of the complaint was "lack of capacity to sue." When Union Bank filed its complaint on September 16, 1997, it was still qualified to do so. The authority of the Liquidator to recover all the properties of NIKON and EYCO in the hands of other persons had not yet been established. It was only on October 27, 1997 that the MANCOM was created and no law provides for the retroactive effect of its authority. However, substitution of parties may be effected in accordance with the procedure under the Rules if the circumstances so warrant.

Finding no legal obstacle in allowing full ventilation of the issues raised in the complaint filed in the RTC, the CA thus decreed:

> **ACCORDINGLY**, the appeal is **GRANTED**. The twin Orders dated March 22, 2005 and August 26, 2005 of the Regional Trial Court, Branch 157, Pasig City, in Civil Case No. 66477 are **REVERSED** and **SET ASIDE** and a new one rendered **REMANDING** the case to the trial court for a full blown hearing and determination of the case on the merits.
>
> **SO ORDERED.**[38] (citation omitted)

On March 14, 2011, BAYAN Delinquent Loan Recovery I (SPV-AMC, INC.) (*BAYAN*) filed a Motion for Substitution With Motion to Admit Comment, manifesting that under Deed of Assignment dated October 3, 2007, Union Bank assigned all its rights, title, interest and benefit, and all obligations arising out of or in connection with the loan obligation of NIKON, to BAYAN, including the bank's right to collect from Spouses Yutingco pursuant to the surety agreements and other security documents they executed in favor of Union Bank.[39]

---

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

[39] *Id.* at 105-121.

In its Resolution dated April 19, 2011, the CA granted the motion for substitution and admitted the comment, but denied the motions for reconsideration respectively filed by FEBTC and Yutingcos/EYCO for lack of merit.[40]

The present petition was filed by FEBTC (now Bank of the Philippine Islands) on May 13, 2011. The Spouses Yutingco had earlier requested for extension of time to file in this Court a separate petition questioning the same CA ruling in CA-G.R. CV No. 86172, docketed as G.R. No. 196629 entitled "*Eulogio and Wong Bee Kuan Yutingco and Eyco Properties, Inc. vs. Union Bank of the Philippines and Bayan Delinquent and Loan Recovery 1 [SPV-AMC]*." However, G.R. No. 196629 was withdrawn by the Yutingcos under Manifestation dated July 6, 2011. Accordingly, this Court's Second Division issued, on August 3, 2011, a Resolution granting the said Manifestation and declaring G.R. No. 196629 closed and terminated.[41]

Issues

For resolution are the following issues: 1) Whether Civil Case No. 66477 should be dismissed on the ground of *litis pendentia*; 2) Whether Union Bank was guilty of forum shopping; and 3) Whether Union Bank had the legal personality to file Civil Case No. 66477.

Petitioner's Arguments

On the first issue, petitioner contends that the CA erred in not dismissing Civil Case No. 66477 in view of another pending case, SEC Case No. 09-97-5764 filed on September 16, 1997. The issue in the SEC case is precisely the settlement of EYCO's obligations to its creditors, which include herein respondent Union Bank. Here, Union Bank also seeks to collect from the distressed corporations of EYCO. The CA failed to consider the well- settled rule that all questions involving properties of

---

[40] *Id*. at 122.

[41] Records, pp. 1839-1840, Vol. III.

an insolvent are properly cognizable by the insolvency court to the exclusion of all other courts. Civil Case No. 66477 is necessarily related to, and thus precluded by, the SEC Case which has exclusive jurisdiction "to decide all questions concerning the title or right of possession" over the properties of the distressed corporation. The issue of invalidity of the conveyance of property of EYCO will necessarily have to be threshed out in the SEC case.

Further, petitioner asserts that the CA incorrectly ruled that the parties in the two cases are different. The law does not require that there be absolute identity of parties with respect to a later case, but only substantial identity of parties. Union Bank, as one of the creditors of NIKON, is a compulsory party in the SEC case. Thus, judgment in the SEC case will bar the proceedings in Civil Case No. 66477 and vice-versa.

On the second issue, respondent was shown to have repetitively availed of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved by, some other court. In G.R. No. 131729 (*Union Bank of the Phils. v. Court of Appeals*),[42] both the CA and this Court found Union Bank guilty of forum shopping. The SEC already appointed a MANCOM or rehabilitation receiver, who was to have custody and control of all the assets of the corporation under receivership/ rehabilitation.

On the third issue, petitioner argues that, insofar as the rights and interests of the creditors of corporations under a management committee, such as Union Bank, and the judicial enforcement of said rights are concerned, they are collectively vested upon the rehabilitation receiver. With the appointment of a MANCOM, Union Bank clearly has no legal personality to impugn the sale by EYCO to FEBTC. The proper party to institute such an action is the rehabilitation receiver.

---

[42] *Supra* note 6.

Respondent's Arguments

Union Bank, substituted by [Deutsche Bank][43]/Bayan Delinquent Loan Recovery 1 (SPV-AMC), Inc., submits the arguments set forth in the Comment/Opposition to FEBTC's motion for reconsideration (of the Decision dated November 15, 2010) filed in the CA.

On *litis pendentia*, respondent maintains that there is no identity of parties considering that this Court in *Union Bank of the Phils. v. Court of Appeals*[44] has ordered that the Spouses Yutingco be dropped as "party-defendants" in the SEC case due to lack of jurisdiction over their persons. Petitioner's argument that NIKON are indispensable parties in Civil Case No. 66477 is unavailing, inasmuch as the creditor has the right to proceed against the surety independent of the debtor. Here, the Continuing Surety Agreement executed by the Spouses Yutingco in favor of Union Bank, unequivocally provides that the former bind themselves solidarity with their principal (NIKON).

Neither is there identity in causes of action considering that it is the fraudulent conveyance of properties by the Spouses Yutingco through EYCO properties in favor of FEBTC that caused Union Bank's cause of action to accrue. Employing another test to determine the identity of causes of action, *i.e.*, whether the same evidence will sustain both actions, respondent points out that it will have to present evidence in the SEC case proving the Spouses Yutingcos' obligation to it and their consequent failure to abide by the same. Such evidence, however, is not needed in the annulment of sale case (Civil Case No. 66477).

As to petitioner's allegation that the approved Liquidation Plan is binding on the respondent, under which NIKON's obligation with Union Bank was extinguished, respondent asserts

---

[43] *Rollo*, pp. 89-90, 94.

[44] *Supra* note 6.

that such does not warrant the reversal of the CA Decision. As found by the CA, Union Bank is not a party to the SEC case and hence not bound by any order or proceeding therein. Petitioner's reliance of this Court's pronouncement in *Union Bank of the Phils. v. Court of Appeals*[45] is likewise misplaced. In said case, this Court merely held that the SEC's jurisdiction on matters of suspension of payments is confined only to those initiated by corporations, partnerships or associations and not those by individuals. In any event, from the very terms of the Liquidation Plan itself, it is not the approval of the Liquidation Plan but the execution of waivers and quitclaims and the dismissal of all pending cases arising from or related to the subject loan obligations that would extinguish the same. Lastly, judgment in Civil Case No. 66477 will not operate as *res judicata* in the SEC case, nor will the final disposition of the SEC case operate as *res judicata* in the former civil suit.

Respondent maintains that it is not guilty of forum shopping since there is no similarity of parties, issues, reliefs sought and evidence. As to this Court's pronouncement in *Union Bank of the Phils. v. Court of Appeals*,[46] the CA correctly pointed out that a close reading of the decision in that case reveals that Union Bank was found guilty of forum shopping for filing a petition for *certiorari* in the Supreme Court when its motion to dismiss was still pending with the SEC, and does not pertain to the complaints filed in the regular courts for rescission of contracts.

Finally, respondent contends that the CA correctly held that when Union Bank filed its complaint in the RTC against the Spouses Yutingco on September 26, 1997, the MANCOM was not yet created and no Liquidator had been appointed.

The Court's Ruling

We deny the petition.

---

[45] *Id*.

[46] *Id*.

Litis pendentia as a ground for the dismissal of a civil action contemplates a situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious.[47] It is one of the grounds that authorizes a court to dismiss a case *motu proprio*, as provided in Sec. 1(e), Rule 16 of the 1997 Rules of Civil Procedure.[48]

For *litis pendentia* to exist, the following requisites or elements must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity with respect to the two (2) preceding particulars in the two (2) cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[49]

We sustain the CA in holding that *litis pendentia* is not applicable to the present case.

On the first requisite, there is no identity of parties considering that the Yutingcos were ordered dropped from SEC Case No. 09-97-5764 pursuant to *Union Bank of the Phils. v. Court of Appeals*[50] which was decided in 1998. This Court ruled therein that the SEC cannot acquire jurisdiction over an individual filing

---

[47] *Subic Telecommunications Company, Inc. v. Subic Bay Metropolitan Authority, et al.*, 618 Phil. 480, 493 (2009), citing *Guevara v. BPI Securities Corporation*, 530 Phil 342, 366 (2006).

[48] SECTION I. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds

x x x x x x x x x

(e) That there is another action pending between the same parties for the same cause[.]

[49] *Supra* note 47 at 494-495.

[50] *Supra* Note 6.

a petition for suspension of payments together with a corporate entity.[51]

In Civil Case No. 66477 filed by Union Bank, the Spouses Yutingco are being sued as sureties for the loans obtained by NIKON from Union Bank, along with petitioner who is the present registered owner of the EYCO properties. SEC Case No. 09-97-5764 was initiated by EYCO and the Yutingcos, seeking a suspension of payments for its financially distressed companies, which included NIKON and petitioner. Notably, NIKON is not impleaded as defendants in Civil Case No. 09-97-5764, Union Bank having asserted that the Spouses Yutingco are the real parties in interest being the controlling stockholders of NIKON and EYCO, and sureties of NIKON's loans with Union Bank.[52] While petitioner and Union Bank are among the creditors affected by the filing of the SEC case, the proceedings therein are not adversarial.

The second requisite is likewise absent. In Civil Case No. 66477, Union Bank sought to rescind the sale of certain properties of EYCO to petitioner, on the theory that the Yutingcos/EYCO colluded with petitioner to divert the assets of NIKON to purchase real properties under the name of EYCO. Union Bank prayed that ownership of the properties be reverted to NIKON so that these can be used to pay for credit facilities extended to it by Union Bank, pursuant to the undertaking of the Yutingcos under the Continuing Surety Agreement.

On the other hand, SEC Case No. 09-97-5764 was initiated by EYCO seeking a declaration of suspension of payments under the provisions of P.D. No. 902-A. While it is true that EYCO's creditors have been directed to file its claims under existing contracts with the debtor-corporations - the ultimate objective being the equitable distribution of earnings from the business

---

[51] *Id*. at 825, citing *Chung Ka Bio v. Intermediate Appellate Court, et al.,* 246 Phil. 556 (1988); *Modern Paper Products, Inc., et al. v. Court of Appeals, et al*., 350 Phil. 402 (1998).

[52] Records, pp. 1685-1687, Vol. III.

under rehabilitation — the validity of the sale to petitioner of EYCO's properties is the principal issue in Civil Case No. 66477. Thus, it cannot be said that the rights asserted and the reliefs prayed for are the same.[53]

Moreover, SEC took cognizance of the petition for suspension of payments, having been vested with exclusive jurisdiction under P.D. No. 902-A over such recourse by financially distressed corporations. While a management committee or rehabilitation receiver may review or seek modification of existing contracts of the debtor-corporation, this is merely an incident of the specific powers granted by law and only for the purpose of maintaining the viability of the debtor-corporation which would ultimately benefit the creditors. The RTC, on the other hand, unquestionably has jurisdiction to hear and decide actions incapable of pecuniary estimation, such as the suit for rescission of sale (Civil Case No. 66477).

Finally, the third element is also lacking. Any judgment in Civil Case No. 66477 will not have the effect of *res judicata* to the proceedings in SECCase No. 09-97-5764, and vice versa.[54] Any judgment or final disposition by the SEC on the claims against the debtor-corporations will not fully resolve the issues before the trial court (*i.e*., validity of the sale of EYCO properties in favor of petitioner, real ownership of the properties and damages). The rulings issued by the SEC Hearing Panel in the course of rehabilitation will not settle the issue of whether the Spouses Yutingco, EYCO and petitioner connived to ensure that the properties of NIKON will not answer for the latter's huge loans obtained from Union Bank. Rehabilitation proceedings are summary in nature; they do not include adjudication of claims that require full trial on the merits.[55]

---

[53] See *Philippine Woman's Christian Temperance Union, Inc. v. Abiertas House of Friendship, Inc., et al*., 354 Phil. 791, 801 (1998).

[54] *Id*. at 801.

[55] See *Steel Corporation of the Phils. v. Mapfre Insular Insurance Corporation, et al., 719 Phil. 638, 655- 656 (2013), citing Advent Capital and Finance Corporation v. Alcantara, et al*., 680 Phil. 238, 246 (2012).

Conversely, the trial court's decision annulling the contract of sale in favor of petitioner will not in any way determine the viability of rehabilitation plan for EYCO, nor provide an equitable distribution of the assets of the debtor-corporations. It bears stressing that the properties subject of Civil Case No. 66477 were never included in the properties of EYCO placed in the custody of the MANCOM and eventually the Liquidator, for distribution to all claimants and creditors.

There being no *litis pendentia* or *res judicata*, we find Union Bank not guilty of forum shopping.

Jurisprudence has laid down the test for determining whether a party violated the rule against forum shopping. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other.[56] The requisites of *litis pendentia* not having concurred, and the issues presented in SEC Case No. 09-97-5764 and RTC not being identical, Union Bank is therefore not guilty of forum shopping.[57]

As already discussed, the main issue in the SEC petition is the viability of EYCO to continue their businesses. The debtor-corporations, who having allegedly sufficient assets to cover all its debts, foresees the impossibility of meeting those debts when they respectively fall due. In Civil Case No. 66477, the issue being litigated is the validity of the contract of sale of EYCO properties to petitioner, allegedly made in fraud of NIKON's creditor, Union Bank. Clearly, the issues in the two cases are not identical.

As correctly stated by the CA, the act of forum shopping raised in the present case should be distinguished from that adjudged in *Union Bank of the Phils. v. Court of Appeals*[58]

---

[56] *Rudecon Management Corporation v. Singson*, 494 Phil. 581 (2005); citing *Ayala Land Inc. v. Valisno*, 381 Phil. 518 (2000).

[57] See *Phil. Woman's Christian Temperance Union Inc. v. Abiertas House of Friendship, Inc. et al.*, *supra* note 53.

[58] *Supra* note 6.

where the charge of forum shopping arose from Union Bank's resort to a petition for *certiorari* in the CA, even as its motion to dismiss based on lack of jurisdiction of the SEC and propriety of suspension of payments was still pending in the SEC. Thus:

As to the issue of forum-shopping, we fully subscribe to the Court of Appeals in ruling that such violation existed when it declared:

> Finally, the charge that petitioner is guilty of forum shopping - which is the institution of two or more actions or proceedings grounded on the same cause - cannot unceremoniously be glossed over. It is patent that the instant petition and the pending motion to dismiss before the SEC raise identical issues, namely, lack of jurisdiction and the propriety of the suspension of payments.[59] (underlining supplied, italics in the original)

Here, forum shopping was among the grounds raised in the motions to dismiss filed by EYCO and the Yutingcos who assailed Union Bank for having filed a motion to dismiss in the SEC case and for having earlier filed other complaints in different courts citing the same transactions and fraudulent dispositions of the same properties allegedly committed by them.[60] They contend that it is the SEC which has jurisdiction over all properties of the debtor-corporations under rehabilitation such that Union Bank should have filed its claim against EYCO and NIKON before the SEC.

As already mentioned, the properties subject of Civil Case No. 66477 were not included in the rehabilitation proceedings before the SEC. These properties were sold to petitioner one day before the filing of the petition with the SEC where EYCO sought the suspension of payments of debts to its creditors and the rehabilitation of its companies. Union Bank filed the rescission case in the trial court against EYCO, petitioner and the Yutingcos, the latter being sureties of NIKON who availed of Union Bank's credit facilities. Union Bank sought to rescind

---

[59] *Id.* at 831-832.

[60] *Rollo*, p. 82.

the allegedly fraudulent sale of EYCO's properties purchased out of NIKON's assets, and revert their ownership to NIKON. Clearly, the issues in the two cases are not the same, and the reliefs prayed for are different.

It may be mentioned that under the new law on corporate rehabilitation and insolvency, Republic Act No. 10142 (Financial Rehabilitation and Insolvency Act *[FRIA]* of 2010), among those exempted from the coverage of a Stay Order are actions filed against sureties or persons solidarily liable with the debtor.

> **SECTION. 18.** *Exceptions to the Stay or Suspension Order.* — The Stay or Suspension Order shall not apply:
>
> x x x x x x x x x
>
> (c) to the enforcement of **claims against sureties and other persons solidarily liable with the debtor**, and third party or accommodation mortgagors as well as issuers of letters of credit, unless the property subject of the third party or accommodation mortgage is necessary for the rehabilitation of the debtor as determined by the court upon recommendation by the rehabilitation receiver[.][61] (emphasis supplied)

Petitioner nonetheless contends that the matter of interests and rights of the creditors of the debtor-corporations are vested on the management committee created pursuant to P.D. 902-A. With the appointment of a MANCOM, the proper party to file the action for rescission of the sale of EYCO properties to petitioner is clearly the rehabilitation receiver appointed by SEC. Union Bank thus has no legal personality to institute Civil Case No. 66477 involving the assets of the debtor-corporations under rehabilitation.

We find no reversible error in the CA's ruling that when Union Bank filed Civil Case No. 66477 on September 26, 1997, it still possessed the legal capacity (not legal personality) to do so. This is because it was only on October 27, 1997 that the MANCOM was created.

---

[61] R.A. No. 10142, Sec. 18(c).

Notwithstanding the CA's proper denial of the motion to dismiss Civil Case No. 66477, we hold that said case should have been suspended upon the constitution of the MANCOM.

The applicable law on the suspension of actions for claims against corporations is P.D. No. 902-A, which was in force at the time EYCO filed its petition for suspension of payments with the SEC.

The pertinent provisions of P.D. No. 902-A read:

Section 5. In addition to the regulatory adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x x x x x x x

d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.[62]

Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following:

x x x x x x x x x

c) To appoint one or more receivers of the property, real or personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors. x x x Provided, further, that **upon appointment of a management committee**, rehabilitation receiver, board or body, **pursuant to this Decree,**

---

[62] Sec. 3 of P.D. No. 1758, s. 1981.

> **all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly**.[63] (emphasis supplied)

In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court, et al.*,[64] the Court held that once a management committee, rehabilitation receiver, board or body is appointed pursuant to P.D. 902-A, all actions for claims against a distressed corporation pending before any court, tribunal, board or body shall be suspended accordingly.

In *Castillo v. Uniwide Warehouse Club, Inc., et al.*,[65] we explained the coverage of the suspension order, thus:

> Jurisprudence is settled that **the suspension of proceedings referred to in the law uniformly applies to "all actions for claims" filed against a corporation, partnership or association under management or receivership, without distinction**, except only those expenses incurred in the ordinary course of business. In the oft-cited case of *Rubberworld (Phils.), Inc. v. NLRC*, the Court noted that aside from the given exception, **the law is clear and makes no distinction as to the claims that are suspended once a management committee is created or a rehabilitation receiver is appointed**. Since the law makes no distinction or exemptions, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos. Philippine Airlines, Inc. v. Zamora* declares that the automatic suspension of an action for claims against a corporation under a rehabilitation receiver or management committee **embraces all phases of the suit, that is, the entire proceedings of an action or suit and not just the payment of claims.**
>
> x x x x x x x x x
>
> At this juncture, it must be conceded that the date when the claim arose, or when the action was filed, has no bearing at all in deciding whether the given action or claim is covered by the stay or suspension order. What matters is that **as long as the corporation is under a**

---

[63] Sec. 4 of P.D. No. 1758, s. 1981.

[64] 378 Phil. 10, 21-22 (1999).

[65] 634 Phil. 41 (2010).

management committee or a rehabilitation receiver, all actions for claims against it, whether for money or otherwise, must yield to the greater imperative of corporate revival, excepting only, as already mentioned, claims for payment of obligations incurred by the corporation in the ordinary course of business.[66] (citations omitted, emphasis supplied)

In *Philippine Airlines Incorporated, et al. v. Zamora*,[67] the Court reiterated the reason for suspending claims during rehabilitation, *viz*:

The *raison d'etre* behind the suspension of claims pending rehabilitation proceedings was explained in this wise:

> In light of these powers, the reason for suspending actions for claims against the corporation should not be difficult to discover. It is not really to enable the management committee or the rehabilitation receiver to substitute the defendant in any pending action against it before any court, tribunal, board or body. **Obviously, the real justification is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company.** To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.[68] (italics in the original, emphasis supplied)

Thus, while the motions to dismiss Civil Case No. 66477 should have been denied by the trial court, said case should have also been suspended in view of the creation of the MANCOM on October 27, 1997. As borne by the records, the case did not go beyond pre-trial stage because of the long exchange of pleadings between the parties upon the sole incident

---

[66] *Id.* at 50-52.

[67] 543 Phil. 546 (2007).

[68] *Id.* at 564; citing *BF Homes, Incorporated v. Court of Appeals,* 268 Phil. 276, 284 (1990).

of the motions to dismiss filed by EYCO and Yutingcos. It was only on March 22, 2005 that the trial court issued the order granting the motions to dismiss. Union Bank appealed to the CA, which resulted in more delays until the CA rendered the assailed decision reversing the trial court's dismissal of the case.

Expectedly, the present controversy was overtaken by succeeding developments in SEC Case No. 09-97-5764.

The rehabilitation plan of a group of creditors earlier adopted by the SEC Hearing Panel, was disapproved on September 14, 1999 by the SEC *En Banc* which granted the appeal of the Consortium. The suspension of payment proceedings were terminated, the committees created dissolved and discharged, the dissolution and liquidation of the petitioning corporations were ordered, and a Liquidator appointed.

The case was remanded to the hearing panel for liquidation proceedings. On appeal by EYCO (CA-G.R. SP No. 55208), the CA upheld the SEC ruling. EYCO then filed a petition for *certiorari* before this Court, docketed as G.R. No. 145977, which case was eventually dismissed under Resolution dated May 3, 2005 upon joint manifestation and motion to dismiss filed by the parties. Said resolution became final and executory on June 16, 2005.[69]

By October 10, 2000, the SEC had directed all creditors/claimants of the companies belonging to EYCO to file their formal claims with the Liquidator. Atty. Concepcion took over as Liquidator on May 31, 2001 and his proposed Liquidation Plan was eventually approved by the SEC on April 11, 2002.

While these developments in SEC Case No. 09-97-5764 were taking place, R.A. No. 8799 was passed by Congress, transferring all those cases enumerated in Sec. 5 of P.D. No. 902-A to the regional trial courts. As to the implications of the transfer of jurisdiction to the appropriate regional trial courts of cases

---

[69] See *Bank of Philippine Island v. Hong, et al.*, 682 Phil. 66, 69 (2012).

formerly handled by the SEC, this Court has previously ruled that the proceedings in SEC Case No. 09-97-5764 was effectively terminated upon the disapproval of the SAC rehabilitation plan for the EYCO Group of Companies, and the order of dissolution and liquidation issued by the SEC *En Banc* on September 14, 1999.

In *Bank of the Philippine Islands v. Hong, et al.*,[70] a petition for review on *certiorari* was filed in this Court by BPI assailing the CA decision which affirmed the trial court's denial of its motion to dismiss the injunction suit filed by the respondent, an unsecured creditor of NIKON. BPI moved to dismiss the injunction case arguing that, by respondent's own submissions, it is the SEC which has jurisdiction over the reliefs prayed for in respondent's complaint, and that respondent actually resorted to forum shopping since he filed a claim with the SEC and the designated Liquidator in the ongoing liquidation of EYCO.

Before this Court, BPI as secured creditor of EYCO who initiated foreclosure proceedings, raised the sole issue of whether the RTC can take cognizance of the injunction suit despite the pendency of SEC Case No. 09-97-5764. We denied BPI's petition, as follows:

> Previously, under the Rules of Procedure on Corporate Recovery, the SEC upon termination of cases involving petitions for suspension of payments or rehabilitation may, *motu proprio*, or on motion by any interested party, or on the basis of the findings and recommendation of the Management Committee that the continuance in business of the debtor is no longer feasible or profitable, or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of the debtor and the liquidation of its remaining assets appointing a Liquidator for the purpose. The debtor's properties are then deemed to have been conveyed to the Liquidator in trust for the benefit of creditors, stockholders and other persons in interest. This notwithstanding, any lien or preference to any property shall be recognized by the Liquidator in favor of the security or lienholder, to the extent allowed by law, in the implementation of the liquidation plan.

---

[70] *Supra*.

However, R.A. No. 8799, which took effect on August 8, 2000, transferred to the appropriate regional trial courts the SEC's jurisdiction over those cases enumerated in Sec. 5 of P.D. No. 902-A. Section 5.2 of R.A. No. 8799 provides:

> SEC. 5.2 The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. **The Commission shall retain jurisdiction over pending suspension of payments/ rehabilitation cases filed as of 30 June 2000 until finally disposed.** x x x

Upon the effectivity of R.A. No. 8799, SEC Case No. 09-97-5764 was no longer pending. The SEC finally disposed of said case when it rendered on September 14, 1999 the decision disapproving the petition for suspension of payments, terminating the proposed rehabilitation plan, and ordering the dissolution and liquidation of the petitioning corporation. With the enactment of the new law, jurisdiction over the liquidation proceedings ordered in SEC Case No. 09-97-5764 was transferred to the RTC branch designated by the Supreme Court to exercise jurisdiction over cases formerly cognizable by the SEC. As this Court held in *Consuelo Metal Corporation v. Planters Development Bank*:

> The SEC assumed jurisdiction over CMC's petition for suspension of payment and issued a suspension order on 2 April 1996 after it found CMC's petition to be sufficient in form and substance. While CMC's petition was still pending with the SEC as of 30 June 2000, it was finally disposed of on 29 November 2000 when the SEC issued its Omnibus Order directing the dissolution of CMC and the transfer of the liquidation proceedings before the appropriate trial court. **The SEC finally disposed of CMC's petition for suspension of payment when it determined that CMC could no longer be successfully rehabilitated.**

> However, the SEC's jurisdiction does not extend to the liquidation of a corporation. **While the SEC has jurisdiction to order the dissolution of a corporation, jurisdiction over the liquidation of the corporation now pertains to the appropriate regional trial courts.** This is the reason why the SEC, in its 29 November 2000 Omnibus Order, directed that "the proceedings on and implementation of the order of liquidation be commenced at the Regional Trial Court to which this case shall be transferred." This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences. x x x

There is no showing in the records that SEC Case No. 09-97-5764 had been transferred to the appropriate RTC designated as Special Commercial Court at the time of the commencement of the injunction suit on December 18, 2000. Given the urgency of the situation and the proximity of the scheduled public auction of the mortgaged properties as per the Notice of Sheriffs Sale, respondent was constrained to seek relief from the same court having jurisdiction over the foreclosure proceedings - RTC of Valenzuela City. Respondent thus filed Civil Case No. 349-V-00 in the RTC of Valenzuela City on December 18, 2000 questioning the validity of and enjoining the extrajudicial foreclosure initiated by petitioner. Pursuant to its original jurisdiction over suits for injunction and damages, the RTC of Valenzuela City, Branch 75 properly took cognizance of the injunction case filed by the respondent. **No reversible error was therefore committed by the CA when it ruled that the RTC of Valenzuela City, Branch 75 had jurisdiction to hear and decide respondent's complaint for injunction and damages.**

Lastly, it may be mentioned that while the Consortium of Creditor Banks had agreed to end their opposition to the liquidation proceedings upon the execution of the Agreement dated February 10, 2003, on the basis of which the parties moved for the dismissal of G.R. No. 145977, it is to be noted that petitioner is not a party to the said agreement. Thus, even assuming that the SEC retained jurisdiction over SEC Case No. 09-97-5764, petitioner was not bound by the terms and conditions of the Agreement relative to the foreclosure of

those mortgaged properties belonging to EYCO and/or other accommodation mortgagors.[71] (citations omitted, emphasis supplied)

Without delving into matters concerning the liquidation proceedings in SEC Case No. 09-97-5764, We hold that with the termination of suspension of payment proceedings in SEC Case No. 09-97-5764 on September 14, 1999, there is no more legal hindrance to the continuation of Civil Case No. 66477. Records show that the Spouses Yutingco already filed their Answer but BPI had requested for suspension of proceedings until the present petition is finally resolved.[72]

WHEREFORE, the petition is **DENIED**. The November 15, 2010 Decision and April 19, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 86172 are hereby **AFFIRMED**.

SO ORDERED.

Bersamin, C.J., del Castillo, and *Jardeleza, JJ.*, concur.

Carandang, J., on wellness leave.

THIRD DIVISION

[G.R. No. 200170. June 3, 2019]

MARILYN R.. YANGSON, *petitioner, vs.* **DEPARTMENT OF EDUCATION represented by its SECRETARY BRO. ARMIN A. LUISTRO, FSC,** *respondent.*

---

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

[72] Records, pp. 1867-1868, 1882-1894, Vol. III.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; APPOINTMENTS; STATION-SPECIFIC APPOINTMENT; AN APPOINTMENT IS STATION-SPECIFIC IF THE EMPLOYEE'S APPOINTMENT PAPER SPECIFICALLY INDICATES ON ITS FACE THE PARTICULAR OFFICE OR STATION THE POSITION IS LOCATED.—** An appointment is station-specific if the employee's appointment paper specifically indicates on its face the particular office or station the position is located. Moreover, the station should already be specified in the position title, even if the place of assignment is not indicated on the face of the appointment. Here, respondent alleges that petitioner was appointed as "Principal III of [the Department of Education] Division of Surigao del Norte." x x x Evidently, petitioner's appointment is not solely for Surigao National or for any specific school. There is no particular office or station specifically indicated on the face of her appointment paper. Neither does her position title specifically indicate her station.

2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF LOWER TRIBUNALS ARE ENTITLED TO GREAT WEIGHT AND RESPECT ABSENT ANY SHOWING THAT THEY ARE NOT SUPPORTED BY EVIDENCE, OR THE JUDGMENT IS BASED ON A MISAPPREHENSION OF FACTS.—** [T]he Regional Trial Court, the Department of Education, and the Court of Appeals, all found that petitioner's appointment was *not* station-specific. It is settled that the factual findings of lower tribunals are entitled to great weight and respect absent any showing that they were not supported by evidence, or the judgment is based on a misapprehension of facts. There is no showing of any of these exceptions here.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 4670 (THE MAGNA CARTA FOR PUBLIC SCHOOL TEACHERS); CONSENT FOR TRANSFER; THE PROVISION ON CONSENT FOR TRANSFER APPLIES TO TRANSFER, NOT REASSIGNMENTS; TRANSFER AND REASSIGNMENT, DISTINGUISHED.—** Section 6 of the Magna Carta for Public School Teachers does not apply here. x x x The text of the law is clear and unequivocal: Section 6 applies to transfers, not reassignments. Petitioner's movement from Surigao National

to Toledo Memorial was a reassignment, not a transfer. The legal concept of transfer differs from reassignment. Most notably, a transfer involves the issuance of another appointment, while a reassignment does not. x x x Transfer and reassignment are defined in Section 24 of Presidential Decree No. 807, or the Civil Service Law x x x. They are also defined in Sections 11 and 13(a) of Civil Service Commission Resolution No. 1800692, otherwise known as the 2017 Omnibus Rules on Appointments and Other Human Resource Actions. x x x Here, the Memorandum petitioner questions specifically stated that she was being reassigned x x x.

4. **ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; SECURITY OF TENURE; NOT VIOLATED WHEN A PUBLIC OFFICER OR EMPLOYEE, WHOSE APPOINTMENT IS NOT STATION-SPECIFIC, IS REASSIGNED.—** [P]etitioner's reassignment did not violate her right to security of tenure. x x x [I]t has been established that petitioner's appointment is not station-specific. While she is entitled to her right to security of tenure, she cannot assert her right to stay at Surigao National. Her appointment papers are not specific to the school, which means she may be assigned to any station as may be necessary for public exigency. Because she holds no vested right to remain as Principal III of Surigao National, her security of tenure was not violated.

5. **ID.; ID.; ID.; REASSIGNMENTS; PRESUMED REGULAR AND MADE IN THE INTEREST OF PUBLIC SERVICE, AND THE PARTY QUESTIONING ITS REGULARITY CARRIES THE BURDEN TO PROVE HIS ALLEGATIONS.—** [P]etitioner's reassignment was for the exigency of service. x x x Section 26(7) of the Administrative Code allows any government department or agency that is embraced in the civil service prerogative to reassign employees x x x. [W]e cannot conclude as a matter of established fact that petitioner was reassigned by whim, fancy, or spite, as she would like this Court to believe. It is presumed that reassignments are "regular and made in the interest of public service." The party questioning its regularity or asserting bad faith carries the burden to prove his or her allegations.

6. **ID.; ID.; ID.; ID.; A REASSIGNMENT CANNOT BE CONSIDERED A DEMOTION WHEN THERE IS NO MOVEMENT FROM A HIGHER POSITION TO A LOWER POSITION, AND THE EMPLOYEE RETAINS THE SAME RANK, STATUS, AND**

SALARY, AND IS EXPECTED TO EXERCISE THE SAME DUTIES AND RESPONSIBILITIES.— A demotion means that an employee is moved or appointed from a higher position to a lower position with decreased duties and responsibilities, or with lesser status, rank, or salary. x x x Petitioner's position at Toledo Memorial is still Principal III. She retains the same rank, status, and salary, and is expected to exercise the same duties and responsibilities. There is no movement from a higher position to a lower position.

7. ID.; ID.; ID.; ID.; A REASSIGNMENT MAY BE DEEMED A CONSTRUCTIVE DISMISSAL IF THE EMPLOYEE IS MOVED TO A POSITION WITH A MORE SERVILE OR MENIAL JOB AS COMPARED TO THE PREVIOUS POSITION, OR IF THE EMPLOYEE IS NOT GIVEN A DEFINITE SET OF DUTIES AND RESPONSIBILITIES, OR THE MOTIVATION FOR THE REASSIGNMENT IS TO HARASS THE EMPLOYEE, OR IT MAY BE INFERRED FROM REASSIGNMENTS DONE TWICE WITHIN A YEAR.— Constructive dismissal occurs whether or not there is diminution in rank, status, or salary if the employee's environment has rendered it impossible for him or her to stay in his or her work. It may be due to the agency head's unreasonable, humiliating, or demeaning actuations, hardship because [of] geographic location, financial dislocation, or performance of other duties and responsibilities inconsistent with those attached to the position. A reassignment may be deemed a constructive dismissal if the employee is moved to a position with a more servile or menial job as compared to his previous position. It may occur if the employee was reassigned to an office not in the existing organizational structure, or if he or she is not given a definite set of duties and responsibilities. It may be deemed constructive dismissal if the motivation for the reassignment was to harass or oppress the employee on the pretext of promoting public interest. This may be inferred from reassignments done twice within a year, or during a change of administration of elective and appointive officials. x x x [Petitioner] was not given a more servile or menial job. Similarly, she was not humiliated, demeaned, or treated unreasonably. She did not allege that it was impossible for her to continue her work due to the geographic location. There is no showing that she was financially dislocated or that she was being made to perform duties and responsibilities that contravene those of her position. Moreover, Toledo Memorial is a high school

within her area of appointment. She was given a definite set of duties and responsibilities. This is not the second reassignment within a year, or a reassignment during a change of administration of elective and appointive officials.

8. ID.; ID.; ID.; ID.; FOR APPOINTMENTS THAT ARE NOT STATION-SPECIFIC, THE REASSIGNMENT MAY BE INDEFINITE AND MAY EXCEED ONE YEAR.— When an employee's appointment is station-specific, his or her reassignment may not exceed a maximum period of one (1) year. This is not the case for appointments that are not station-specific. In such instances, the reassignment may be indefinite and exceed one (1) year —as in petitioner's case.

APPEARANCES OF COUNSEL

Noel P. Catre for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Reassignments differ from transfers, and public employees with appointments that are not station-specific may be reassigned to another station in the exigency of public service.

This resolves a Petition for Review on Certiorari[1] assailing the July 28, 2011 Decision[2] and January 4, 2012 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 117679.

Marilyn R. Yangson (Yangson) was Principal III at the Surigao

---

[1] *Rollo*, pp. 9-31.

[2] *Id*. at 32-44. The Decision was penned by Associate Justice Japar B. Dimaampao, and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Jane Aurora C. Lantion of the First Division, Court of Appeals, Manila.

[3] *Id*. at 45-46. The Resolution was penned by Associate Justice Japar B. Dimaampao, and concurred in by Presiding Justice Andres B. Reyes, Jr.

Norte National High School (Surigao National).[4]

On April 30, 2008, Yangson was personally served a Memorandum dated April 14, 2008 issued by then Assistant Schools Division Superintendent Officer-in-Charge Fidela Rosas (Rosas).[5] In the Memorandum, Yangson was reassigned from Surigao National to Toledo S. Pantilo Memorial National High School (Toledo Memorial):

> In the exigency of the service, you are hereby advise[d] of your reassignment from Surigao Norte National High School to Toledo S. Pantilo Memorial National High School effective May 5, 2008.
>
> Please submit your clearance as to money and property accountability before reporting to your new station. Your First Day of Service must also be submitted to this Office for our reference and file.
>
> It is expected that you do your best in the interest of the service. Please be guided accordingly.[6]

Yangson refused to accept the Memorandum without first consulting her counsel.[7]

Two (2) days prior to the effectivity of her reassignment on May 5, 2008, Yangson filed before the Regional Trial Court a Petition for Injunction with Prayer for Temporary Restraining Order and Damages against Rosas and Dulcesima Corvera (Corvera), who was supposed to replace Yangson as the new principal of Surigao National.[8]

Yangson alleged that the Memorandum violated Department

(now a member of this Court) and Associate Justice Jane Aurora C. Lantion of the Former First Division, Court of Appeals, Manila.

[4] *Id*. at 32.

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

[6] *Id*. at 47.

[7] *Id*. at 33.

[8] *Id*.

of Education Circular No. 02, series of 2005, because it failed to specify the duration of her reassignment and because it was issued without her prior consultation. She also claimed that there was no vacancy in the position, and the reassignment would cause diminution in her rank.[9]

On May 5, 2008, the Regional Trial Court issued a Temporary Restraining Order.[10]

However, in its May 24, 2008 Order,[11] the Regional Trial Court denied Yangson's prayer for preliminary injunction. It held that Yangson did not have a vested right over her position at Surigao National because her appointment as Principal III was not station-specific.[12] It also found that the Temporary Restraining Order was sufficient to vindicate her rights even if the Memorandum was not served properly.

Furthermore, the trial court ruled that Yangson was not singled out as other principals were also reassigned. It held that the reassignments were in good faith and within Rosas' authority.[13] It ruled that the issuance of an injunction was improper as Yangson could still appeal to the Director of Public Schools under Section 6 of Republic Act No. 4670, or the Magna Carta for Public School Teachers. While this was pending resolution, the trial court explained, her transfer could be held in abeyance.[14]

Thus, Yangson appealed before the Department of Education CARAGA Regional Office.[15]

---

[9] *Id*. at 54.

[10] *Id*. at 33 and 54-55.

[11] *Id*. at 56-58.

[12] *Id*. at 56-57.

[13] *Id*. at 57.

[14] *Id*. at 33-34 and 57-58

[15] *Id*. at 34.

In her June 11, 2008 Resolution,[16] Regional Director Jesusita Arteche (Regional Director Arteche) denied Yangson's appeal. Citing Section 26 of the Administrative Code, which differentiated transfers from reassignments,[17] she found that Yangson was reassigned, not transferred. Thus, Section 6 of the Magna Carta for Public School Teachers, which only provided for transfers, was inapplicable. Yangson's reassignment, then could not be held in abeyance while her appeal was pending resolution.[18]

Regional Director Arteche also ruled that Yangson was not constructively dismissed because her reassignment was done in good faith. Further, it held that Rosas had the discretion to reassign principals and teachers under DECS Order No. 7, series of 1999, which directed the reassignment of teachers and principals every five (5) years.[19]

Yangson elevated her case to the Department of Education Central Office, but her appeal was denied in the August 13, 2008 Resolution.[20]

The Department of Education Central Office affirmed that Yangson was reassigned, not transferred, since her movement did not involve the issuance of an appointment.[21] It held that since Yangson's appointment was not station-specific, her reassignment was within the prerogative of the head of office for the exigency of service. Hence, Yangson could be assigned to any school.

Moreover, the Department of Education Central Office found

---

[16] *Id*. at 64-66. The Resolution was penned by Regional Director Jesusita L. Arteche, CESO, of the Department of Education CARAGA Regional Office.

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

[18] *Id*. at 65.

[19] *Id*.

[20] *Id*. at 34-35 and 75-82. The Resolution was recommended by Undersecretary Atty. Franklin C. Suñga and approved by Secretary Jesli A. Lapus of the Department of Education.

that since her reassignment was done to promote efficiency in government service, her consent was not necessary. Thus, the Magna Carta for Public School Teachers was not violated.[22]

Even if the movement was a transfer, the Department of Education Central Office found that Yangson's consent was not required since her appointment was not station-specific. It explained that when the appointment is not station-specific, one's consent is not required when he or she is merely assigned or temporarily appointed.[23]

The Department of Education Central Office ruled that there was no malice in Yangson's reassignment just because she was unable to consult her lawyer to question it. It found that Rosas made several earnest efforts to serve Yangson the Memorandum on time, beginning April 22, 2008. In all those instances, Yangson refused to receive the Memorandum, and only accepted it on May 2, 2008. Thus, it ruled that Yangson could not feign ignorance of the action as it was she who employed delaying tactics.[24]

Maintaining that Yangson was not singled out, the Department of Education Central Office explained that her reassignment was part of the reshuffling of all school heads and principals within the division under DECS Order No. 7.[25]

The Department of Education Central Office, likewise, ruled that Yangson's reassignment to a smaller school was neither a demotion nor constructive dismissal. It held that government projects, programs, efforts, and resources could not be subordinated to individual preferences of Civil Service employees as it would defy the notion that "a public office is a public

---

[21] *Id*. at 77.

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

[23] *Id*. at 78.

[24] *Id*. at 79-80.

[25] *Id*. at 80.

trust."[26]

The Department of Education Central Office further found that Yangson's Appeal before the Regional Director was filed out of time.[27] It found:

> WHEREFORE, premises considered, the appeal of appellant Marilyn Yangson, is hereby dismissed for lack of merit. She is hereby directed to report immediately to Toledo S. Pantilo Memorial National High School, Sison, Surigao Del Norte.
>
> SO RESOLVED.[28]

Yangson filed a Motion for Reconsideration, but it was denied by the Department of Education Central Office in its October 13, 2008 Resolution. Thus, she elevated her claims to the Civil Service Commission.[29]

In its June 15, 2010 Resolution,[30] the Civil Service Commission reversed both Resolutions of the Department of Education Central Office and ruled in favor of Yangson. It found that her reassignment did not comply with the requirements of Section 6 of the Magna Carta for Public School Teachers.[31]

The Civil Service Commission affirmed that Yangson could be assigned anywhere in the school division.[32] However, It noted that while the movement would be in the same region, Yangson would be placed in a different division. It found that

---

[26] *Id.*

[27] *Id.* at 81.

[28] *Id.* at 82.

[29] *Id.* at 35.

[30] *Id.* at 91-97. The Resolution was signed by Commissioners Mary Ann Z. Fernandez-Mendoza and Cesar D. Buenaflor and Chairman Francisco T. Duque III, and attested by Director IV Dolores B. Bonifacio of the Civil Service Commission.

[31] *Id.* at 39-40.

[32] *Id.* at 95.

Surigao National is under the Division of Surigao City, while Toledo Memorial is under the Division of Surigao del Norte.[33] Thus, it ruled that Yangson's consent was necessary.[34]

The Civil Service Commission also concluded that the Memorandum only stated the exigency of service, but "failed to show that [Yangson's] transfer was premised on the ground of completion of five (5) years . . . at [Surigao National]."[35] The dispositive portion of the Resolution read:

> WHEREFORE, the appeal filed by Marilyn R. Yangson is GRANTED. Accordingly, Resolution dated August 13, 2008 and Resolution dated October 13, 2008 issued by the Secretary, Department of Education, Pasig City, directing her to immediately report to Toledo S. Pantilo Sr. Memorial National High School, Sison, Surigao del Norte, are declared NULL AND VOID. The Schools Division Superintendent is directed to immediately reinstate Yangson in her original work station.[36]

Thus, the Department of Education elevated the matter to the Court of Appeals.[37]

In its July 28, 2011 Decision,[38] the Court of Appeals set aside the rulings of the Civil Service Commission.[39]

---

[33] *Id*. The Civil Service Commission based its finding on the master list of schools of the CARAGA Region.

[34] *Id*. at 96.

[35] *Id*.

[36] *Id*. at 97. The Resolution dated June 15, 2010 was penned by Civil Service Commissioner Mary Ann Z. Fernandez-Mendoza, signed by Chairman Francisco T. Duque III, and Commissioner Cesar D. Buenaflor, and attested by Director IV of the Civil Service Commission Secretariat and Liason Office Dolores B. Bonifacio, of the Civil Service Commission.

[37] *Id*. at 36.

[38] *Id*. at 32-44.

[39] *Id*. at 43.

The Court of Appeals maintained that while reassignments are different from transfers, both are covered by Section 6 of the Magna Carta for Public School Teachers.[40] However, though it was applicable, the Court of Appeals found that the provision was not violated.[41] It explained that Yangson was being reassigned under the Division Office's plan to reshuffle school administrators in the exigency of service, as the last reshuffling had happened more than five (5) years earlier.[42]

The Court of Appeals also ruled that the reassignment was valid without Yangson's consent, and the notice served to her sufficiently complied with the requirement under the Magna Carta for Public School Teachers.[43] It agreed with the Civil Service Commission that Yangson had not been demoted as there was no reduction in Yangson's rank, status, or salary.[44]

The Court of Appeals further found that Yangson was reassigned to a school in the same division as Surigao National. It noted that she was appointed at the Department of Education, Division of Surigao del Norte, and not any specific station or school.[45] Citing *Fernandez v. Sto. Tomas*,[46] it held that since her appointment was not station-specific, Yangson could be assigned to any school. Her security of tenure does not entitle her to permanently stay in only one (1) school.[47]

The dispositive portion of the Court of Appeals Decision read:

---

[40] *Id*. at 40 *citing The Superintendent of City Schools for Manila v. Azarcon*, 568 Phil. 273 (2008) [Per *J*. Corona, First Division].

[41] *Id*.

[42] *Id*.

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

[44] *Id*. at 42.

[45] *Id*. at 41.

[46] 312 Phil. 235 (1995) [Per *J*. Feliciano, *En Banc*].

[47] *Rollo*, p. 42.

WHEREFORE, the Petition is hereby GRANTED. Resolution Nos. 101241 and 1000476 of the Civil Service Commission dated 15 June 2010 and 13 December 2010, respectively, are SET ASIDE.

SO ORDERED.[48]

Yangson filed a Motion for Reconsideration, which the Court of Appeals denied in its January 4, 2012 Resolution.[49]

Thus, Yangson filed this Petition for Review on Certiorari.[50]

Petitioner insists that the Court of Appeals did not address the issue of whether her movement was a reassignment or a transfer.[51] She claims that her reassignment contravenes Section 6 of the Magna Carta for Public School Teachers, which provides that her consent must first be obtained before she is transferred.[52] She asserts that she should have been given prior notice. She also posits that the reassignments should not have been implemented while the appeal was pending.[53]

Petitioner further questions the reason and motivation for her transfer. She alleges that Rosas merely shuffled the assignments of three (3) principals after previous attempts to remove her from Surigao National had failed. Likewise, she assails the Division Office's reason that it was for the exigency of service, maintaining that there was no extraordinary occurrence in Toledo Memorial that will require her expertise and qualifications.[54]

Moreover, petitioner claims that there is no reason to remove her from Surigao National as she had an exemplary record at

---

[48] *Id*. at 43.

[49] *Id*. at 46.

[50] *Id*. at 9-28.

[51] *Id*. at 18.

[52] *Id*. at 16.

[53] *Id*. at 19.

[54] *Id*. at 22.

the school. She notes, among others, that the school excelled during her administration and that she was recognized by the Department of Education as Most Outstanding Principal for school year 2005 to 2006.[55]

Further claiming that the reassignment diminished her rank and status, petitioner points out that she will only have 31 personnel at Toledo Memorial against her 165 personnel at Surigao National. Since Toledo Memorial is smaller, her supervisory authority will be considerably diminished, as such size is for the position of Principal I, not Principal III.[56]

Petitioner further argues that even if there was no new appointment, her movement was still a demotion. She claims that demotion does not have to be evidenced by a change of appointment, and it may be shown by the size of the school where she is being transferred.[57]

Petitioner suggests that her appointment to Surigao National is station-specific, as her appointment papers indicate that she would replace Mamerto Racaza (Racaza), who had been assigned to Surigao National before he retired.[58]

Petitioner explains that she does not claim any property right over her present position. She is simply refusing her transfer because her constitutional right to security of tenure was violated.[59]

Finally, petitioner argues that even if the movement was a reassignment, not a transfer, it should not be for an indefinite period[60] and should not last longer than one (1) year.[61]

---

[55] *Id*. at 24.

[56] *Id*. at 23-24.

[57] *Id*. at 23.

[58] *Id*. at 24.

[59] *Id*. at 25.

[60] *Id*. at 19.

[61] *Id*. at 25.

In its Comment,[62] respondent Department of Education argues that the Court of Appeals correctly ruled that petitioner's reassignment is valid.[63] It asserts that petitioner's appointment was not station-specific since her appointment papers indicate that she was appointed as "Principal III of [the Department of Education] Division of Surigao del Norte."[64] It contends that Civil Service Commission Memorandum Circular No. 2, series of 2005, provides that employees without specific stations may be reassigned indefinitely.[65]

Respondent further argues that petitioner need not be served prior notice or an explanation for her reassignment to be valid. Similarly, her consent is not necessary as her transfer was done in good faith and in the interest of government service.[66] It argues that petitioner cannot demand as a right that she remain the principal of Surigao National just because she withheld her consent.[67]

Respondent claims that under Section 26(7) of the Administrative Code, Rosas is vested with management prerogative to effect reassignments.[68] It argues that Section 6 of the Magna Carta for Public School Teachers cannot impinge on the policy that school staff would be reassigned after a five (5)-year service in a station. It explains that the policy was made to prevent situations where school officials tend to be complacent after staying in a station for too long, which causes administrative problems.[69]

---

[62] *Id*. at 184-211.

[63] *Id*. at 195.

[64] *Id*. at 198.

[65] *Id*. at 195.

[66] *Id*. at 200.

[67] *Id*. at 201.

[68] *Id*. at 200.

[69] *Id*. at 201.

Asserting that the reassignment was made in accordance with law, respondent argues that the act cannot be deemed a removal without lawful cause or a violation of petitioner's right to security of tenure. It reiterates that petitioner has no vested right to serve at Surigao National, pointing out that she would retain the same rank, status, and salary as Principal III of Toledo Memorial.[70]

Furthermore, respondent claims that petitioner raises factual issues improper in a Rule 45 petition.[71] It asserts that the findings of the Court of Appeals are conclusive as they were supported by substantial evidence.[72]

Respondent also points that petitioner failed to comply with the requirement under Rule 45, Section 5 of the Rules of Court because it was petitioner herself who certified the documents attached to the Petition as true copies.[73]

In her Reply,[74] petitioner reiterates that even if she can be transferred or reassigned, it should not be for an indefinite period.[75]

For this Court's resolution is the issue of whether or not petitioner Marilyn R. Yangson's reassignment was valid. In connection with this, we resolve the following issues:

First, whether or not petitioner's appointment is station-specific;

---

[70] *Id.* at 205.

[71] *Id.* at 205-206. These factual issues allegedly include: (1) whether Yangson's movement was a transfer; (2) whether the notice is necessary to enable her appeal; (3) whether her reassignment is for an indefinite period; (4) whether there is a valid reason for her reassignment; (5) whether it amounts to a diminution in her rank and status; (6) whether she was appointed solely to Surigao National; and (7) whether her reassignment was warranted considering her excellent performance at Surigao National.

[72] *Id.*

[73] *Id.* at 207.

[74] *Id.* at 266-270.

[75] *Id.* at 266.

Second, whether or not Section 6 of the Magna Carta for Public School Teachers applies to petitioner's movement;

Third, whether or not petitioner's reassignment violated her security of tenure;

Fourth, whether or not petitioner's reassignment was for the exigency of service and in accordance with policy;

Fifth, whether or not petitioner was demoted; and

Finally, whether or not petitioner's appointment may be indeterminate.

The Petition lacks merit. Petitioner's reassignment is valid

I

This Court affirms the finding that petitioner's appointment was not station-specific.

Petitioner suggests that her appointment is station-specific because her appointment papers state that she would replace Racaza, who, before his retirement, had been assigned at Surigao National.[76]

This contention is untenable.

An appointment is station-specific if the employee's appointment paper specifically indicates on its face the particular office or station the position is located. Moreover, the station should already be specified in the position title, even if the place of assignment is not indicated on the face of the appointment.[77]

Here, respondent alleges that petitioner was appointed as "Principal III of [the Department of Education] Division of Surigao del Norte."[78]

---

[76] *Id*. at 24.

[77] CSC Resolution No. 1800692 (2018), sec. 13(1). 2017 Omnibus Rules on Appointments and Other Human Resource Actions (Revised 2018).

[78] *Rollo*, p. 198.

Petitioner did not deny this in her pleadings.

Evidently, petitioner's appointment is not solely for Surigao National or for any specific school. There is no particular office or station specifically indicated on the face of her appointment paper. Neither does her position title specifically indicate her station.

Furthermore, the Regional Trial Court,[79] the Department of Education,[80] and the Court of Appeals,[81] all found that petitioner's appointment was *not* station-specific.

It is settled that the factual findings of lower tribunals are entitled to great weight and respect absent any showing that they were not supported by evidence, or the judgment is based on a misapprehension of facts.[82] There is no showing of any of these exceptions here.

II

Moreover, Section 6 of the Magna Carta for Public School Teachers does not apply here. The provision states:

> SECTION 6. *Consent for Transfer — Transportation Expenses*. — Except for cause and as herein otherwise provided, no teacher shall be transferred without his consent from one station to another.
>
> Where the exigencies of the service require the *transfer* of a teacher from one station to another, such *transfer* may be effected by the school superintendent who shall previously notify the teacher concerned of the *transfer* and the reason or reasons therefor. If the teacher believes there is no justification for the *transfer*, he may appeal his case to the Director of Public Schools or the Director of Vocational Education, as the case may be. Pending his appeal and the decision thereon, his *transfer* shall be held in abeyance: *Provided, however*,

---

[79] *Id*. at 56.

[80] *Id*. at 80.

[81] *Id*. at 41.

[82] *Fangonil-Herrera v. Fangonil*, 558 Phil. 235, 254 (2007) [Per J. Chico-Nazario, Third Division].

That no *transfers* whatever shall be made three months before any local or national election.

Necessary transfer expenses of the teacher and his family shall be paid for by the Government if his transfer is finally approved. (Emphasis supplied)

The text of the law is clear and unequivocal: Section 6 applies to transfers, not reassignments. Petitioner's movement from Surigao National to Toledo Memorial was a reassignment, not a transfer.

The legal concept of transfer differs from reassignment. Most notably, a transfer involves the issuance of another appointment, while a reassignment does not.

Section 26 of the Administrative Code provides:

SECTION 26. Personnel Actions. — . . .

As used in this Title, any action denoting the movement or progress of personnel in the civil service shall be known as personnel action. Such action shall include appointment through certification, promotion, *transfer*, reinstatement, re-employment, detail, *reassignment*, demotion, and separation. All personnel actions shall be in accordance with such rules, standards, and regulations as may be promulgated by the Commission.

. . . . . .

(3) Transfer. — A transfer is a movement from one position to another which is of equivalent rank, level, or salary without break in service *involving the issuance of an appointment*.

It shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall be informed of the reasons therefor. If the employee believes that there is no justification for the transfer, he may appeal his case to the Commission.

The transfer may be from one department or agency to another or from one organizational unit to another in the same department or agency: *Provided, however*, That any movement from the non-career service to the career service shall not be considered a transfer.

. . . . . .

(7) *Reassignment*. — An employee may be reassigned from one organizational unit to another in the same agency: Provided, that such reassignment shall not involve a reduction in rank, status or salary.

Transfer and reassignment are defined in Section 24 of Presidential Decree No. 807,[83] or the Civil Service Law:

SECTION 24. *Personnel Actions*. — All appointments in the career service shall be made only according to merit and fitness, to be determined as far as practicable by competitive examinations. A non-eligible shall not be appointed to any position in the civil service whenever there is a civil service eligible actually available for and ready to accept appointment.

As used in this Decree, any action denoting the movement or progress of personnel in the civil service shall be known as personnel action. Such action shall include appointment through certification, promotion, transfer, reinstatement, re-employment, detail, reassignment, demotion, and separation. All personnel actions shall be in accordance with such rules, standards, and regulations as may be promulgated by the Commission.

. . . . . .

(c) *Transfer*. — A transfer is a movement from one position to another which is of equivalent rank, level, or salary without break in service involving the issuance of an appointment.

It shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall be informed of the reasons therefore. If the employee believes that there is no justification for the transfer, he may appeal his case to the Commission.

The transfer may be from one department or agency to another or from one organizational unit to another in the same department or agency: *Provided, however*, That any movement from the non-career service to the career service shall not be considered a transfer.

---

[83] Presidential Decree No. 807 (1975), Sec. 24, Civil Service Decree of the Philippines or Civil Service Law of 1975.

(g) *Reassignment*. — An employee may be reassigned from one organizational unit to another in the same agency: Provided, That such reassignment shall not involve a reduction in rank, status or salary.

They are also defined in Sections 11 and 13(a) of Civil Service Commission Resolution No. 1800692, otherwise known as the 2017 Omnibus Rules on Appointments and Other Human Resource Actions. The provisions state:

SECTION 11. *Nature of Appointment*. — The nature of appointment shall be, as follows:

. . . . . .

c. Transfer — the movement of employee from one position to another which is of equivalent rank, level or salary without gap in the service involving the issuance of an appointment.

The transfer may be from one organizational unit to another in the same department or agency or from one department or agency to another: Provided, however, that any movement from the non-career service to the career service and vice versa shall not be considered as a transfer but reappointment.

. . . . . .

SECTION 13. *Other Human Resource Actions*. — The following human resource actions which will not require the issuance of an appointment shall nevertheless require an Office Order issued by the appointing officer/authority:

a. Reassignment — movement of an employee across the organizational structure within the same department or agency, which does not involve a reduction in rank, status or salary.

Osea v. Malaya[84] differentiates a reassignment from a new appointment, which is necessary in a transfer:

Appointment should be distinguished from reassignment. An appointment may be defined as the selection, by the authority vested

---

[84] 425 Phil. 920 (2002) [Per *J*. Ynares-Santiago, *En Banc*].

with the power, of an individual who is to exercise the functions of a given office. When completed, usually with its confirmation, the appointment results in security of tenure for the person chosen unless he is replaceable at pleasure because of the nature of his office.

On the other hand, a reassignment is merely a movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary and does not require the issuance of an appointment.[85] (Citations omitted)

In *Department of Education, Culture and Sports v. Court of Appeals*,[86] a secondary school principal, whose appointment was not station-specific, contested her reassignment to another school. She cited the Magna Carta for Public School Teachers, arguing that her consent is necessary for the reassignment's validity. There, this Court differentiated transfer from reassignment and held that the Magna Carta for Public School Teachers is not applicable:

The aforequoted provision of Republic Act No. 4670 particularly Section 6 thereof which provides that except for cause and in the exigencies of the service no teacher shall be transferred without his consent from one station to another, finds no application in the case at bar as this is *predicated upon the theory that the teacher concerned is appointed — not merely assigned — to a particular station*. Thus:

> "The rule pursued by plaintiff only goes so far as the appointment indicates a specification. Otherwise, the constitutionally ordained security of tenure cannot shield her. In appointments of this nature, this Court has consistently rejected the officer's demand to remain — even as public service dictates that a transfer be made — in a particular station. Judicial attitude toward transfers of this nature is expressed in the following statement in *Ibañez vs. Commission on Elections*:
>
> > 'That security of tenure is an essential and constitutionally guaranteed feature of our Civil Service System, is not open to debaite. The mantle of its protection extends not only against removals without cause but also against

[85] *Id.* at 926.

> unconsented transfer which, as repeatedly enunciated, are tantamount to removals which are within the ambit of the fundamental guarantee. However, the availability of that security of tenure necessarily depends, in the first instance, upon the *nature of the appointment*. Such that the rule which proscribes transfers without consent as anathema to the security of tenure is predicated upon the theory that the *officer involved is appointed — not merely assigned to a particular station*."

The appointment of Navarro as principal does not refer to any particular station or school. As such, she could be assigned to any station and she is not entitled to stay permanently at any specific school. When she was assigned to the Carlos Albert High School, it could not have been with the intention to let her stay in said school permanently. Otherwise, her appointment would have so stated. Consequently, she may be assigned to any station or school in Quezon City as the exigencies of public service require even without her consent.[87] (Emphasis supplied, citations omitted)

Here, the Memorandum petitioner questions specifically stated that she was being reassigned:

> In the exigency of the service, you are hereby advise(d) of your reassignment from [Surigao National] to [Toledo Memorial] effective May 5, 2008.[88]

This was a simple reassignment. Section 6 of the Magna Carta for Public School Teachers, then, does not apply.

III

Moreover, petitioner's reassignment did not violate her right to security of tenure.

In *Brillantes v. Guevarra*,[89] another principal contested her assignment to a school, alleging that she was being removed

---

[86] 262 Phil. 608 (1990) [Per *J*. Paras, Second Division].

[87] *Id*. at 614-615.

[88] *Rollo*, p. 33.

[89] 136 Phil. 315 (1969) [Per *J*. Sanchez, *En Banc*].

without cause and her consent. This Court found her contentions unmeritorious:

> 1. Arguing that an appointment as principal in the Bureau of Public Schools and *assignment* to a particular school are inseparable, plaintiff maintains that her unconsented transfer to another school by virtue of an administrative directive amounts to a removal — prohibited by the Constitution and the Civil Service Act — which cannot be done unless for causes specified by law.
>
> Plaintiffs confident stride falters. She took too loose a view of the applicable jurisprudence. Her refuge behind the mantle of security of tenure guaranteed by the Constitution is not impenetrable. She proceeds upon the assumption that she occupies her station in Sinalang Elementary School by appointment. But her first appointment as Principal merely reads, thus: "You are hereby appointed a *Principal (Elementary School) in the Bureau of Public Schools, Department of Education*" without mentioning her station. She cannot therefore claim security of tenure as Principal of Sinalang Elementary School or any particular station. She may be assigned to any station as exigency of public service requires, even without her consent. She thus has no right of choice.
>
> The rule pursued by plaintiff only goes so far as the appointment indicates a specific station. Otherwise, the constitutionally ordained security of tenure cannot shield her. In appointments of this nature, this Court has consistently rejected the officer's demand to remain—even as public service dictates that a transfer be made—in a particular station.[90] (Citations omitted)

Fernandez discusses several more cases where it was ruled that the right to security of tenure is not violated when a public officer or employee, whose appointment is not station-specific, is reassigned:

> In the very recent case of *Fernando, et al. v. Hon. Sto. Tomas, etc., et al.*, the Court addressed appointments of petitioners as "Mediators-Arbiters in the National Capital Region" in dismissing a challenge on *certiorari* to resolutions of the CSC and orders of the Secretary of Labor. The Court said:

---

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

> "Petitioners were appointed as Mediator-Arbiters in the National Capital Region. *They were not, however, appointed to a specific station or particular unit of the Department of Labor in the National Capital Region (DOLE-NCR).* Consequently, *they can always be reassigned from one organizational unit to another of the same agency* where, in the opinion of respondent Secretary, their services may be used more effectively. As such *they can neither claim a vested right to the station to which they were assigned nor to security of tenure thereat*. As correctly observed by the Solicitor General, petitioners' reassignment is not a transfer for they were not removed from their position as med-arbiters. They were not given new appointments to new positions. It indubitably follows, therefore, that Memorandum Order No. 4 ordering their reassignment in the interest of the service is legally in order."

In *Quisumbing v. Gumban*, the Court, dealing with an appointment in the Bureau of Public Schools of the Department of Education, Culture and Sports, ruled as follows:

> "After a careful scrutiny of the records, it is to be underscored that *the appointment of private respondent Yap is simply that of a District Supervisor of the Bureau of Public Schools which does not indicate a specific station*. As such, *she could be assigned to any station and she is not entitled to stay permanently at any specific station.*"

Again, in *Ibañez v. Commission on Elections*, the Court had before it petitioners' appointments as "Election Registrars in the Commission of Elections," without any intimation to what city, municipality or municipal district they had been appointed as such. The Court held that since petitioners "were not appointed to, and consequently not entitled to any security of tenure or permanence in, any specific station," "on general principles, they [could] be transferred as the exigencies of the service required," and that they had no right to complain against any change in assignment. The Court further held that assignment to a particular station after issuance of the appointment was not necessary to complete such appointment:

> . . . And the respective appointees were entitled only to such security of tenure as the appointment papers concerned actually conferred — not in that of any place to which they may have been subsequently assigned. . . . As things stand, *in default*

of any particular station stated in their respective appointments, no security of tenure can be asserted by the petitioners on the basis of the mere assignments which were given to them. A contrary rule will erase altogether the demarcation line we have repeatedly drawn between *appointment* and *assignment* as two distinct concepts in the law of public officers."

. . . . . .

Also noteworthy is *Sta. Maria v. Lopez* which involved the appointment of petitioner Sta. Maria as "Dean, College of Education, University of the Philippines." Dean Sta. Maria was transferred by the President of the University of the Philippines to the Office of the President, U.P., without demotion in rank or salary, thereby acceding to the demands of student activists who were boycotting their classes in the U.P. College of Education. Dean Sta. Maria assailed his transfer as an illegal and unconstitutional removal from office. In upholding Dean Sta. Maria's claim, the Court, speaking through Mr. Justice Sanchez, laid down the applicable doctrine in the following terms:

. . . . . .

The clue to such transfers may be found in the 'nature of the appointment.' Where the appointment does not indicate a specific station, an employee may be transferred or reassigned provided the transfer affects so substantial change in title, rank and salary. Thus, one who is appointed 'principal in the Bureau of Public Schools' and is designated to head a pilot school may be transferred to the post of principal of another school.

And *the rule that outlaws unconsented transfers* as anathema to security of tenure *applies only to an officer who is appointed — not merely assigned — to a particular station*. Such a rule does not proscribe a transfer carried out under a specific statute that empowers the head of an agency to periodically reassign the employees and officers in order to improve the service of the agency. *The use of approved techniques or methods in personnel management to harness the abilities of employees to promote optimum public service cannot be objected to.*

. . . . . .

> To be stressed at this point, however, is that the appointment of Sta. Maria is that of *'Dean, College of Education, University of the Philippines.' He is not merely a dean 'in the university.' His appointment is to a specific position; and, more importantly, to a specific station.*"[91] (Emphasis supplied, citations omitted)

Here, it has been established that petitioner's appointment is not station-specific. While she is entitled to her right to security of tenure, she cannot assert her right to stay at Surigao National. Her appointment papers are not specific to the school, which means she may be assigned to any station as may be necessary for public exigency. Because she holds no vested right to remain as Principal III of Surigao National, her security of tenure was not violated.

IV

Clearly, petitioner's reassignment was for the exigency of service.

Prior to the issuance of the Memorandum, in a March 31, 2008 letter, Rosas recommended the reshuffling and/or reassignment of secondary administrators and teachers to the Regional Director of the Department of Education CARAGA.[92] The Regional Director did not object.[93]

Furthermore, on March 7, 2008, a special meeting of secondary school administrators was held to inform the teachers of the planned reshuffling of school administrators to comply with MEC Circular No. 26.[94] This allegation was supported by Affidavits from those in attendance.[95]

---

[91] 312 Phil. 235, 254-258 (1995) [Per *J*. Feliciano, *En Banc*].

[92] *Rollo*, pp. 75 and 91.

[93] *Id*. In accordance with the 1st Indorsement dated April 2, 2008 signed by Dr. Isabelita M. Borres, CESO IV, Assistant Regional Director and Officer-in-Charge, Department of Education CARAGA.

[94] *Id*. at 212.

[95] *Id*. at 212-229.

While petitioner was absent on the day of the meeting, she does not deny that the meeting took place. Neither can she assert that she was insufficiently notified of her reassignment, since she had refused the Memorandum precisely entailing her reassignment to be served upon her.[96]

Section 26(7) of the Administrative Code allows any government department or agency that is embraced in the civil service prerogative to reassign employees:[97]

> SECTION 26. *Personnel Actions*. — . . .
>
> As used in this Title, any action denoting the movement or progress of personnel in the civil service shall be known as personnel action. Such action shall include appointment through certification, promotion, transfer, reinstatement, re-employment, detail, reassignment, demotion, and separation. *All personnel actions shall be in accordance with such rules, standards, and regulations as may be promulgated by the Commission.*
>
> . . . . . .
>
> (7) *Reassignment*. — An employee may be reassigned *from one organizational unit to another in the same agency; Provided*, That such reassignment shall *not* involve a *reduction in rank, status or salary*. (Emphasis supplied)

Fernandez discusses that reassignments by virtue of this provision are neither deemed as removals without lawful cause nor seen as violations of the right to security of tenure:

> It follows that the reassignment of petitioners . . . had been effected with express statutory authority and did not constitute removals without lawful cause. It also follows that such reassignment did *not* involve any violation of the constitutional right of petitioners to security of tenure considering that they retained their positions of Director IV and would continue to enjoy the same rank, status and salary at their new assigned stations which they had enjoyed at the Head Office of the Commission in Metropolitan Manila. Petitioners

---

[96] *Id*. at 33.

[97] *Fernandez v. Sto. Tomas*, 312 Phil. 235 (1995) [Per *J*. Feliciano, *En Banc*].

had not, in other words, acquired a vested right to serve at the Commission's Head Office.[98]

In *Department of Education, Culture and Sports*, this Court affirmed the reshuffling of principals in the exigencies of service:

It should be here emphasized that Azurin's letter of August 12, 1982, clearly stated that Navarro's reassignment is in the exigencies of the service. It was explicitly mentioned that her reassignment is a recognition of her capabilities as administrator in improving the Carlos Albert High School and that she should look at her new assignment as a challenge to accomplish new and bigger projects for Manuel Roxas High School. Moreover, her reassignment was the result of a recognition/reshuffling of all principals in the Quezon City public high schools in the exigencies of the service pursuant to MEC Circular No. 26, Series of 1972. This circular refers to the policy of the Ministry of Education that principals, district supervisors, academic supervisors, general education supervisors, school administrative officers and superintendents are to be transferred upon completion of five (5) years of service in one station. Such policy was based on the experience that when school officials have stayed long enough in one station, there is a tendency for them to become stale and unchallenged by new situations and conditions, and that some administrative problems accumulate for a good number of years.

In the case at bar, the reasons given by Azurin in recommending Navarro's reassignment were far from whimsical, capricious or arbitrary. Navarro had been assigned as principal of Carlos Albert High School for more than ten (10) years. She was ripe for reassignment. That she was a model principal was precisely one of the reasons for recommending her for reassignment so that her management and expertise could be availed of in her new assignment. Apart from the presumption of good faith that Azurin enjoys, We believe that her recommendation for Navarro's reassignment — for the latter to share the benefits of her expertise in her new assignment plus the recognizable fact that a relatively long stay in one's station tends towards over-fraternization with associates which could be injurious to the service — has a substantial factual basis that meets the requirements of the exigencies of the service.[99] (Citations omitted)

---

[98] 312 Phil. 235, 251 (1995) [Per *J*. Feliciano, *En Banc*].

[99] 262 Phil. 608, 616 (1990) [Per *J*. Paras, Second Division].

Similarly, here, we cannot conclude as a matter of established fact that petitioner was reassigned by whim, fancy, or spite, as she would like this Court to believe. It is presumed that reassignments are "regular and made in the interest of public service."[100] The party questioning its regularity or asserting bad faith carries the burden to prove his or her allegations.[101] In *Andrade v. Court of Appeals*:[102]

> Entrenched is the rule that bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. In the case at bar, we find that there was no "dishonest purpose," or "some moral obliquity," or "conscious doing of a wrong," or "breach of a known duty," or "some motive or interest or ill will" that can be attributed to the private respondent. It appeared that efforts to accommodate petitioner were made as she was offered to handle two (2) non-teaching jobs, that is, to handle Developmental Reading lessons and be an assistant Librarian, pending her re-assignment or transfer to another work station, but she refused. The same would not have been proposed if the intention of private respondent were to cause undue hardship on the petitioner. Good faith is always presumed unless convincing evidence to the contrary is adduced. It is incumbent upon the party alleging bad faith to sufficiently prove such allegation. Absent enough proof thereof, the presumption of good faith prevails. In the case at bar, the burden of proving alleged bad faith therefore was with petitioner but she failed to discharge such *onus probandi*. Without a clear and persuasive evidence of bad faith, the presumption of good faith in favor of private respondent stands.[103]

---

[100] *Nieves v. Blanco*, 688 Phil. 282, 292 (2012) [Per *J*. Reyes, *En Banc*] *citing* CSC Resolution No. 1800692 (2018), Sec. 13(a)(3).

[101] *Andrade v. Court of Appeals*, 423 Phil. 30, 43 (2001) [Per *J*. De Leon, Jr. Second Division].

[102] 423 Phil. 30 (2001) [Per *J*. De Leon, Jr. Second Division].

[103] *Id.* at 43.

V

Petitioner's reassignment cannot be considered a demotion or constructive dismissal.

A demotion means that an employee is moved or appointed from a higher position to a lower position with decreased duties and responsibilities, or with lesser status, rank, or salary.[104]

Constructive dismissal occurs whether or not there is diminution in rank, status, or salary if the employee's environment has rendered it impossible for him or her to stay in his or her work. It may be due to the agency head's unreasonable, humiliating, or demeaning actuations, hardship because geographic location, financial dislocation, or performance of other duties and responsibilities inconsistent with those attached to the position.[105]

A reassignment may be deemed a constructive dismissal if the employee is moved to a position with a more servile or menial job as compared to his previous position. It may occur if the employee was reassigned to an office not in the existing organizational structure, or if he or she is not given a definite set of duties and responsibilities. It may be deemed constructive dismissal if the motivation for the reassignment was to harass or oppress the employee on the pretext of promoting public interest. This may be inferred from reassignments done twice within a year, or during a change of administration of elective and appointive officials.[106]

---

[104] *Cruz v. Court of Appeals*, 322 Phil. 649, 667 (1996) [Per *J.* Davide, Jr., Third Division], *citing* Rule VII, Section 11 of the *Civil Service Commission Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws*, and *Fernando v. Sto. Tomas*, 304 Phil. 713 (1994) [Per *J.* Regalado, *En Banc*].

[105] *Coseteng v. Perez*, G.R. No. 185938, September 6, 2017, 838 SCRA 680-681 (2017) [Per *J.* Reyes, Jr., Second Division] and CSC Resolution No. 1800692 (2018), Sec. 13(a)(3).

[106] CSC Resolution No. 1800692 (2018), Sec. 13(a)(3).

However, demotion and constructive dismissal are never presumed and must be sufficiently proven.[107] Again, petitioner failed to rebut this reasonable presumption.

Petitioner's position at Toledo Memorial is still Principal III. She retains the same rank, status, and salary, and is expected to exercise the same duties and responsibilities. There is no movement from a higher position to a lower position. She was not given a more servile or menial job.

Similarly, she was not humiliated, demeaned, or treated unreasonably. She did not allege that it was impossible for her to continue her work due to the geographic location. There is no showing that she was financially dislocated or that she was being made to perform duties and responsibilities that contravene those of her position. Moreover, Toledo Memorial is a high school within her area of appointment. She was given a definite set of duties and responsibilities. This is not the second reassignment within a year, or a reassignment during a change of administration of elective and appointive officials.[108]

Moreover, petitioner explains that she was demoted because her supervisory authority has been diminished considering the school she was reassigned to is smaller than Surigao National.[109]

This argument is specious.

In *Brillantes*, a principal insisted that she was demoted because the school she was assigned to was not a pilot demonstration school, was six (6) kilometers from her hometown, and only had 13 teachers. She compared this to her old school which was a pilot school in her hometown with 23 teachers. This Court noted that her rank was maintained as Principal I and that her preferences could not be prioritized over the demands of public service and the interest of the public that may benefit from her experience.[110]

---

[107] CSC Resolution No. 1800692 (2018), Sec. 13(a)(3).

[108] *Id*.

[109] *Rollo* p. 23.

[110] 136 Phil. 315, 325-327 (1969) [Per *J*. Sanchez, *En Banc*].

VI

Finally, petitioner argues that assuming she was only reassigned, her reassignment should not be for an indefinite period and should not last longer than a year.[111]

Again, petitioner's argument fails.

When an employee's appointment is station-specific, his or her reassignment may not exceed a maximum period of one (1) year. This is not the case for appointments that are not station-specific. In such instances, the reassignment may be indefinite and exceed one (1) year[112]—as in petitioner's case.

On a final note, this Court is aghast that grammatical errors pervade the Memorandum of the Assistant Schools Division Superintendent Officer-in-Charge.[113] Such errors committed by a public employee, whose position affects the education of the youth, is disturbing. Certainly, it appears that there is a need to better the quality of education in our country and impose higher standards on the competence of public officers, in keeping with the constitutional provision to promote the right of all citizens to quality education at all levels[114]—unless, of course, this unforgivable lack of proficiency in the English language is unique to Rosas. For the good of the country, we advise that she brush up her skills using the lessons that our public schools teach our children.

WHEREFORE, this Court **DENIES** the Petition. The July 28, 2011 Decision and January 4, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 117679 are **AFFIRMED**. Petitioner Marilyn R. Yangson's reassignment is valid and consistent with law and jurisprudence.

---

[111] *Rollo*, pp. 19 and 25-26.

[112] *Nieves v. Blanco*, 688 Phil. 282, 290 (2012) [Per *J.* Reyes, *En Banc*]. CSC Resolution No. 1800692 (2018), Sec. 13 (a), par. 1-2.

[113] *Rollo*, p. 33.

[114] CONST., Art. XIV, Sec. 1.

SO ORDERED.

Peralta (*Chairperson*), *Hernando*, and *Inting, JJ.*, concur.

Caguioa, J., on wellness leave.

SECOND DIVISION

[G.R. No. 210604, June 03, 2019]

MISNET, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES; PROTESTING OF ASSESSMENT; APPEAL TO THE COURT OF TAX APPEALS; 30-DAY PERIOD TO APPEAL; THE PERFECTION OF AN APPEAL WITHIN THE STATUTORY PERIOD IS A JURISDICTIONAL REQUIREMENT, BUT THE SUPREME COURT ALLOWS THE FILING OF AN APPEAL OUTSIDE THE PERIOD PRESCRIBED BY LAW IN THE INTEREST OF JUSTICE, AND IN THE EXERCISE OF ITS EQUITY JURISDICTION.— Section 228 of the 1997 National Internal Revenue Code of the Philippines (NIRC) x x x provides for the remedies of a taxpayer in case of an adverse final decision by the CIR on Disputed Assessment x x x. It bears to stress that the perfection of an appeal *within the statutory period* is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review. In the instant case, petitioner allegedly failed to observe the 30-day period within which to appeal the final decision of the CIR to the CTA. x x x Nonetheless, this Court has on several occasions relaxed this strict requirement. We have on several instances allowed the filing of an appeal outside the period prescribed by law in the

interest of justice, and in the exercise of its equity jurisdiction. x x x [P]etitioner's belated filing of an appeal with the CTA is not without strong, compelling reason. We could say that petitioner was merely exhausting all administrative remedies available before seeking recourse to the judicial courts. While the rule is that a taxpayer has 30 days to appeal to the CTA from the final decision of the CIR, the said rule could not be applied if the Assessment Notice itself clearly states that the taxpayer must file a protest with the CIR or the Regional Director within 30 days from receipt of the Assessment Notice. Under the circumstances obtaining in this case, we opted not to apply the statutory period within which to appeal with the CTA considering that no final decision yet was issued by the CIR on petitioner's protest. The subsequent appeal taken by petitioner is from the inaction of the CIR on its protest. x x x If petitioner's right to appeal would be curtailed by the mere expediency of holding that it had belatedly filed its appeal, then this Court as the final arbiter of justice would be deserting its avowed objective, that is to dispense justice based on the merits of the case and not on a mere technicality.

2. ID.; SUPREME COURT JURISDICTION OVER TAX CASES; THE SUPREME COURT HAS NO JURISDICTION TO REVIEW TAX CASES AT THE FIRST INSTANCE WITHOUT FIRST LETTING THE COURT OF TAX APPEALS STUDY AND RESOLVE THE SAME.— Since the CTA First Division has the exclusive appellate jurisdiction over decisions of the Commissioner of Internal Revenue on disputed assessment, it is just proper to remand the case to it in order to determine whether petitioner is indeed liable to pay the deficiency withholding tax on VAT on royalties. It should be noted that the CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems. Thus, this Court has no jurisdiction to review tax cases at the first instance without first letting the CTA study and resolve the same.

APPEARANCES OF COUNSEL

Donato Zarate & Rodriguez for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

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

This resolves the Petition for Review on *Certiorari* from the Decision[1] dated July 15, 2013 and Resolution[2] dated December 9, 2013 of the Court of Tax Appeals (CTA) *En Banc*, in CTA EB Case No. 915.

On November 29, 2006, petitioner received a Preliminary Assessment Notice (PAN)[3] from respondent Commissioner of Internal Revenue (CIR) stating that after examination, there was an alleged deficiency in taxes for taxable year 2003 amounting to ₱11,329,803.61, representing the expanded withholding tax (EWT) and final withholding VAT. Petitioner filed a letter--protest on the PAN.

Thereafter, on January 23, 2007, petitioner received a Formal Assessment Notice (FAN)[4] which states that petitioner's tax deficiency for the year 2003, amounted to P11,580,749.31, inclusive of ₱25,000.00 Compromise Penalty. Thus:

Expanded Withholding Tax (EWT)	₱ 1,781,873.55
Final Withholding of VAT	9,773,875.76
S U B T O T A L	11,555,749.31
Add: Compromise Penalty	25,000.00
T O T A L	₱11,580,749.31

---

[1] Penned by Associate Justice Caesar A. Casanova, with Associate Justices Roman G. Del Rosario (Presiding Justice), Juanito C. Castañeda, Jr., Lovell R. Bautista; Erlinda P. Uy, Esperanza R. Fabon-Victorino; Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis--Liban; concurring; *rollo*, pp. 521-536.

[2] *Id*. at 33-34.

[3] *Id*. at 50.

[4] *Id*. at 54-56.

[5] *Id*. at 61.

On February 9, 2007, petitioner paid the amount of P2,152.41 for certain undisputed assessments.[5] On the same day, petitioner administratively protested the FAN by filing a request for reconsideration.[6]

The CIR acknowledged receipt of the payment and the protest letter and informed the petitioner that its tax docket had been forwarded to Revenue District Officer (RDO) No. 049, North Makati.[7] On May 28, 2007, the CIR informed petitioner that Revenue Officer (RO) Josephine L. Paralejas has been authorized to verify the documents relative to its request for reinvestigation and reiterated the previous assessment of petitioner's deficiency taxes for taxable year 2003 in the amount of ₱11,580,749.31.[8]

On June 1, 2007, petitioner sent a letter to RO Josephine L. Paralejas reiterating its protest to the PAN and the FAN.

On April 28, 2008, the CIR again wrote a letter to petitioner informing it that it found additional deficiency taxes due.[9] On May 8, 2008, petitioner protested this letter.

On March 28, 2011, petitioner received an Amended Assessment Notice reflecting an amended deficiency EWT after reinvestigation. On the same date, petitioner received a Final Decision on Disputed Assessment (FDDA) stating that after reinvestigation, there was still due from petitioner the amount of ₱14,564,323.34, representing deficiency taxes, broken down as follows:

Expanded Withholding Tax (with Interest)	₱ 430,716.17
Final Withholding of VAT (with 25% Surcharge & Interest)	14,108,607.17
Compromise Penalty	25,000.00
TOTAL	₱ 14,564,323.34

[6] *Id*. at 63.

[7] *Id*. at 64.

[8] *Id*. at 67.

[9] *Id*. at 68.

This FDDA was received by petitioner on March 28, 2011.[10]

On April 8, 2011, petitioner filed a letter-reply[11] to the Amended Assessment Notice and FDDA, which was received by the CIR on April 11, 2011. On May 9, 2011, the CIR sent a letter[12] to petitioner which states in part that petitioner's letter-reply dated April 8, 2011 produced no legal effect since it availed of the improper remedy.[13] It should have appealed the final decision of the CIR to the Court of Tax Appeals within thirty (30) days from the date of receipt of the said Decision, otherwise, the assessment became final, executory and demandable.[14]

On May 27, 2011, petitioner filed a Petition for Relief from Judgment[15] with respondent Commissioner arguing that it was not able to file its proper appeal of the FDDA due to its mistake and excusable negligence as it was not assisted by counsel. On June 29, 2011, petitioner received a Preliminary Collection Letter[16] dated June 22, 2011, which is deemed a denial of petitioner's Petition for Relief.[17]

On July 26, 2011, petitioner filed a Petition for Review[18] docketed as CTA Case No. 8313, with the Court of Tax Appeals which was raffled to the First Division. Meanwhile, the CIR filed a Motion to Dismiss the petition on the ground of lack of jurisdiction – arguing that the assessment against petitioner has become final, executory and demandable for its failure to file an appeal within the prescribed period of thirty (30) days.

---

[10] *Id*. at 8.

[11] *Id*. at 76.

[12] *Id*. at 77.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 78-82.

[16] *Id*. at 192.

[17] *Id*. at 11.

[18] *Id*. at 104-122.

In a Resolution dated March 27, 2012,[19] the CTA 181 Division granted CIR's Motion to Dismiss. Petitioner filed a Motion for Reconsideration[20] of the March 27, 2012 Resolution. On June 27, 2012, petitioner received from CTA 1st Division a Resolution dated June 22, 2012[21] denying its Motion for Reconsideration.

On July 12, 2012, petitioner filed a Petition for Review (CTA EB Case No. 915) with the CTA *En Banc*.

In a Decision dated July 15, 2013, the CTA *En Banc* dismissed petitioner's Petition for Review on the ground of lack of jurisdiction as the lapse of the statutory period to appeal rendered the subject deficiency taxes final, executory and demandable.[22] On August 6, 2013, petitioner filed a Motion for Reconsideration but the said Motion was denied in a Resolution dated December 9, 2013.[23]

Dissatisfied, petitioner filed the instant Petition with this Court raising the lone issue that —

THE HONORABLE COURT OF TAX APPEALS [*EN BANC*] GRAVELY ERRED IN DISMISSING THE PETITION FOR REVIEW FOR LACK OF JURISDICTION, BECAUSE IT THEREBY DISREGARDED THE REMEDY OF PETITION FOR RELIEF IN TAX CASES, PURSUANT TO SECTION 3 OF RULE 1 OF THE REVISED RULES OF THE COURT OF TAX APPEALS, SECTIONS 1 TO 3 OF RULE 38 OF THE RULES OF COURT, AND THE RULING OF THE SUPREME COURT IN THE CASE OF GESULGON [*V.*] NLRC.[24]

Otherwise stated, the issue obtaining in the instant case is whether or not the CTA *En Banc* correctly dismissed petitioner's Petition for Review on the ground of lack of jurisdiction.

---

[19] *Id*. at 200-205.

[20] *Id*. at 206-211.

[21] *Id*. at 213-217.

[22] *Supra* note 1, at 535.

[23] *Supra* note 2.

[24] *Id*. at 13.

Section 228 of the 1997 National Internal Revenue Code of the Philippines (NIRC) which provides for the remedies of a taxpayer in case of an adverse final decision by the CIR on Disputed Assessment, thus:

> **SEC. 228. *Protesting of Assessment*.** — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x
>
> x x x x x x x x x
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.
>
> Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis supplied)

It bears to stress that the perfection of an appeal *within the statutory period* is a jurisdictional requirement and failure to do so renders the questioned decision or decree final and executory and no longer subject to review.[25]

In the instant case, petitioner allegedly failed to observe the 30-day period within which to appeal the final decision of the

---

[25] *Jocson v. Baguio*, 259 Phil. 153, 158 (1989).

CIR to the CTA. As records would show, petitioner admittedly received the FDDA on March 28, 2011. Reckoned from this date of receipt, it has until April27, 2011, within which to appeal with the CTA. However, petitioner filed its appeal (Petition for Review) only on July 26, 2011 or after the lapse of ninety-three (93) days from its receipt of the FDDA. It appears that petitioner's filing of an appeal with the CTA was beyond the statutory period to appeal.

Nonetheless, this Court has on several occasions relaxed this strict requirement. We have on several instances allowed the filing of an appeal outside the period prescribed by law in the interest of justice, and in the exercise of its equity jurisdiction.[26] Thus:

> x x x [F]or a party to seek exception for its failure to comply strictly with the statutory requirements for perfecting its appeal, **strong compelling reasons** such as serving the ends of justice and preventing a grave miscarriage thereof must be shown, in order to warrant the Court's suspension of the rules. Indeed, the Court is confronted with the need to balance stringent application of technical rules *vis-a-vis* strong policy considerations of substantial significance to relax said rules based on equity and justice.[27] (Emphasis supplied; citation omitted)

Petitioner averred that after receiving the Amended Assessment Notice and the FDDA of the CIR on March 28, 2011, it filed, without the assistance of a counsel, a letter protesting the Amended Assessment Notice, with Regional Director Mr. Jaime B. Santiago, of RDO No. 049, Makati City. This letter of protest was filed by petitioner on April 11, 2011[28] or within the statutory period within which to appeal. Apparently, petitioner was merely relying on the statement in the said Amended Assessment Notice, which reads:

---

[26] *Toledo v. Intermediate Appellate Court*, 236 Phil. 619, 625 (1987), citing *Vda. De Crisologo v. Court of Appeals*, 137 SCRA 238.

[27] *Trans International v. Court of Appeals*, 348 Phil. 830, 838 (1998).

[28] *See* Affidavit of Merit, *rollo*, p. 89.

IF YOU DISAGREE WITH THIS ASSESSMENT, FILE YOUR PROTEST IN WRITING INDICATING YOUR REASONS WITH THE COMMISSIONER OF INTERNAL REVENUE, BIR DILIMAN, QUEZON CITY OR THE REGIONAL DIRECTOR WITHIN 30 DAYS FROM RECEIPT HEREOF: x x x[29]

Thus, petitioner opted to file the protest with the Regional Director. On May 12, 2011, petitioner received a letter informing it that its filing of a letter of protest was an improper remedy.[30] Therefore, petitioner, on May 27, 2011, filed a Petition for Relief from Judgment on the ground of mistake in good faith for relying on the statement provided in the Amended Assessment Notice. Petitioner contends that the CTA *En Banc* should have taken into consideration that the filing of the Petition for Relief from Judgment has stopped the running of the period to appeal. Petitioner insists that all of these incidents constitute excusable delay that justified its belated filing of an appeal with the CTA.

We sustain petitioner's argument.

When petitioner sent a letter-reply[31] dated April 8, 2011 to the Regional Director, it was actually protesting both the Amended Assessment Notice and the FDDA. The Amended Assessment Notice[32] reflects the amended deficiency EWT of petitioner after reinvestigation while the FDDA[33] reflects the Final Decision on: (a) petitioner's deficiency EWT; (b) Final Withholding of VAT; and (c) Compromise Penalty. Since the deficiency EWT is a mere component of the aggregate tax due as reflected in the FDDA, then the FDDA cannot be considered as the final decision of the CIR as one of its components - the amended deficiency EWT – is still under protest.

---

[29] *Id*. at 71.

[30] *Id*. at 89.

[31] *Id*. at 76.

[32] *Id*. at 71.

[33] *Id*. at 72.

Petitioner was correct when it protested with the Regional Director the deficiency EWT as per the Amended Assessment Notice sent by the BIR. However, instead of resolving the protest, the Regional Director informed the petitioner that it was an improper remedy. A ruling totally inconsistent with the statement reflected in the Amended Assessment Notice, which states that protest must be filed with the CIR or the Regional Director within 30 days from receipt thereof.[34] Apparently, the Regional Director has hastily presumed that petitioner was already protesting the FDDA, which incidentally was received by petitioner on the same date as that of the Amended Assessment Notice.

With petitioner's pending protest with the Regional Director on the amended EWT, then technically speaking, there was yet no final decision that was issued by the CIR that is appealable to the CTA. It is still incumbent for the Regional Director to act upon the protest on the amended EWT– whether to grant or to deny it. Only when the CIR settled (deny/grant) the protest on the deficiency EWT could there be a final decision on petitioner's liabilities. And only when there is a final decision of the CIR, would the prescriptive period to appeal with the CTA begin to run.

Hence, petitioner's belated filing of an appeal with the CTA is not without strong, compelling reason. We could say that petitioner was merely exhausting all administrative remedies available before seeking recourse to the judicial courts. While the rule is that a taxpayer has 30 days to appeal to the CTA from the final decision of the CIR, the said rule could not be applied if the Assessment Notice itself clearly states that the taxpayer must file a protest with the CIR or the Regional Director within 30 days from receipt of the Assessment Notice. Under the circumstances obtaining in this case, we opted not to apply the statutory period within which to appeal with the CTA considering that no final decision yet was issued by the CIR

---

[34] *Id*. at 71.

on petitioner's protest. The subsequent appeal taken by petitioner is from the inaction of the CIR on its protest.

In this case, petitioner's appeal with the CTA was basically anchored on two points of contention, to wit: (a) the BIR's assessment of EWT which has no basis in fact and in law. Petitioner argues that it is not a top 10,000 Corporation, hence, not all its purchases are subject to the 1% and 2% EWT; and (b) the withholding of the VAT on royalty payments for the software application it purchased from a non-resident foreign corporation. Petitioner argues that it is only a reseller (engaged in the buy and sell) of Microsoft products and not a licensor. Thus, the income payments made to Microsoft do not constitute royalty income subject to withholding VAT but merely a business income. It maintained that even Revenue Memorandum Circular (RMC) No. 44-2005 issued by the Bureau of Internal Revenue (BIR) on September 7, 2005 does not consider payments for computer software as royalties but business income. And lastly, petitioner argues that RMC No. 7-2003 issued on November 18, 2003, which was relied upon by the BIR in assessing it with deficiency withholding tax on VAT on royalties, does not expressly state when it would take effect. Thus, petitioner opined that it cannot be given retroactive effect (to cover its case), otherwise, it will impose liabilities not existing at the time of its passage.

If petitioner's right to appeal would be curtailed by the mere expediency of holding that it had belatedly filed its appeal, then this Court as the final arbiter of justice would be deserting its avowed objective, that is to dispense justice based on the merits of the case and not on a mere technicality.[35]

Since the CTA First Division has the exclusive appellate jurisdiction over decisions of the Commissioner of Internal Revenue on disputed assessment[36] it is just proper to remand the case

---

[35] *Trans International v. Court of Appeals*, *supra* note 27, at 838.

[36] *REVISED RULES OF THE COURT OF TAX APPEALS*, Rule 4, Sec. 3 (a), par. 1.

to it in order to determine whether petitioner is indeed liable to pay the deficiency withholding tax on VAT on royalties. It should be noted that the CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems.[37] Thus, this Court has no jurisdiction to review tax cases at the first instance without first letting the CTA study and resolve the same.[38]

WHEREFORE, the instant petition is **GRANTED**. The case is **REMANDED** to the Court of Tax Appeals 1st Division which is **DIRECTED** to reinstate petitioner's Petition for Review (appeal), in CTA Case No. 8313 and to resolve the same on the merits with reasonable dispatch.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe*, and *Lazaro-Javier, JJ.*, concur.

Caguioa, J., on wellness leave.

THIRD DIVISION

[G.R. No. 212626. June 3, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLANDO TERNIDA Y MUNAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002);

---

[37] *Gaw, Jr. v. Commissioner of Internal Revenue*, G.R. No. 222837, July 23, 2018.

[38] *Id.*

ILLEGAL SALE OF DANGEROUS DRUGS; FOR THE ACCUSED TO BE CONVICTED, THE PROSECUTION MUST NOT ONLY PROVE THAT THE SALE TOOK PLACE, BUT ALSO PRESENT THE *CORPUS DELICTI* IN EVIDENCE.— To convict an accused of the illegal sale of dangerous drugs, the prosecution must not only prove that the sale took place, but also present the *corpus delicti* in evidence. In doing this, the prosecution must establish the chain of custody of the seized items to prove with moral certainty the identity of the dangerous drug seized.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY REQUIREMENTS; BEFORE THE COURT MAY CONSIDER THE SEIZED ITEMS AS EVIDENCE DESPITE NON-COMPLIANCE THEREWITH, JUSTIFIABLE GROUNDS MUST BE IDENTIFIED AND PROVED, AND THE PROSECUTION MUST ESTABLISH THE STEPS TAKEN TO ENSURE THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED.— Article II, Section 21 of the Comprehensive Dangerous Drugs Act provides the procedures that the apprehending team must observe to comply with the chain of custody requirements in handling seized drugs. x x x That the photographing and physical inventory of the seized drugs must be done immediately where seizure had taken place minimizes the possibility that evidence may be planted. Noncompliance with this legally mandated procedure, upon seizure, raises doubt that what was submitted for laboratory examination and as evidence in court was seized from an accused. Here, the prosecution failed to provide any evidence that the allegedly seized drugs were photographed upon seizure, in the presence of the accused. x x x Worse, the prosecution did not even address the apprehending team's failure to photograph the seized items. x x x Still, conviction may be sustained despite noncompliance with the chain of custody requirements if there were justifiable grounds provided. This was only expressly codified into the law with the passage of Republic Act No. 10640 in 2014, five (5) years after the buy-bust operation had been conducted. Nonetheless, at the time of the buy-bust, the Implementing Rules and Regulations of the Comprehensive Dangerous Drugs Act is already in effect. x x x Thus, before courts may consider the seized drugs as evidence despite noncompliance with the legal requirements, justifiable grounds must be identified and proved. The

> prosecution must establish the steps taken to ensure that the integrity and evidentiary value of the seized items were preserved. It has the *positive duty* to establish its reasons for the procedural lapses. In this case, the prosecution has failed to perform such duty. x x x [T]he prosecution claimed that noncompliance with the law is irrelevant. This is not only insufficient to convince this Court of the evidentiary value of the allegedly seized drugs; it also raises serious doubts as to their identity, especially given the minuscule amount involved. x x x [T]he arresting officers' failure to photograph the seized drugs, to explain this failure, and to establish that the integrity of the seized drugs was preserved despite the failure, are sufficient to reverse accused- appellant's conviction based on reasonable doubt.

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.*:

The failure of law enforcers in buy-bust operations to photograph seized drugs in accordance with Article II, Section 21 of Republic Act No. 9165, combined with the prosecution's failure to address this omission, raises doubt on the identity of the drugs seized, especially when the amount of dangerous drugs allegedly taken from the accused is minuscule.

This Court resolves an appeal[1] of the October 30, 2013 Decision[2] of the Court of Appeals in CA-G.R. CR-H.C.

---

[1] The appeal was filed under Rule 124, Section 13(c) of the Rules of Court.

[2] *Rollo*, pp. 2-13. The Decision was penned by Associate Justice Elihu A. Ybañez, and concurred in by Associate Justices Japar B. Dimaampao and Victoria Isabel A. Paredes of the Fourteenth Division, Court of Appeals, Manila.

No. 05208, which affirmed the conviction of Rolando Ternida y Munar (Ternida) for violating Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, for the illegal sale of dangerous drugs.

An Information was filed charging Ternida with selling 0.0402 gram of shabu, in violation of the Comprehensive Dangerous Drugs Act. It read in part:

> That on or about the 17th day of November 2009, in the City of San Fernando, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and without first securing the necessary permit, license or prescription from the proper government agency, did then and there willfully, unlawfully and feloniously sell, dispense and deliver one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as "Shabu" a dangerous drug, weighing ZERO POINT ZERO FOUR HUNDRED TWO (0.0402) gram to PO2 RICARDO ANNAGUE, who posed as a poseur buyer thereof using marked money one (1) piece of One Thousand peso bill bearing serial number 526998.
>
> CONTRARY TO LAW.[3]

Upon arraignment, Ternida pleaded not guilty to the crime charged. Pre-trial was conducted, and trial on the merits then ensued.[4]

The version of the prosecution is as follows:

On November 12, 2009, a confidential informant told the San Fernando City Police that an illegal drug transaction involving Ternida would take place in five (5) days at Quezon Avenue, San Fernando City, La Union. Acting on the tip, the San Fernando City Police formed a buy-bust team composed of Police Officer 2 Ricardo Annague (PO2 Annague), who was designated as the poseur-buyer, Police Inspector Quesada (Inspector

---

[3] *Id*. at 2-3.

[4] *Id*. at 3.

Quesada), PO3 Raul Dapula, and PO3 Paul Batnag (PO3 Batnag), who was designated as back-up.[5]

On November 17, 2009, the team carried out the operation. At around 10:40 p.m., the officers spotted Ternida along Quezon Avenue. PO2 Annague approached him, while PO3 Batnag stayed at a distance where he could observe the transaction.[6]

Ternida asked how much PO2 Annague would buy, to which PO2 Annague said ₱1,000.00 worth. Ternida then gave PO2 Annague one (1) heat-sealed plastic sachet of crystalline substance in exchange for PO2 Annague's ₱1,000.00 bill, which had been designated as the buy-bust money. After securing the sachet, PO2 Annague gave the pre-arranged signal to PO3 Batnag, who immediately approached and arrested Ternida. A Certificate of Inventory was subsequently prepared. The seized plastic sachet was then sent to the crime laboratory for forensic examination, where it tested positive for methamphetamine hydrochloride or shabu.[7]

In his defense, Ternida denied that there had been a buy-bust operation. He claimed that on November 17, 2009, he was about to cross Quezon Avenue on his way to Golden Society Restaurant when three (3) men, whom he later identified as Inspector Quesada, PO3 Batnag, and PO2 Annague, arrested him. Inspector Quesada held his neck, while PO3 Batnag and PO2 Annague handcuffed him.[8]

After frisking him, the officers took his cell phone and coin purse containing ₱150.00. They then brought him under a tree, where they took photos of him beside the plastic sachet. Afterwards, they brought him to the police station, where he was detained.[9]

---

[5] *Id*. at 4 and CA *rollo*, p. 13.

[6] CA *rollo*, pp. 13-14.

[7] *Id*. at 14 and *rollo*, p. 5.

[8] *Rollo*, p. 5.

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

In its July 6, 2011 Decision,[10] the Regional Trial Court found Ternida guilty beyond reasonable doubt of the offense charged. The dispositive portion of the Decision read:

> **WHEREFORE**, premises considered, accused **ROLANDO TERNIDA y Munar** is hereby found **GUILTY** beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act No. 9165 and is sentenced to suffer the penalty of life imprisonment and a fine of five hundred thousand pesos (Php500,000.00).
>
> SO ORDERED.[11] (Emphasis in the original)

On appeal,[12] Ternida argued that the prosecution failed to preserve the identity and integrity of the *corpus delicti*. He pointed out that the seized item was not marked with the date of seizure, which meant that it could not be distinguished from other evidence that may have been in the police officer's possession. Moreover, he claimed that the drugs allegedly seized were not photographed. He asserted that the prosecution did not give justifiable grounds for the apprehending officers' failure to comply with the chain of custody requirements under the law.[13]

Ternida also pointed out that the witnesses who had signed the Certificate of Inventory were not presented in court. 11oreover, he claimed that the arresting officers contradicted each other as to the witnesses' presence during the buy-bust. PO2 Annague testified that the barangay officials and media representatives witnessed the buy-bust operation itself, while PO3 Batnag testified that they were called only after the arrest.[14]

---

[10] CA *rollo*, pp. 12-20. The Decision was penned by Presiding Judge Victor O. Concepcion of Branch 66, Regional Trial Court, San Fernando City, La Union.

[11] *Id.* at 20.

[12] *Id.* at 45-67.

[13] *Id.* at 53-55.

[14] *Id.* at 55.

Moreover, Ternida asserted that no Certificate of Coordination with the Philippine Drug Enforcement Agency was presented, and that the police officers themselves admitted that they did not coordinate with the Philippine Drug Enforcement Agency during the surveillance and monitoring operations before Ternida's arrest. He also claimed that PO2 Annague's and PO3 Batnag's testimonies on their coordination with the Philippine Drug Enforcement Agency were not only inconsistent with each other, but also inconsistent with the Pre-Operation Report and Coordination Sheet presented by the prosecution.[15]

Ternida also claimed that the prosecution did not present the official Physical Sciences Report regarding the shabu, and offered only the initial laboratory report, which was "issued exclusively for the inquest ... pending the release of the official chemistry report[.]"[16]

Ternida also insisted that the prosecution did not establish the chain of custody of the seized item.[17]

Finally, Ternida maintained that PO2 Annague had motive to plant evidence to arrest him. He claimed that it was improbable for Ternida to sell drugs to PO2 Annague, considering that PO2 Annague had previously arrested Ternida in a commotion incident.[18]

The Office of the Solicitor General, representing plaintiff-appellee People of the Philippines, countered in its Brief[19] that PO2 Annague's testimony was sufficient to establish the chain of custody.[20] As to PO2 Annague having previously arrested Ternida, it inscrutably asserted that "it [was] impossible for appellant to sell shabu to someone whom he [had] previously

---

[15] *Id.* at 58-59.

[16] *Id.* at 59.

[17] *Id.* at 60.

[18] *Id.* at 64.

[19] *Id.* at 86-104.

[20] *Id.* at 96-99.

known as a policeman."[21] In any case, the Office of the Solicitor General insisted that the presumption that police officers have performed their duties with regularity applies in this case.[22]

In its October 30, 2013 Decision,[23] the Court of Appeals affirmed the Regional Trial Court's findings *in toto*. The dispositive portion of the Decision read:

> **WHEREFORE**, in view of the foregoing premises, the instant appeal is hereby ordered **DISMISSED**, and the appealed decision rendered by Branch 66 of the RTC of San Fernando City, La Union in Criminal Case No. 8514 on 06 July 2011 is **AFFIRMED *in toto***.
>
> **SO ORDERED.**[24] (Emphasis in the original)

Thus, Ternida filed a Notice of Appeal. In its December 5, 2013 Resolution,[25] the Court of Appeals gave due course to Ternida's appeal and elevated the case records to this Court.[26] Accused-appellant and plaintiff-appellee, in compliance with this Court's July 23, 2014 Resolution,[27] filed their respective Manifestations on September 9, 2014[28] and September 26, 2014.[29]

For this Court's resolution is the issue of whether or not accused-appellant Rolando Ternida y Munar is guilty beyond reasonable doubt of illegal sale of dangerous drugs.

Accused-appellant should be acquitted.

To convict an accused of the illegal sale of dangerous drugs, the prosecution must not only prove that the sale took place,

---

[21] *Id*. at 102.

[22] *Id*. at 101.

[23] *Rollo*, pp. 2-13.

[24] *Id*. at 12.

[25] CA *rollo*, p. 127.

[26] *Rollo*, p. 1.

[27] *Id*. at 19-19-A.

[28] *Id*. at 22-26.

[29] *Id*. at 28-31.

but also present the *corpus delicti* in evidence. In doing this, the prosecution must establish the chain of custody of the seized items[30] to prove with moral certainty the identity of the dangerous drug seized.[31]

Article II, Section 21 of the Comprehensive Dangerous Drugs Act provides the procedures that the apprehending team must observe to comply with the chain of custody requirements in handling seized drugs. The first step upon seizure mandates:

> (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[.]

That the photographing and physical inventory of the seized drugs must be done immediately where seizure had taken place minimizes the possibility that evidence may be planted. Noncompliance with this legally mandated procedure, upon seizure, raises doubt that what was submitted for laboratory examination and as evidence in court was seized from an accused.[32]

Here, the prosecution failed to provide any evidence that the allegedly seized drugs were photographed upon seizure, in the presence of the accused. That no photograph of the seized drugs was offered in evidence raises questions as to whether

---

[30] *People v. Lim*, G.R. No. 231989, September 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400> [Per *J.* Peralta, *En Banc*].

[31] *People v. Miranda*, G.R. No. 229671, January 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63999> [Per *J.* Perlas-Bernabe, Second Division].

[32] *See People v. Orteza*, 555 Phil. 700 (2007) [Per *J.* Tinga, Second Division].

the specimen submitted for laboratory examination was seized from accused-appellant in the buy-bust operation.

Worse, the prosecution did not even address the apprehending team's failure to photograph the seized items. In plaintiff-appellee's brief, the Office of the Solicitor General argued that even if there was a failure to observe the mandated process, this Court has held that it is irrelevant to the prosecution of the criminal case:

> Even assuming *arguendo* that there is a deviation from the cited provision, the same does not affect the prosecution of the case. It does not render the evidence gathered inadmissible and certainly could not reasonably lead to the acquittal of appellant. As held by the Supreme Court, the failure of arresting officers to comply with a Dangerous Drugs Board (DDB) regulation is a matter strictly between the DDB and arresting officers and is totally irrelevant to the prosecution of the criminal case. There is no provision or statement in any law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. Indeed, the commission of the crime of illegal sale of dangerous drug is considered consummated once the sale is established and the prosecution thereof is not undermined by the failure of the arresting officers to comply with the regulations of the DDB. In the case at bar, the elements of illegal sale of dangerous drugs was clearly proven by the prosecution.[33] (Citations omitted)

In support of this argument, the Office of the Solicitor General cited *People v. De los Reyes*,[34] a 1994 case where this Court rejected the accused's argument that the arresting officers failed to comply with a 1979 Dangerous Drugs Board regulation. Such reliance—despite the passage of the Comprehensive Dangerous Drugs Act in 2002, which expressly requires the apprehending team to seize the drugs in a specific way—is misplaced, outdated, and rejected.

---

[33] CA *rollo*, pp. 100-101.

[34] 299 Phil. 460 (1994) [Per *J*. Melo, Third Division].

Still, conviction may be sustained despite noncompliance with the chain of custody requirements if there were justifiable grounds provided. This was only expressly codified into the law with the passage of Republic Act No. 10640 in 2014, five (5) years after the buy-bust operation had been conducted. Nonetheless, at the time of the buy-bust, the Implementing Rules and Regulations of the Comprehensive Dangerous Drugs Act is already in effect. It states:

> (a) ... *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[.][35]

This Court has expounded on this provision in *People v. Miranda*:[36]

> The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void

---

[35] Implementing Rules and Regulations of Republic Act No. 9165 (2002), Sec. 21(a).

[36] G.R. No. 229671, January 31,2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63999> [Per *J.* Perlas-Bernabe, Second Division].

and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.

In *People v. Almorfe*, **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the , integrity and value of the seized evidence had nonetheless been preserved**. Also, in *People v. De Guzman*, it was emphasized that **the justifiable ground for non-compliance must be proven as , a fact, because that Court cannot presume what these grounds are or that they even exist**

. . . . . .

To be sure, this Court is not impervious to the sentiments of the State when it is left to deal with the seemingly unfair situation of having a drug conviction overturned upon grounds that it was not able to meet in the proceedings *a quo*. However, there is no gainsaying that these sentiments must yield to the higher imperative of protecting the fundamental liberties of the accused. Besides, the law itself apprises our law enforcement authorities about the requirements of compliance with the chain of custody rule. Case law exhorts that the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. **Therefore, as the requirements are clearly set forth in the law, then the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value**, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.[37] (Emphasis in the original, citations omitted)

Thus, before courts may consider the seized drugs as evidence despite noncompliance with the legal requirements, justifiable grounds must be identified and proved. The prosecution must establish the steps taken to ensure that the integrity and evidentiary

---

[37] *Id.*

value of the seized items were preserved.[38] It has the *positive duty* to establish its reasons for the procedural lapses.

In this case, the prosecution has failed to perform such duty.

Assuming that the other requirements of the law had been complied with, the prosecution could have strengthened its case by taking positive action and by providing evidence on why the seized drugs were not photographed. It could have also presented evidence to establish that what was submitted for laboratory examination was, indeed, seized from accused-appellant.

Instead, the prosecution claimed that noncompliance with the law is irrelevant. This is not only insufficient to convince this Court of the evidentiary value of the allegedly seized drugs; it also raises serious doubts as to their identity, especially given the minuscule amount involved.[39]

Accused-appellant's other arguments regarding his arrest are unconvincing. There is no evidence supporting his claim that the prosecution had an ulterior motive to arrest him, and that it was implausible for him to engage in illegal transactions with the police officer due to their prior interaction. When accused-appellant took the stand, he did not mention having previously interacted with PO2 Annague or knowing his face.[40] Moreover, the wording of PO2 Annague's testimony on Ternida's previous incident is unclear and insufficient to establish that PO2 Annague had any interaction with accused-appellant prior to the buy-bust operation.[41]

---

[38] *See People v. Lim*, G.R. No. 231989, September 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400> [Per *J*. Peralta, *En Banc*] and *J*. Leonen, Concurring Opinion in *People v. Lim*, G.R. No. 231989, September 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64400> [Per *J*. Peralta, *En Banc*].

[39] *People v. Holgado*, 741 Phil. 78, 98 (2014) [Per *J*. Leonen, Third Division].

[40] Transcript of Stenographic Notes taken on November 9, 2010.

[41] Transcript of Stenographic Notes taken on April 29, 2010, pp. 16-17.

Nonetheless, the arresting officers' failure to photograph the seized drugs, to explain this failure, and to establish that the integrity of the seized drugs was preserved despite the failure, are sufficient to reverse accused- appellant's conviction based on reasonable doubt.

Finally, worth noting is the minuscule amount of shabu subject of this case. This Court reiterates its pronouncement in *People v. Holgado*:[42]

> 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.[43]

WHEREFORE, the Court of Appeals October 30, 2013 Decision in CA-G.R. CR-H.C. No. 05208 is **REVERSED** and **SET ASIDE**. Accused--appellant Rolando Ternida y Munar is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for some other lawful cause.

---

[42] 741 Phil. 78 (2014) [Per *J*. Leonen, Third Division].

[43] *Id*. at 100.

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 Drug Enforcement Agency.

Let entry of final judgment be issued immediately.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 215932. June 3, 2019]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **RICHARD S. REBONG,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE COMMISSION; RULE AGAINST DESIGNATION OF A FIRST LEVEL POSITION HOLDER TO SECOND LEVEL POSITION; NOT VIOLATED BY THE EMPLOYEE'S ASSIGNMENTS IN CASE AT BAR, AND HIS EXPERIENCE THEREIN SHOULD BE CREDITED IN HIS FAVOR FOR PURPOSES OF PROMOTION.— It is worthy to emphasize that the CSC would consider respondent to have complied with the experience requirement were it not for the alleged violation of the rule against designation of a first level position holder to second level positions which is stated in CSC Memorandum Circular No. 06-05, dated February 15, 2005 x x x. The appellate court,

however, is correct in ruling that respondent's assignments as Team Leader and Field Officer could not be considered as designation to second level positions. x x x In this case, respondent, while holding the position of Intelligence Agent 1, was assigned as Team Leader and later on, as Field Officer. These assignments, however, simply meant additional duties on respondent's part. x x x. Additionally, in refusing to credit respondent's assignments as Team Leader and Field Officer as relevant experience in positions involving management and supervision, the CSC merely stated that respondent performed the duties pertaining to second level positions without, however, narrating what these duties are. Nevertheless, even if the CSC is correct in saying that respondent should have never performed the duties of a second level position, the fact remains that respondent served as IA 1 in the defunct EIIB for nine years and as IA 1 in the BOC for eight years. His assignments as Team Leader and Field Officer and his performance of the duties relative thereto should never be taken against him. It is only fair and just that his experience therein should be counted in his favor for purposes of promotion. It may be inferred that the prohibition against designation of a first level position holder to a second level position is frowned upon not only to prevent a violation of Section 7, Article IX-B of the Constitution which states that "x x x no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries," but also to avoid a situation wherein an employee performs the duties corresponding to two positions, but he is only receiving the compensation attached to the lower position. Moreover, CSC Memorandum Circular No. 06-05 does not even provide for the consequences of designating a first level position holder to second level positions. Nowhere in the said Circular is it provided that such service would not be credited in the employee's favor for purposes of promotion.

2. ID.; ID.; ID.; THREE-SALARY-GRADE RULE; AN EMPLOYEE MAY BE PROMOTED OR TRANSFERRED TO A POSITION WHICH IS NOT MORE THAN THREE SALARY, PAY OR JOB GRADES HIGHER THAN THE EMPLOYEE'S PRESENT POSITION EXCEPT IN VERY MERITORIOUS CASES.— [T]he CSC contends that respondent was appointed in violation

of the three-salary-grade rule found in Item 15 of CSC Memorandum Circular No. 3, Series of 2001. Therefore, respondent's appointment should be recalled. Item 15 of CSC Memorandum Circular No. 3, Series of 2001 on the three-salary-grade rule states that "[a]n employee may be promoted or transferred to a position which is not more than three (3) salary, pay or job grades higher than the employee's present position x x x[.]" However, this rule is subject to the exception of "very meritorious cases." These "very meritorious cases" are provided in CSC Resolution No. 03-0106 dated January 24, 2003 x x x. In the Summary of Equivalent Ratings of Applicants prepared by the Personnel Selection Board of the BOC, respondent ranked third. Undoubtedly, respondent falls under the exception of "very meritorious cases" especially in light of the Manifestation filed by the appointing authority, then Customs Commissioner Biazon who confirmed respondent's credentials x x x.

3. **ID.; ID.; ID.; THE COMMISSION'S AUTHORITY IS LIMITED ONLY TO THE DETERMINATION OF WHETHER OR NOT THE APPOINTEES POSSESS THE LEGAL QUALIFICATIONS AND THE APPROPRIATE CIVIL SERVICE ELIGIBILITY, AND IT CANNOT EXCEED ITS POWER BY SUBSTITUTING ITS WILL FOR THAT OF THE APPOINTING AUTHORITY.—** Appointment is an essentially discretionary power exercised by the head of an agency who is most knowledgeable to decide who can best perform the functions of the office. If the appointee possesses the qualifications required by law, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. The choice of an appointee from among those who possess the required qualifications is a political and administrative decision calling for considerations of wisdom, convenience, utility and the interests of the service which can best be made by the head of the office concerned, the person most familiar with the organizational structure and environmental circumstances within which the appointee must function. From the vantage point of then Commissioner Biazon, respondent is the person who can best fill the post and discharge its functions. As long as the appointee is qualified, the Civil Service Commission has no choice but to attest to and respect the appointment even if it be proved that there are others with superior credentials. The law limits the Commission's authority only to [the determination of]

whether or not the appointees possess the legal qualifications and the appropriate civil service eligibility, nothing else. If they do then the appointments are approved because the Commission cannot exceed its power by substituting its will for that of the appointing authority.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Topacio Law Office for respondent.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari* are the August 29, 2014 Decision[1] and the December 23, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 134264 which reversed and set aside the July 26, 2013 Decision[3] November 11, 2013 Resolution[4] and February 25, 2014 Resolution[5] of the Civil Service Commission (petitioner), which disapproved Richard S. Rebong's (respondent) permanent appointment as Intelligence Officer V.

The Antecedents

Respondent served as Intelligence Agent 1 (IA 1) of the then Economic Intelligence and Investigation Bureau (EIIB) of the Bureau of Customs (BOC) from October 1994 to January 2000, or for approximately five years. As IA 1, respondent

---

[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda Lampas Peralta and Myra V. Garcia-Fernandez, concurring; *rollo*, pp. 34-53.

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

[3] Approved by Chairman Francisco T. Duque III and Commissioners Robert S. Martinez and Nieves L. Osorio; *id*. at 56-67.

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

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

was assigned by then Deputy Commissioner Francisco Arriola (Deputy Arriola) as Team Leader of the Special Operations Group (SOG), at the Container Yard (CY), Container Freight Station (CFS) and Customs Bonded Warehouses (CBW) of the Port of Manila and the Manila International Container Port.[6]

As Team Leader, respondent supervised other Intelligence Agents and Intelligence Aides who were members of the team. He ensured that no diversion of shipments bound to Rizal, Cavite, Laguna and Batangas provinces would occur.[7]

Respondent's duties and responsibilities as IA 1 include the preparation and supervision of strategic operation set-ups for the detailing of Intelligence Agents and Intelligence Aides to various CY, CFS and CBW located in the National Capital Region (NCR). These Intelligence Agents and Intelligence Aides would submit reports which respondent, in turn, prepared and submitted to the Chief of the SOG in the form of Summary of Information and After Mission Reports including reports on the justification of Mission Order and profiling of suspected violators of the Tariff and Customs Code of the Philippines (TCCP).[8]

From March 2004 until May 2012, or approximately eight years, respondent continued to serve as IA 1 for the Customs Intelligence and Investigation Service (CIIS) of the BOC. During his service as such, respondent was assigned as Team Leader in the CIIS's sub-unit at the Philippine Economic Zone Authority (PEZA) covering the provinces of Rizal, Cavite, Laguna and Batangas.[9] Respondent's assignment as Team Leader was upon the instance of the head of the CIIS-District who would divide the intelligence officers and agents assigned in the area into teams or groups.[10]

---

[6] *Id*. at 35.

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*.

As Team Leader, respondent managed a team of agents who was tasked to safeguard shipments bound to PEZA and CBW in Region IV. Likewise, upon instruction of the Intelligence Officer 11 (IO 11) as immediate supervisor, respondent assigned tasks and monitored the performance of the group of agents and would thereafter report directly to the IO 11.[11]

In 2007, under Office Order No. 2-2007, respondent was assigned by Atty. Julio Doria as Field Officer of the X-Ray Inspection Project unit at the Manila International Container Port. As Field Officer, he was the leader of a team of x-ray inspectors composed of an Assistant Field Officer and four team members.[12]

Specifically, as Field Officer, respondent supervised the activities of x-ray inspectors in a particular x-ray field office. He likewise prepared regular reports of x-ray field office activities and accomplishments. Respondent also coordinated with the District Collector, the arrastre operator and the Department of Health officials concerning the safety requirements of the project. Thus, all operational and management control of X-Ray Inspection Project in one of the major ports in Metro Manila were assigned to respondent.[13]

In 2008, by virtue of the Customs Personnel Order No. B-7-2008 issued by Deputy Commissioner for Intelligence and Enforcement Group Celso Templo, respondent was assigned as Assistant Officer-in-Charge of the CIIS-PEZA Cavite/Laguna and its extensions located in Cavite, Laguna and Rizal.[14]

Prior to his being employed as IA 1, respondent worked in various private companies, as Account Manager at the New Business Center, from February 1988 to June 1988; Security Investigator at the RVV Security Services, Inc., from August

---

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

[12] *Id*. at 36.

[13] *Id*.

[14] *Id*.

1988 to August 1991; and as Senior Market Analyst at the Queensland-Tokyo Commodities, Inc., from August 1991 to December 1991.[15]

Respondent has a bachelor's degree in business administration, major in public administration.[16] In 2009, he earned his master's degree in public administration after finishing the required management courses such as Human Behavior in Management, Theory and Practice of Public Administration and Management, Local Government and Regional Administration, Public Fiscal Administration, Organization and Management, and Public Personnel Administration.[17] In 2012, respondent earned his doctorate in public administration.[18]

When the position of Intelligence Officer V (IO V) or the Chief of the Customs Intelligence Division became vacant, respondent applied for the position.[19]

The Personnel Selection Board (PSB) of the BOC then conducted deliberations and evaluation of the aspirants and thereafter, trimmed down the candidates to eight which included respondent who were then scheduled for interview for purposes of preparing the short list to be submitted to then Commissioner Razzano Rufino Biazon (Commissioner Biazon) for his consideration.[20]

Subsequently, the PSB submitted to Commissioner Biazon the short list of the candidates for the position of IO V. Respondent was among the three (3) short listed candidates.[21]

---

[15] *Id*.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 37.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 38.

On May 10, 2012, respondent was appointed by Commissioner Biazon as IO V. Accordingly, on May 15, 2012, respondent was issued a permanent appointment as IO V by way of promotion.[22]

Respondent's appointment was thereafter transmitted to the Civil Service Commission Field Office-Department of Public Works and Highways (CSCFO-DPWH) for evaluation and attestation. Respondent's appointment, however, was disapproved on the ground that he did not meet the experience and training requirements prescribed for the position.[23]

Respondent appealed the disapproval of his permanent appointment to the Civil Service Commission-National Capital Region (CSC-NCR).[24]

In its Decision dated August 30, 2012, the CSC-NCR found that while respondent satisfied the educational and eligibility requirements for the position of IO V, his experience and training requirements were lacking. According to the CSC-NCR, only respondent's work as Account Manager for four months may be credited for purposes of compliance with the experience requirement since it involved management and supervision. His duties as IA 1, however, were not credited by the CSC-NCR on the ground that as a first level position holder, respondent could not be designated to perform the duties pertaining to second level positions.[25]

Respondent moved for reconsideration which was treated by petitioner as a petition for review.

The CSC Ruling

In a Decision dated July 26, 2013, petitioner ruled that respondent failed to meet the required experience and training

---

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

qualifications for the position. It declared that the knowledge and skills gained by respondent in the IA 1 position have no actual significant closeness and functional relation with the duties and responsibilities of the position of IO V. Petitioner stated that the main duties and functions of IA 1 involve gathering and compilation of documents, conduct of security mission activities, and search and seizure of illicit cargoes. It held that such duties and functions were not functionally related to the duties and functions of an IO V which requires management and supervision. Moreover, petitioner found that the trainings and seminars attended by respondent did not involve management and supervision.

Likewise, petitioner did not give weight and credence to Office Order No. 2-2007 dated May 28, 2007 issued by Atty. Julito Doria of the X-Ray Inspection Project. designating respondent as Field Officer at Manila International Container Port; Customs Personnel Order No. B-7-2008 dated January 3, 2008 issued by Deputy Commissioner Celso P. Templo, Intelligence and Enforcement Group, reassigning/designating respondent from CIIS Administrative and Support Unit to Assistant OIC CIIS-PEZA, Cavite/Laguna and its Extensions/CBWs located in Cavite, Laguna and Rizal. It noted that said designations were made during the period that respondent was holding the position of IA I, a first level position. Petitioner emphasized that CSC Resolution No. 050157 dated February 7, 2005, circularized through Memorandum Circular No. 6, s. 2005 dated February 15, 2005, particularly Section B thereof, provides that "designees can only be designated to positions within the level they are currently occupying." Thus, petitioner concluded that the designations made in favor of respondent for him to perform the duties and functions of the second level position, while he was an IA 1 could not be credited for purposes of compliance with the experience requirement for his appointment to the position of IO V as they violated the rules on designation. The *fallo* reads:

WHEREFORE, the Petition for Review of Richard S. Rebong, Intelligence Officer V, Bureau of Customs (BOC), is hereby DISMISSED. Accordingly, the Decision dated August 30, 2012 of

the Civil Service Commission-National Capital Region (CSC-NCR), at affirming the Decision dated May 31, 2012 of the Civil Service Commission Field Office- Department of Public Works and Highways (CSCFO-DPWH), disapproving his permanent (promotion) appointment as Intelligence Officer V for failure to meet the experience and training requirements, is hereby AFFIRMED.[26]

Respondent moved for reconsideration but the same was denied by the CSC in a Resolution dated November 11, 2013 and in a subsequent Resolution dated February 25, 2014.

Aggrieved, respondent elevated a petition for review before the CA.

The CA Ruling

In a Decision dated August 29, 2014, the CA reversed and set aside petitioner's ruling. It held that the Qualification Standards for the IO V position do not require experience in positions that are managerial and supervisory *per se*, but only positions involving management and supervision. Otherwise stated, if the task of managing and supervising is included or is a part of the appointee's previous employment, then the experience requirement is satisfied. Further, the Qualification Standards do not require that the previous employment held by the appointee be functionally related to the duties of IO V. Had the BOC intended that the previous position of the appointee be functionally-related to the duties of an IO V, then it could have easily so provided. However, as it is, the Qualification Standards enumerate only four requirements, none of which requires that the appointee's previous position be significantly close to or functionally-related to the duties of an IO V.

The appellate court further held that petitioner would have credited respondent's work as IA 1 when he was assigned as Team Leader and as Field Officer as experience involving management and supervision, had it not been for the alleged inherent impermissiveness of such designations, reasoning that

---

[26] *Id*. at 67.

a holder of a first-level position like respondent could not be designated to perform duties and functions pertaining to a second level position. It ruled that respondent was not designated to a second level position because he was not named to any specific second level position as he still held the position of an IA 1, while then acting as Team Leader and as Field Officer; and his duties as Team Leader and Field Officer were reflective of his duties as IA 1 and were merely an implementation of his duties as such. Thus, respondent's assignment as Team Leader and Field Officer, not being contrary to petitioner's rules against designation of a first level position holder to a second level position, must be credited to form part of his compliance with the Qualification Standards.

Finally, the CA adjudged that contrary to the unfounded conclusion of petitioner, the training attended by respondent in preparation for his task as Field Officer of the X-Ray Inspection Project involved management and supervisory training. Respondent's attendance in the said training course for 96 hours sufficiently complied with the training requirement. It disposed the case in this wise:

> **WHEREFORE**, the instant Petition is **GRANTED**. The Decision dated July 26, 2013 of the Civil Service Commission and the Resolutions dated November 11, 2013 and February 25, 2014 are **REVERSED and SET ASIDE**. The appointment of Petitioner Richard S. Rebong as Intelligence Officer V is hereby **UPHELD**.[27]

Petitioner moved for reconsideration, but the same was denied by the CA in a Resolution dated December 23, 2014. Hence, this Petition for Review on *Certiorari* wherein petitioner raises the following assignment of errors:

> I. THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT RESPONDENT SATISFIED THE FOUR-YEAR MANAGERIAL/SUPERVISORY EXPERIENCE REQUIREMENT.

---

[27] *Id*. at 52.

II. THE COURT OF APPEALS GRAVELY ERRED WHEN IT HELD THAT RESPONDENT'S DESIGNATION AS TEAM LEADER AND FIELD OFFICER INVOLVED EXPERIENCE IN MANAGEMENT AND SUPERVISION.

III. THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT'S APPOINTMENT DID NOT VIOLATE THE THREE-SALARY GRADE RULE.[28]

Petitioner argues that the duties of IA 1 do not involve management and supervision; that respondent's designations as Team Leader and Field Officer encompass duties from both first and second level positions, thus, it is incorrect to say that the duties and responsibilities pertaining to management and supervision, *i.e.*, managing operations and supervising team members, were done by respondent only in his capacity as IA 1; that respondent's appointment violated the three-salary grade rule which provides that an employee may be promoted or transferred to a position which is not more than three (3) salary, pay, or job grades higher than the employee's present position, except in very meritorious cases; and that respondent has not shown that his appointment falls within the meritorious exceptions provided in existing Civil Service rules.[29]

In his Comment,[30] respondent counters that to require his duties and responsibilities as IA 1 to have actual significant closeness and functional relation with the duties and responsibilities of the position of IO V in order to qualify as relevant experience, is tantamount to requiring an additional criterion for the position of IO V; that the CSC's characterizations of "Team Leader" and "Field Officer" were inaccurate because these are tasks, not offices; and that he offered in evidence sworn statements of competent witnesses to substantiate the fact that the assignments given to him while he was an IA 1

---

[28] *Id*. at 14.

[29] *Id*. at 15-26

[30] *Id*. at 113-125.

pertain to a first level position, and that such assignments necessarily involved management and supervision.

In its Reply,[31] petitioner contends that respondent was holding the position of IA 1, a first level position when he was designated as Field Officer in 2007 and Officer-in-Charge in 2008, thus, the prohibition against designation of first level personnel to perform the duties and functions of second level positions clearly applies in the case of respondent; and that considering that the designations of respondent are legally flawed for violation of Civil Service rules and regulations, it only follows that the same could not be credited for purposes of compliance with the experience requirement.

The Court's Ruling

The petition lacks merit.

It is worthy to emphasize that the CSC would consider respondent to have complied with the experience requirement were it not for the alleged violation of the rule against designation of a first level position holder to second level positions which is stated in CSC Memorandum Circular No. 06-05, dated February 15, 2005, *viz.*:

x x x x x x x x x

A. Employees to be designated should hold permanent appointments to career positions.

B. Designees can only be designated to positions within the level they are currently occupying. However, Division Chiefs may be designated to perform the duties of third level positions.

First level personnel cannot be designated to perform the duties of second level positions.

x x x x x x x x x

[31] *Id.* at 135-144.

The appellate court, however, is correct in ruling that respondent's assignments as Team Leader and Field Officer could not be considered as designation to second level positions.

In *Betoy v. The Board of Directors, National Power Corporation*,[32] the Court declared:

> x x x Designation connotes an imposition of additional duties, usually by law, upon a person already in the public service by virtue of an earlier appointment. Designation does not entail payment of additional benefits or grant upon the person so designated the right to claim the salary attached to the position. Without an appointment, a designation does not entitle the officer to receive the salary of the position. The legal basis of an employee's right to claim the salary attached thereto is a duly issued and approved appointment to the position, and not a mere designation.[33]

The Court further stated in *Sevilla v. Court of Appeals*:[34]

> *[W]here the person is merely designated and not appointed, the implication is that he shall hold the office only in a temporary capacity and may be replaced at will by the appointing authority.* In this sense, the designation is considered only an acting or temporary appointment, which does not confer security of tenure on the person named.[35]

In this case, respondent, while holding the position of Intelligence Agent 1, was assigned as Team Leader and later on, as Field Officer. These assignments, however, simply meant additional duties on respondent's part. As the appellate court correctly ruled:

x x x x x x x x x

The Qualification Standards for the position of IO V are limited to the following:

---

[32] 674 Phil. 204 (2011).

[33] *Id.* at 238.

[34] 285 Phil. 201 (1992).

[35] *Id.* at 208.

1. Education: Masteral degree;
2. Experience: Four (4) years in position/s involving management and supervision
3. Training: Twenty-four (24) hours of training in management and supervision
4. Eligibility: Career Service Professional Eligibility, Second Level Eligibility[36]

x x x x x x x x x

The duties and responsibilities of an IA 1 as enumerated under its Position Description are as follows:

1. Gathers/Collects, compiles and collates information on acts in violation of the TCCP as amended and other laws, rules and regulations:
2. Undertakes surveillance of persons and companies suspected of violating the Tariff and Customs Code of the Philippines and other related laws, rules and regulations;
3. Conducts security mission activities on board a vessel or aircraft while in the Philippine area of jurisdiction;
4. Conducts searches, seizes illicit cargoes and baggage and other contraband, and executes arrests in coordination with other law enforcement agencies;
5. Acts as process server;
6. Assists other law enforcement agencies in the investigation, preparation, and prosecution of Customs and related cases; and
7. Performs other related functions as may be required by the service.

As Team Leader of the CY, CFS, CBWs in the Port of Manila and the Manila International Container Port under the EIIB, Rebong was tasked *to monitor and ensure that no diversion of shipments bound to Rizal, Cavite, Laguna and Batangas provinces would occur.*

As Team Leader under the CIIS, Rebong was assigned *to prepare a list of Order of Battle for known major and minor smugglers to*

---

[36] *Rollo*, p. 42.

differentiate them from the other violators of the TCCP; prepare[s] contingency plans to address the modus operandi of the smugglers; recommend[s] the issuance of hold order and/or "alert" after evaluating suspected prohibited or regulated shipments; conduct[s] on-the-spot examination and/or inspection, together with the other units of the BOC, of imported shipments inside the seaports, airports CBWs, CY and CFS; perform[s] underguarding of imported shipments bound to other ports of destination or authorized warehouses to safeguard its arrival at its final destination to avoid diversion; and prepare[s] and conduct[s] operational plans serving as the bas[e]s for the issuance of Warrant and Seizure Detention and Letters of Authority against suspected smuggled imported articles.

On the other hand, as Field Officer, he was assigned *operational and management control of the X-Ray Inspection Project in one of the major ports in Manila. Specifically, Rebong had the duty to* "*cause the actual physical inspection of or hold the release of any particular shipment suspected to be violative of customs laws, rules and regulations.*"

Clearly, his duties as such Team Leader and Field Officer are reflective of his duties as IA 1 and are but an implementation of his duties as such, which, as above-enumerated, include the *collection of information* on acts violative of the TCCP, *surveillance* of persons suspected of violating the TCCT, conduct of *security mission activities*, as well as the conduct of *search and seizure* of illicit cargoes, baggage and other contrabands. Hence, the duties of Rebong as Team Leader and Field Officer cannot be said to be in addition to, or are outside of his regular functions as IAl to fall under the proscription against designation to duties pertaining to second-level position.

In fact, the same is true .with respect to the IA1s and the Intelligence Aides who were part of the team. They were similarly performing duties properly pertaining to the functions of an lA I without, however, being considered as discharging duties belonging to a second-level position. However, what sets Rebong apart from his contemporaries was the fact that Rebong was tasked to manage the operations and supervise the team members, hence his role as Team Leader and as Field Officer.[37]

---

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

Additionally, in refusing to credit respondent's assignments as Team Leader and Field Officer as relevant experience in positions involving management and supervision, the CSC merely stated that respondent performed the duties pertaining to second level positions without, however, narrating what these duties are.

Nevertheless, even if the CSC is correct in saying that respondent should have never performed the duties of a second level position, the fact remains that respondent served as IA 1 in the defunct EIIB for nine years and as IA 1 in the BOC for eight years. His assignments as Team Leader and Field Officer and his performance of the duties relative thereto should never be taken against him. It is only fair and just that his experience therein should be counted in his favor for purposes of pr motion. It may be inferred that the prohibition against designation of a first level position holder to a second level position is frowned upon not only to prevent a violation of Section 7, Article IX-B of the Constitution which states that "x x x no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries," but also to avoid a situation wherein an employee performs the duties corresponding to two positions, but he is only receiving the compensation attached to the lower position. Moreover, CSC Memorandum Circular No. 06-05 does not even provide for the consequences of designating a first level position holder to second level positions. Nowhere in the said Circular is it provided that such service would not be credited in the employee's favor for purposes of promotion.

Finally, the CSC contends that respondent was appointed in violation of the three-salary-grade rule found in Item 15 of CSC Memorandum Circular No. 3, Series of 2001. Therefore, respondent's appointment should be recalled.

Item 15 of CSC Memorandum Circular No. 3, Series of 2001 on the three-salary-grade rule states that "[a]n employee may be promoted or transferred to a position which is not more than three (3) salary, pay or job grades higher than the employee's

present position x x x[.]" However, this rule is subject to the exception of "very meritorious cases." These "very meritorious cases" are provided in CSC Resolution No. 03- 0106 dated January 24, 2003:

> Any or all of the following would constitute as a meritorious case, exempted from the 3-salary grade limitation on promotion and transfer:
>
> 1. The position occupied by the person is next-in-rank to the vacant position, as identified in Merit Promotion Plan and the System of Ranking Positions (SRP) of the agency;
>
> 2. The position is a lone, or entrance position, as indicated in the agency[']s staffing pattern;
>
> 3. The position belongs to the dearth category, such as Medical Officer/Specialist positions and Attorney positions;
>
> 4. The position is unique and/or highly specialized such as Actuarial positions and Airways Communicator;
>
> **5. The candidates passed through a deep selection process, taking into consideration the candidates' superior qualifications in regard to:**
>
> • **Educational achievement**
> • **Highly specialized training**
> • **Relevant work experienc**
> • **Consistent high performance rating/ranking**
>
> 6. The vacant position belongs to the closed career system.[38] (Emphases supplied)

In the Summary of Equivalent Ratings of Applicants prepared by the Personnel Selection Board of the BOC, respondent ranked third.[39] Undoubtedly, respondent falls under the exception of "very meritorious cases" especially in light of the Manifestation filed by the appointing authority, then Customs Commissioner Biazon who confirmed respondent's credentials, *viz.*:

x x x x x x x x x

---

[38] *Estrellado v. David*, 781 Phil. 29, 44-45 (2016).

[39] *Rollo*, p. 65.

a. The undersigned competently believes that the Appointee's experience as Intelligence Agent 1 both in the Customs Intelligence and Investigation Service ("CHS") of the Bureau and the defunct Economic Intelligence and Investigation Bureau ("EIIB"), comprising a total of about thirteen (13) years, more than satisfy the management and supervisory experience requirement.

b. The undersigned acknowledges the Appointee's excellent educational background and training (Master's and Doctoral degrees in Public Administration) which provided Appointee the requisite management and supervisory experience making him ready for the IO V position.

c. The undersigned has carefully reviewed the credentials presented by the Appointee and is aware that the Appointee has the management and supervisory experience and skills to take on the position.

d. The undersigned is fully convinced that with the management and supervisory experience of the Appointee, the Appointee is the best person to help him institute the most needed reforms in the Bureau. The undersigned has therefore concluded that of all the applicants on the short-list for the IO V position, the Appointee is the ***most qualified***. x x x.[40]

Appointment is an essentially discretionary power exercised by the head of an agency who is most knowledgeable to decide who can best perform the functions of the office. If the appointee possesses the qualifications required by law, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. The choice of an appointee from among those who possess the required qualifications is a political and administrative decision calling for considerations of wisdom, convenience, utility and the interests of the service which can best be made by the head of the office concerned, the person most familiar with the organizational structure and environmental circumstances within which the

[40] *Id*. at 39.

appointee must function.[41] From the vantage point of then Commissioner Biazon, respondent is the person who can best fill the post and discharge its functions.

As long as the appointee is qualified, the Civil Service Commission has no choice but to attest to and respect the appointment even if it be proved that there are others with superior credentials.[42] The law limits the Commission's authority only to whether or not the appointees possess the legal qualifications and the appropriate civil service eligibility, nothing else. If they do then the appointments are approved because the Commission cannot exceed its power by substituting its will for that of the appointing authority.[43]

WHEREFORE, the petition is **DENIED** for lack of merit. The August 29, 2014 Decision and December 23, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 134264 are **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *Lazaro-Javier, JJ.*, concur.

Caguioa, J., on wellness leave.

---

[41] *Rimonte v. Civil Service Commission*, 314 Phil. 421, 430-431 (1995).

[42] *Abad v. Dela Cruz*, 756 Phil. 414, 431 (2015).

[43] *Rimonte v. Civil Service Commission*, *supra* at 431.

SECOND DIVISION

[G.R. No. 216569. June 3, 2019]

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, *petitioner, vs.* **SUPERLINES TRANSPORTATION CO., INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PRINCIPLE OF THE LAW OF THE CASE; THE IRREVOCABLY ESTABLISHED CONTROLLING LEGAL RULE BETWEEN THE SAME PARTIES IN THE SAME CASE CONTINUES TO BE THE LAW OF THE CASE, WHETHER CORRECT ON GENERAL PRINCIPLES OR NOT, SO LONG AS THE FACTS ON WHICH THE LEGAL RULE IS PREDICATED CONTINUE TO BE THE FACTS OF THE CASE BEFORE THE COURT.— [T]his Court already made a definitive ruling in G.R. No. 169596 not only as to the propriety of the action for replevin, but also to the inclusion of Lopera as an indispensable party in the claim for damages. The principle of the law of the case is thus significant. In the case of *Vios v. Pantangco,* this Court had the occasion to explain the implication of this doctrine, to wit: The *law of the case* doctrine applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court for further proceedings; the question settled by the appellate court becomes the *law of the case* at the lower court and in any subsequent appeal. It means that whatever is irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, *whether correct on general principles or not,* so long as the facts on which the legal rule or decision was predicated continue to be the facts of the case before the court. Therefore, what was established as the controlling decision in G.R. No. 169596 continues to be the *law of the case,* there being no supervening or additional facts presented in the case remanded before the RTC. x x x Considering the x x x pronouncement of this Court, the law of the case constitutes the fact that Lopera and other responsible officers are indispensable parties as to the claim

for damages for they were implicated by virtue of a contract of deposit between them and PNCC. As this Court categorically stated, it was Lopera who requested the turnover of the subject bus to PNCC. Hence, as they orchestrated the illegal seizure and detention of the bus, which is violative of the Constitution, this Court found that they should be included as indispensable parties in Superlines' claim for damages, if the latter would pursue the same.

2. **ID.; ID.; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTIES; FAILURE TO IMPLEAD AN INDISPENSABLE PARTY DOES NOT MERIT THE DISMISSAL OF THE CASE, BUT IF THE PLAINTIFF REFUSES TO IMPLEAD AN INDISPENSABLE PARTY DESPITE THE ORDER OF THE COURT, THAT COURT MAY DISMISS THE COMPLAINT FOR THE PLAINTIFF'S FAILURE TO COMPLY WITH THE ORDER.—** As a general rule, failure to implead an indispensable party does not merit the dismissal of the case. However, if the plaintiff refuses to implead an indispensable party despite the order of the court, that court may dismiss the complaint for the plaintiff's failure to comply with the order. This view is consistent with the pronouncement of this Court in *Pacaña-Contreras v. Rovila Water Supply, Inc.,* wherein a categorical ruling was made as regards the effects of inclusion and non-inclusion of indispensable parties.

3. **ID.; ID.; ID.; ID.; THE JOINDER OF INDISPENSABLE PARTIES IS MANDATORY, FOR THE NON-INCLUSION OF INDISPENSABLE PARTIES RENDERS ANY JUDGMENT INEFFECTIVE AS IT CANNOT ATTAIN REAL FINALITY.—** [T]he incidents leading to the exclusion of Lopera was not in violation of this Court's ruling in G.R. No. 169596. This, however, should not be construed as a recognition of the directory nature of this Court's order to implead indispensable parties, contrary to the ruling of the CA. The use of the word "may" in this Court's decision does not, in any way, alter this attribute. Such disposition must be construed in the light of the totality of the decision, and not in isolation. The word "may" was used because impleading indispensable parties is dependent on whether Superlines would pursue its claim for damages or not. If in the negative, then there is no necessity to implead Lopera and other police officers because the case was already decided

on the merits. Nevertheless, non-inclusion of indispensable parties would render any judgment ineffective as it cannot attain real finality. The joinder of indispensable parties is then mandatory.

4. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; ACTUAL DAMAGES; IN ORDER TO RECOVER ACTUAL DAMAGES, THE ALLEGED UNEARNED PROFITS MUST NOT BE CONJECTURAL OR BASED ON CONTINGENT TRANSACTIONS.—** Anent the award of unearned income for fifteen years, the RTC gave credence to the data submitted by Superlines, to wit: (a) the buses of Superlines would ply their respective routes for approximately fifteen years; (b) the average yearly earning of buses plying the Cubao-Daet route would earn ₱582,297.42 to ₱2,862,922.99 based on historical data; and (c) ₱7,500.00 daily lost income of the subject bus. In this regard, this Court notes that said data has no basis. Mere reiteration of the alleged longevity of the subject bus and its perceived daily income is not sufficient. In order to recover actual damages, the alleged unearned profits must not be conjectural or based on contingent transactions. Speculative damages are too remote to be included in an accurate estimate of damages.

5. **ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES; AWARDED IN CONTRACTS AND QUASI-CONTRACTS IF THE DEFENDANT ACTED IN WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE, OR MALEVOLENT MANNER.—** Exemplary damages may be awarded in contracts and quasi-contracts if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. In this case, it was established that PNCC unduly seized and impounded the subject bus, which constitutes a violation of the constitution. However, the amount of ₱1,000,000.00 must be equitably reduced to ₱100,000.00.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Fernando T. Chua for respondent.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari*, which seeks to assail the Decision[1] dated May 30, 2014 and Resolution[2] dated January 13, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 95429 which affirmed with modification the ruling of the Regional Trial Court of Gumaca, Quezon, Branch 62 (RTC).

Relevant Antecedents

This case is an offshoot of the case of *Superlines Transportation Company, Inc. v. Philippines National Construction Company*.[3] A summary of the factual antecedents are as follows:

One of Superlines Transportation Co., Inc.'s (Superlines) buses crashed into the radio room of Philippine National Construction Corporation (PNCC), while traveling north and approaching the Alabarig northbound exit lane. Manifestly, the radio room was damaged.[4]

Consequently, said bus was then turned over to the Alabang Traffic Bureau for the conduct of its investigation of the incident. As there was lack of adequate space, the bus was towed by the PNCC patrol to its compound, on request of traffic investigator Patrolman Cesar Lopera (Lopera).[5]

As the bus was stored inside the compound of PNCC, Superlines made several requests for PNCC to release the same,

---

[1] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Japar B. Dimaampao and Carmelita S. Manahan, concurring; *rollo*, pp. 33-51.

[2] *Id*. at 53-54.

[3] G.R. No. 169596, 548 Phil. 354 (2007).

[4] *Rollo*, pp. 33-34.

[5] *Id*. at 34.

but its head of traffic control and security department Pedro Balubal (Balubal) denied the same. Balubal, instead, demanded the sum of ₱40,000.000 or a collateral with the same value, the estimated cost of the reconstruction of the damaged radio room.[6] As a result, Superlines filed a complaint for replevin with damages against PNCC and Balubal with the RTC.[7]

In their Answer, PNCC and Balubal claimed that they merely towed the bus to the PNCC compound for safekeeping pursuant to an order from the police authorities. By way of Counterclaim, PNCC and Balubal prayed for actual and exemplary damages, attorney's fees, and litigation expenses.[8]

In a Decision dated December 9, 1997, the RTC dismissed Superlines' complaint. On PNCC's counterclaim, the RTC ordered Superlines to pay PNCC the amount of ₱40,320.00 representing actual damages to the radio room.[9]

Superlines filed an appeal before the CA, which held that the storage of the bus for safekeeping purposes partakes of the nature of a deposit; hence, custody or authority over it remained with Lopera who ordered the same. In the absence of any instruction from Lopera, PNCC may not release the bus. The CA concluded that the case should have been brought against the police authorities instead of PNCC.[10]

On appeal to this Court docketed as G.R. No. 169596, entitled *Superlines Transportation Company, Inc. v. Philippine National Construction Company*,[11] this Court ruled that

---

[6] *Id*.

[7] *Id*.

[8] *Id*. at 35.

[9] *Id*.

[10] *Id*.

[11] *Supra* note 3.

Superlines' prayer for recovery of the bus is in order for there was a violation of its constitutional right against unreasonable seizure when PNCC, upon the request of Lopera, seized and impounded the subject bus without authority. Corollary, this Court deemed it proper to implead Lopera and other police officers as indispensable parties for the proper determination on Superlines' claim for damages. The case was thus ordered remanded to the court of origin for the inclusion of such parties should Superlines pursue said claim. The *fallo* thereof reads:

WHEREFORE, the assailed Court of Appeals Decision is **REVERSED** and **SET ASIDE**.

The prayer of petitioner, Superlines Transportation Company, Inc. for recovery of possession of personal property is **GRANTED**.

The records of the case are **REMANDED** to the court of origin, the Regional Trial Court, Branch 62, Gumaca, Quezon, which is **DIRECTED** to **REINSTATE** petitioner's complaint to its docket if petitioner is still interested to pursue its claim for damages and to act in accordance with the foregoing pronouncement of the Court.

SO ORDERED.[12]

Acting on said ruling, Superlines filed its amended complaint, reiterating its basic allegations in the original complaint with the amendment being limited to the inclusion of Lopera as additional defendant. In response, Lopera filed his Answer.[13]

Even before the filing of said amended complaint, Superlines moved for the execution of this Court's decision. However, the whereabouts of the bus was undetermined anent the conflicting claims of PNCC and Superlines. The former claimed that the bus was already turned over to Superlines but the latter denied such allegation. Hence, the writ was not successfully implemented.[14]

---

[12] *Id*. at 38.

[13] *Id*. at 264.

[14] *Id*. at 101-102.

Meanwhile, in the case remanded to the RTC, Lopera was dropped as party-defendant.[15]

In a Decision[16] dated May 12, 2010, the RTC ruled that PNCC and Balubal are liable to pay the actual cost of the bus in view of their inability to deliver its possession and damages. The dispositive portion thereof reads:

WHEREFORE, judgment is rendered as follows:

(a) due to the inability of defendant PNCC to deliver possession of Bus No. 719 as directed by the Supreme Court in its G.R. No. 169596, because of lack of information as to Bus No. 719's whereabouts, **defendants PNCC and Pedro Balubal, jointly and severally are directed to pay plaintiff the amount of [₱]2,036,500.00 representing the cost of acquiring a bus of similar kind or condition as Bus No. 719**, with interest of 6% per annum from May 11, 2007 when the decision of the Supreme Court in G.R. No. 169596 attained finality;

(b) defendants PNCC and Pedro Balubal are directed to pay plaintiff, jointly and severally, the amount of [₱]33,750,000.00 representing the lost/unearned income of Bus No. 719 for the period from 1991 to 2006, with 6% interest from March 1, 1991, the date of judicial demand;

(c) directing defendants PNCC and Pedro Balubal to pay plaintiff, jointly and severally, the amount of [₱]5,000,000.00 as exemplary damage; and

(d) the amount of [₱]300,000.00 as and for attorney's fees is awarded the plaintiff.

Costs against the defendants.

SO ORDERED.[17]

PNCC filed an appeal, essentially arguing that the RTC disregarded this Court's ruling in G.R. No. 169596 when it dropped Lopera as party-defendant.

---

[15] *Id*. at 40.

[16] Penned by Judge Hector Almeyda; *id*. at 98-115.

[17] *Id*. at 114-115.

In a Decision[18] dated May 30, 2014, the CA affirmed with modification the decision of the trial court as to the amount of exemplary damages awarded. The CA interpreted that the ruling of this Court, which states that Superlines or the trial court **may** implead Lopera and other police officers as indispensable parties, is not mandatory. Hence, the trial court cannot be faulted for not holding Lopera liable under the circumstances, thus:

> **WHEREFORE**, in view of the foregoing premises, the appealed Decision rendered on 12 May 2010 by Branch 62 of the Regional Trial Court (RTC) in Gumaca, Quezon in Civil Case No. 2130-G is **AFFIRMED** with the **MODIFICATION** that the award of exemplary damages is reduced to One Million Pesos (P1,000,000.00). The appealed Decision is **AFFIRMED** in all other aspects.
>
> **SO ORDERED.**[19]

A Motion for Reconsideration filed by PNCC was denied in a Resolution[20] dated January 13, 2015.

Undeterred, PNCC filed this instant petition

The Issue

Whether or not the dropping of Lopera as defendant m the case violates this Court's ruling in G.R. No. 169596.

This Court's Ruling

To recall, this Court already made a definitive ruling in G.R. No. 169596 not only as to the propriety of the action for replevin, but also to the inclusion of Lopera as an indispensable party in the claim for damages.

The principle of the law of the case is thus significant. In the case of *Vios v. Pantangco*,[21] this Court had the occasion to explain the implication of this doctrine, to wit:

---

[18] *Supra* note 1.

[19] *Id*. at 50.

[20] *Supra* note 2.

[21] 597 Phil. 705 (2009).

The *law of the case* doctrine applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court for further proceedings; the question settled by the appellate court becomes the *law of the case* at the lower court and in any subsequent appeal. It means that whatever is irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, *whether correct on general principles or not*, so long as the facts on which the legal rule or decision was predicated continue to be the facts of the case before the court.[22] (Citation omitted)

Therefore, what was established as the controlling decision in G.R. No. 169596 continues to be the *law of the case*, there being no supervening or additional facts presented in the case remanded before the RTC. Corollary, it is necessary to consider the disposition of this Court.

In G.R. No. 169596, this Court held:

The seizure and impounding of petitioners bus, on Lepera's request, were unquestionably violative of the "right to be let alone" by the authorities as guaranteed.by the Constitution. (Citation omitted)

x x x x x x x x x

As for petitioner's claim for damages, **the Court finds that it cannot pass upon the same without impleading Lopera and any other police officer responsible for ordering the seizure and distraint of the bus. The police authorities, through Lopera, having turned over the bus to respondents for safekeeping, a contract of deposit was perfected between them and respondents**. (Emphasis supplied; Citation omitted)

x x x x x x x x x

For petitioner to pursue its claim for damages then, it or the trial court *motu proprio* **may** implead as defendants the indispensable parties — Lopera and any other responsible police officers.[23] (Emphasis supplied)

Considering the preceding pronouncement of this Court, the law of the case constitutes the fact that Lopera and other

---

[22] *Id.* at 718.

[23] *Superlines Transportation Company, Inc. v. Philippine National Construction Company*, *supra* note 3, at 365-367.

responsible officers are indispensable parties as to the claim for damages for they were implicated by virtue of a contract of deposit between them and PNCC. As this Court categorically stated, it was Lopera who requested the turnover of the subject bus to PNCC. Hence, as they orchestrated the illegal seizure and detention of the bus, which is violative of the Constitution, this Court found that they should be included as indispensable parties in Superlines' claim for damages, if the latter would pursue the same.

However, such declaration is not tantamount to adjudication of Lopera and other police officers' actual liability, especially so when they were not impleaded in said case as they are not bound by the same.[24]

Their liability, if any, would ultimately depend on the findings of the RTC.

Complying with the directive of this Court, Superlines opted to file a complaint for damages and impleaded Lopera as additional defendant. Said amendment was granted by the RTC. During the proceedings, however, Superlines moved that Lopera be dropped as an indispensable party, which was likewise granted by the trial court.

As a general rule, failure to implead an indispensable party does not merit the dismissal of the case. However, if the plaintiff refuses to implead an indispensable party despite the order of the court, that court may dismiss the complaint for the plaintiff's failure to comply with the order.[25]

This view is consistent with the pronouncement of this Court in *Pacaña-Contreras v. Rovila Water Supply, Inc.*,[26] wherein a categorical ruling was made as regards the effects of inclusion and non-inclusion of indispensable parties. In said case, this Court reiterated that:

---

[24] *Guy v. Gacott*, 778 Phil. 308, 320 (2016).

[25] *Pamplona Plantation Company, Inc. v. Tinghil*, 491 Phil. 15, 29 (2005).

[26] 722 Phil. 460 (2013).

x x x Pursuant to Section 9, Rule 3 of the Rules of Court, parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action. If the plaintiff refuses to implead an indispensable party despite the order of the court, then the court may dismiss the complaint for the plaintiff's failure to comply with a lawful court order. **The operative act that would lead to the dismissal of the case would be the refusal to comply with the directive of the court for the joinder of an indispensable party to the case.**[27] (Emphasis supplied; citations omitted)

At first blush, it appears that the ruling of this Court was not complied with, considering that Lopera was excluded in the action. However, it must be considered that the determination of whether there was indeed a transgression depends on the events leading to such exclusion.

A careful study of the records, reveals that the exclusion of Lopera in the complaint is actually not in defiance with this Court's ruling in G.R. No. 169596. Lopera's exclusion therein resulted from the trial court's findings that Lopera has no liability after due hearing and submission of evidence. In finding that Lopera should be excluded from liability, the trial court merely adhered to its mandate in ascertaining the obligation of the defendants in the case. On this note, this Court cannot question the wisdom of the trial court's resolution, more so, when it was not raised before us. Moreover, it must be noted that Lopera filed his answer to the complaint, which vested jurisdiction upon the trial court over his person. In this regard, the RTC exercised judicial power over the case because of the presence of all the indispensable parties.[28]

To stress, the incidents leading to the exclusion of Lopera was not in violation of this Court's ruling in G.R. No. 169596. This, however, should not be construed as a recognition of the directory nature of this Court's order to implead indispensable parties, contrary to the ruling of the CA. The use of the word

---

[27] *Id.* at 483.

[28] *Plasabas v. Court of Appeals* (Special Former 9th Division), 601 Phil. 669, 673 (2009).

"may" in this Court's decision does not, in any way, alter this attribute. Such disposition must be construed in the light of the totality of the decision, and not in isolation. The word "may" was used because impleading indispensable parties is dependent on whether Superlines would pursue its claim for damages or not. If in the negative, then there is no necessity to implead Lopera and other police officers because the case was already decided on the merits. Nevertheless, non-inclusion of indispensable parties would render any judgment ineffective as it cannot attain real finality.[29] The joinder of indispensable parties is then mandatory.[30]

As to the award of damages, this Court finds that modification of the same is in order.

Anent the award of unearned income for fifteen years, the RTC gave credence to the data submitted by Superlines, to wit: (a) the buses of Superlines would ply their respective routes for approximately fifteen years; (b) the average yearly earning of buses plying the Cubao-Daet route would earn ₱582,297.42 to ₱2,862,922.99 based on historical data; and (c) ₱7,500.00 daily lost income of the subject bus.

In this regard, this Court notes that said data has no basis. Mere reiteration of the alleged longevity of the subject bus and its perceived daily income is not sufficient. In order to recover actual damages, the alleged unearned profits must not be conjectural or based on contingent transactions. Speculative damages are too remote to be included in an accurate estimate of damages.[31]

Exemplary damages may be awarded in contracts and quasi-contracts if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.[32] In this case, it was

---

[29] *Quilatan v. Heirs of Lorenzo Quilatan*, 614 Phil. 162, 166 (2009).

[30] *Lotte Phil., Co., Inc. v. Dela Cruz*, 502 Phil. 816, 821 (2005).

[31] *Universal International Investment (BVI) Limited v. Ray Burton Development Corporation*, 799 Phil. 420, 437 (2016).

[32] *NEW CIVIL CODE OF THE PHILIPPINES*, Article 2232.

established that PNCC unduly seized and impounded the subject bus, which constitutes a violation of the constitution. However, the amount of ₱1,000,000.00 must be equitably reduced to ₱100,000.00. In the case of *Silahis International Hotel, Inc. v. Soluta*,[33] this Court affirmed the amount of ₱30,000.00 each as exemplary damages when four petitioners in said case caused an illegal search and seizure.

As to attorney's fees, the award of the same is proper under Article 2208 (1)[34] of the Civil Code, but the same must be reduced from ₱300,000.00 to ₱30,000.00.

WHEREFORE, premises considered, the instant petition is **DENIED**.

The Decision dated May 30, 2014 and the Resolution dated January 13, 2015 of the Court of Appeals in CA-G.R. CV No. 95429 are **AFFIRMED** with **MODIFICATIONS** in that the award of lost/unearned income is hereby **DELETED**. The amount of exemplary damages and attorney's fees are **REDUCED** to ₱100,000.00 and ₱30,000.00, respectively.

The amount of exemplary damages shall earn an interest of six percent (6%) per annum from the date of the finality of this judgment until full satisfaction thereof.

All others **STAND**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *Lazaro-Javier, JJ.*, concur.

Caguioa, J., on wellness leave.

---

[33] 518 Phil. 90 (2006).

[34] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded[.]

SECOND DIVISION

[G.R. No. 216635. June 3, 2019]

DR. MARY JEAN P. LORECHE-AMIT, *petitioner, vs.* **CAGAYAN DE ORO MEDICAL CENTER, INC. (CDMC), DR. FRANCISCO OH AND DR. HERNANDO EMANO,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; CORPORATE OFFICERS; TO BE CONSIDERED AS A CORPORATE OFFICER, THE DESIGNATION MUST BE EITHER PROVIDED BY THE CORPORATION CODE OR BY THE BY-LAWS OF THE CORPORATION.—** To be considered as a corporate officer, the designation must be either provided by the Corporation Code or the by-laws of the corporation x x x. In this case, nowhere in the records could the by-laws of CDMC be found. An appointment through the issuance of a resolution by the Board of Directors does not make the appointee a corporate officer. It is necessary that the position is provided in the Corporation Code or in the by-laws. In the absence of the by-laws of CDMC, there is no reason to conclude that petitioner, as Pathologist, is considered as a corporate officer.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST; POWER OF CONTROL; CONSIDERED THE MOST SIGNIFICANT DETERMINANT OF THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP, AND THE TEST IS PREMISED ON WHETHER THE PERSON WHOM THE SERVICES ARE PERFORMED RESERVES THE RIGHT TO CONTROL BOTH THE END ACHIEVED AND THE MANNER AND MEANS USED TO ACHIEVE THAT END.—** The four-fold test, to wit: 1) the selection and engagement of the employees; 2) the payment of wages; 3) the power of dismissal; and 4) the power to control the employee's conduct, must be applied to determine the existence of an employer-employee relationship. x x x The power to control the work of the employee

is considered the most significant determinant of the existence of an employer-employee relationship. This test is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end.

3. ID.; ID.; ID.; ECONOMIC REALITY TEST; USED TO DETERMINE THE EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP, AND UNDER THIS TEST, THE ECONOMIC REALITIES PREVAILING WITHIN THE ACTIVITY OR BETWEEN THE PARTIES ARE EXAMINED, TAKING INTO CONSIDERATION THE TOTALITY OF CIRCUMSTANCES SURROUNDING THE TRUE NATURE OF THE RELATIONSHIP BETWEEN THE PARTIES.— [P]etitioner was working for two other hospitals aside from CDMC, not to mention those other hospitals which she caters to when her services are needed. Such fact evinces that petitioner controls her working hours. On this note, relevant is the economic reality test which this Court has adopted in determining the existence of employer-employee relationship. Under this test, the economic realities prevailing within the activity or between the parties are examined, taking into consideration the totality of circumstances surrounding the true nature of the relationship between the parties x x x.

4. ID.; ID.; ID.; DOES NOT EXIST WHEN A PERSON WHO WORKS FOR ANOTHER PERFORMS HIS JOB MORE OR LESS AT HIS OWN PLEASURE, IN THE MANNER HE SEES FIT, NOT SUBJECT TO DEFINITE HOURS OR CONDITIONS OF WORK, AND IS COMPENSATED ACCORDING TO THE RESULT OF HIS EFFORTS AND NOT THE AMOUNT THEREOF.— [T]he fact that petitioner continued to work for other hospitals strengthens the proposition that petitioner was not wholly dependent on CDMC. Petitioner likewise admitted that she receives in full her 4% share in the Clinical Section of the hospital regardless of the number of hours she worked therein. Alternatively put, petitioner manages her method and hours of work. The rule is that where a person who works for another performs his job more or less at his own pleasure, in the manner he sees fit, not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, no employer-employee relationship exists.

APPEARANCES OF COUNSEL

Arubio Cadavos Law Office for petitioner.
Emmanuela A. Gaabucayan for respondents.

D E C I S I O N

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

Before us is a Petition for Review on *Certiorari*,[1] which seeks to assail the Decision[2] dated August 3, 2012 and Resolution[3] dated April 12, 2013 of the Court of Appeals (CA)-Cagayan de Oro City, in CA-G.R. SP No. 03067-MIN which affirmed the decision of the National Labor Relations Commission (NLRC).

The Relevant Antecedents

Dr. Mary Jean P. Loreche-Amit (petitioner) started working with Cagayan De Oro Medical Center, Inc. (CDMC), sometime in May 1996, when she was engaged by the late Dr. Jose N. Gaerlan (Dr. Gaerlan) as Associate Pathologist in the Department of Laboratories. Upon the demise of Dr. Gaerlan, CDMC's Board of Directors formally appointed petitioner as Chief Pathologist for five years or until May 15, 2011.[4]

On June 13, 2007, (CDMC's) Board of Directors passed a resolution, recalling petitioner's appointment as Chief Pathologist. This prompted petitioner to file a complaint for illegal dismissal, contending that she was dismissed by CDMC from her work without just cause and due process.[5]

---

[1] *Rollo*, pp. 4-28.

[2] Penned by Associate Justice Renato C. Francisco, with Associate Justices Edgardo A. Camello and Marilyn B. Lagura-Yap; *id*. at 41-55.

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

[4] *Id*. at 42.

[5] *Id*.

In her complaint, petitioner narrated the circumstances which surrounded the recall of her appointment. She averred that Dr. Hernando Emano (Dr. Emano) asked her to help his daughter Dr. Helga Emano-Bleza (Dr. Emano-Bleza) to qualify as a pathologist considering that petitioner is one of the six members of the Board of Governors accredited by the Professional Regulation Commission. However, petitioner refused to assist Dr. Emano-Bleza because the latter failed to qualify in the clinical pathology examination. Such refusal, according to petitioner, started the subtle attempt of Dr. Emano to oust her from her job.[6]

Soon thereafter, Dr. Francisco Oh (Dr. Oh) issued an Inter-Office Memorandum addressed to all laboratory personnel stating that working in and out of the building without proper permission is to be treated as absence without official leave and payment for printing of duplicate copies not endorsed to the hospital is a form of stealing. As petitioner slammed the Memorandum against the wall and tagged the name of Dr. Oh as an irrational man, she received an Inter-Office Memorandum from Dr. Oh for alleged conduct unbecoming/insubordination, and to explain why her appointment should not be revoked due to such behavior.[7] Finally, a Memorandum recalling her appointment was issued.[8]

For their part, Dr. Emano, Dr. Oh, and CDMC (collectively referred to as respondents) averred that petitioner was not hired by them as she merely assisted Dr. Gaerlan in operating the hospital's laboratory. Respondents maintained that petitioner worked at the same time as pathologist in Capitol College Hospital and J.R. Borja Memorial Hospital as she was not prohibited to do so.[9]

---

[6] *Id*.

[7] *Id*. at 43.

[8] *Id*.

[9] *Id*. at 43-44.

In dismissing the complaint for lack of jurisdiction, the Labor Arbiter rendered a Decision[10] dated March 31, 2008. The Labor Arbiter found that petitioner is a corporate officer of the hospital because of her appointment by the Board of Directors through a resolution; thus, matters relating to the propriety of her dismissal is under the jurisdiction of the Regional Trial Court (RTC) under Section 5.2 of Republic Act (R.A.) No. 8799 (The Securities Regulation Code of the Philippines). The dispositive portion of the Decision reads:

> WHEREFORE, foregoing premises considered, the above-entitled case is DISMISSED for lack of jurisdiction.
>
> SO ORDERED.[11]

On appeal, the NLRC in a Resolution[12] dated March 31, 2009, affirmed the ruling of the Labor Arbiter and reiterated that petitioner is a corporate officer and that there was no employer-employee relationship between CDMC and her. As it is, the issue is an intra-corporate matter, the jurisdiction of which belongs to the regular courts, *viz.*:

> **WHEREFORE**, in view of all the foregoing considerations, the instant appeal is hereby **DISMISSED** for lack of merit. The assailed Decision dated March 31, 2008 is **AFFIRMED**.
>
> **SO ORDERED.**[13]

Petitioner filed a Petition for *Certiorari* before the CA.

In a Decision[14] dated August 3, 2012, the CA dismissed the petition and echoed the rulings of the Labor Arbiter and NLRC, thus:

---

[10] Penned by Executive Labor Arbiter Bario-Rod M. Talon; *id.* at 60-66.

[11] *Id*. at 66.

[12] Penned by Presiding Commissioner Salic B. Dumarpa, with Commissioners Proculo T. Sarmen and Dominador B. Medroso, Jr.; *id*. at 87-92.

[13] *Id*. at 92.

[14] *Supra* note 2.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.[15]

The motion for reconsideration filed by petitioner was likewise dismissed in a Resolution[16] dated April 12, 2013.

The Issue

Whether or not the labor tribunals have jurisdiction over the complaint for illegal dismissal filed by petitioner.

The Court's Ruling

The determination of whether petitioner was indeed an employee of CDMC is necessary before we proceed to rule on the propriety of her dismissal.

Petitioner argues that she is not a corporate officer because her position as Pathologist is not among those included in the by-laws of CDMC.

This Court agrees.

To be considered as a corporate officer, the designation must be either provided by the Corporation Code or the by-laws of the corporation, to wit:

> Corporate officers are given such character either by the Corporation Code or by the corporation's by-laws. Under Section 25 of the Corporation Code, the corporate officers are the president, secretary, treasurer and such other officers as may be provided in the by-laws. Other officers are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.[17] (Citation omitted)

---

[15] *Id*. at 54.

[16] *Supra* note 3.

[17] *WPP Marketing Communications, Inc. v. Galera,* 630 Phil 410, 425 (2010).

In this case, nowhere in the records could the by-laws of CDMC be found. An appointment through the issuance of a resolution by the Board of Directors does not make the appointee a corporate officer. It is necessary that the position is provided in the Corporation Code or in the by-laws. In the absence of the by-laws of CDMC, there is no reason to conclude that petitioner, as Pathologist, is considered as a corporate officer. In the cases of *WPP Marketing Communications, Inc. v. Galera*[18] and *Marc II Marketing, Inc. v. Joson*,[19] this Court declared that respondents are not corporate officers because neither the Corporation Code nor the by-laws of the respective corporations provided so. In the latter case, this Court treated as employee the respondent whose position was not expressly mentioned in the Corporation Code or the by-laws.[20]

Thus, the RTC does not have jurisdiction over the case as there was no intra-corporate controversy, the latter being operative in vesting jurisdiction upon Regional Trial Courts over all controversies in the election or appointment of directors, trustees, officers or managers of corporations, partnerships or associations.

However, this is not an automatic declaration that petitioner is an employee of CDMC. The four-fold test, to wit: 1) the selection and engagement of the employees; 2) the payment of wages; 3) the power of dismissal; and 4) the power to control the employee's conduct, must be applied to determine the existence of an employer-employee relationship.[21]

In this case, it is apparent that CDMC, through the Board of Directors, exercised the power to select and supervise petitioner as the Pathologist. It must be emphasized that petitioner

---

[18] *Id.*

[19] 678 Phil. 232, 253 (2011)

[20] *Id.*

[21] *Marsman & Company, Inc. v. Sta. Rita*, G.R. No. 194765, April 23, 2018.

was appointed as Pathologist with a term of five years from May 2006 to May 2011. She was likewise paid compensation which is at 4% of the gross receipts of the Clinical Section of the laboratory.

However, based on the records, CDMC does not exercise the power of control over petitioner.

The power to control the work of the employee is considered the most significant determinant of the existence of an employer-employee relationship. This test is premised on whether the person for whom the services are performed reserves the right to control both the end achieved and the manner and means used to achieve that end.[22]

As the Labor Arbiter, NLRC, and the CA aptly observed, petitioner was working for two other hospitals aside from CDMC, not to mention those other hospitals which she caters to when her services are needed. Such fact evinces that petitioner controls her working hours. On this note, relevant is the economic reality test which this Court has adopted in determining the existence of employer-employee relationship. Under this test, the economic realities prevailing within the activity or between the parties are examined, taking into consideration the totality of circumstances surrounding the true nature of the relationship between the parties, to wit:

> x x x. In our jurisdiction, the benchmark of economic reality in analyzing possible employment relationships for purposes of applying the Labor Code ought to be the economic dependence of the worker on his employer.[23]

Thus, the fact that petitioner continued to work for other hospitals strengthens the proposition that petitioner was not wholly dependent on CDMC.

---

[22] *Reyes v. Glaucoma Research Foundation, Inc.*, 760 Phil. 779, 790 (2015).

[23] *Orozco v. The Fifth Division of the Honorable Court of Appeals*, 584 Phil. 35, 52 (2008).

Petitioner likewise admitted that she receives in full her 4% share in the Clinical Section of the hospital regardless of the number of hours she worked therein. Alternatively put, petitioner manages her method and hours of work.

The rule is that where a person who works for another performs his job more or less at his own pleasure, in the manner he sees fit, not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, no employer-employee relationship exists.[24]

Moreover, the Memorandum, pertaining to petitioner's behavior, issued by Dr. Oh does not sufficiently establish the element of control. The Memorandum merely states that intolerable behavior in the hospital cannot be countenanced. It is administrative in character which does not, in any way, pertains to the manner and method of petitioner's work.

In sum, this Court finds no reason to overturn the finding of the LA, NLRC, and the CA that there was no illegal dismissal in this case as it was not sufficiently proven that petitioner is indeed an employee of CDMC.

WHEREFORE, premises considered, the instant petition is **PARTLY GRANTED** in that petitioner is not a corporate officer. The Decision dated August 3, 2012 and the Resolution dated April 12, 2013 of the Court of Appeals-Cagayan de Oro City in CA-G.R. SP No. 03067-MIN are **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *Lazaro-Javier, JJ*., concur

Caguioa, J., on wellness leave.

---

[24] *Supra* note 22, at 791.

SECOND DIVISION

[G.R. No. 217022. June 3, 2019]

THE PEOPLE OF THE PHILIPPINES *plaintiff-appellee, vs.* **SALVE GONZALES *y* TORNO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; PARRICDE; ELEMENTS.—** Article 246 of the Revised Penal Code defines parricide. x x x Parricide is committed when (1) a person is killed; (2) the accused is the killer; and (3) deceased is either the legitimate spouse of the accused, or any legitimate or illegitimate parent, child, ascendant or descendant of the accused.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF CHILDREN AGAINST THEIR OWN FLESH AND BLOOD ARE GIVEN GREAT WEIGHT, ESPECIALLY WHEN NO ILL WILL IS SHOWN.—** The testimonies of Rhey and Racel Gonzales pointing to their own mother as the person who, without mercy, beat up their thirteen-year old brother on the night of September 16, 2009, and again the next morning, deserve full faith and credence. These children would not impute such a heinous crime as parricide on their own mother if it were not true. More so because these children, young as they were, only had appellant to take care of them as their father had already died. The testimonies of children against their own flesh and blood are given great weight, especially when no ill will is shown, as in this case.

3. **ID.; ID.; DENIAL; A WEAK DEFENSE WHICH BECOMES EVEN WEAKER IN THE FACE OF POSITIVE IDENTIFICATION OF THE ACCUSED BY PROSECUTION WITNESSES.— Physical evidence** is a mute but eloquent manifestation of truth. It rates highly in the hierarchy of trustworthy evidence. The physical evidence here is compatible with the testimonies of the prosecution witnesses but inconsistent with appellant's defense of denial. These testimonies, therefore, must prevail. In any event, the Court has invariably ruled that denial is a weak defense

which becomes even weaker in the face of positive identification of the accused by prosecution witnesses.

4. CRIMINAL LAW; REVISED PENAL CODE; MITIGATING CIRCUMSTANCES; LACK OF INTENTION TO COMMIT SO GRAVE A WRONG; CANNOT BE APPRECIATED WHEN THE ACCUSED IS SUFFICIENTLY SHOWN TO HAVE USED BRUTE FORCE ON THE VICTIM.— Appellant was sufficiently shown to have used brute force on Ronald x x x. Undoubtedly, appellant was motivated not by an honest desire to discipline Ronald for his mistake but by an evil intent to ruthlessly beat up the helpless little boy. x x x Appellant's cruelty toward her young child wickedly defies human nature especially the mother's protective instinct toward her own. In the words of the Court of Appeals, *"it is inexplicably tragic that the very person who brought Ronald into this world, with the natural and unconditional obligation to protect and nurture him, was also the one who brought his life to a premature end at the very young age of thirteen (13)."* Plainly, appellant's brutish acts sufficiently produced, and did actually produce, her son's death. Appellant, therefore, cannot be credited with the mitigating circumstance of lack of intention to commit so grave a wrong.

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

LAZARO-JAVIER, *J.*:

The Case

This appeal[1] assails the Decision dated July 1, 2014[2] of the Court of Appeals in CA-G.R. CR-H.C. No. 06227 entitled "*The*

---

[1] By Notice of Appeal dated May 24, 2013; CA *rollo*, pp. 17-18.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Samuel H. Gaerlan and Eduardo B. Peralta, Jr.; *rollo*, pp. 2-28.

People of the Philippines v. Salve Gonzales y Torno" for parricide. It affirmed the Judgment dated May 20, 2013[3] of the Regional Trial Court-Quezon City, Branch 102, in Criminal Case No. Q-09-160855, finding appellant Salve Gonzales y Torno guilty of parricide for killing her thirteen-year old son Ronald Gonzales[4] and imposing on appellant appropriate penalties and monetary awards.[5]

The Proceedings Before the Trial Court

By Information[6] dated September 22, 2009, appellant Salve Gonzales *y* Torno was charged with parricide, as follows:

> That on or about the 16th day of September, 2009, in Quezon City, Philippines, the above-named accused, being then the mother of the victim, with intent to kill, did then and there willfully, unlawfully and feloniously, attack, assault and employ personal violence upon the person of RONALD GONZALES y TORNO, a minor, 13 years of age, by then and there hitting her (sic) on his head with the use of broomstick ("walis tambo"), thereby inflicting upon him serious and mortal injuries which were the direct and immediate cause of her (sic) untimely death, to the damage and prejudice of the heirs of the said RONALD GONZALES y TORNO.
>
> CONTRARY TO LAW.[7]

On arraignment, appellant pleaded not guilty.[8]

At the pre-trial, the parties stipulated on appellant's identity and her relationship with the thirteen-year old victim.[9] During the trial proper, Rhey Gonzales, Racel Gonzales, Glena Gonzales,

---

[3] Penned by Judge Ma. Lourdes A. Giron; CA *rollo*, pp. 20-32.

[4] Baron in some parts of the *rollo*, TSN, February 22, 2010, pp. 3-4.

[5] CA *rollo*, pp. 31-32.

[6] Record, p. 1.

[7] *Id*.

[8] *Id*. at 32-34.

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

and Dr. Filemon C. Porciuncula, Jr. testified for the prosecution. On the other hand, only appellant testified for the defense.

The Prosecution's Evidence

Rhey Gonzales

He was the eldest among appellant's four children and the brother of Ronald Gonzales. Their father was already dead. At the time of the incident, he was fifteen years old while Ronald was thirteen.[10]

On September 16, 2009, around 7 o'clock in the evening, he and Ronald got home from school. Appellant also got home from work around the same time. Shortly after, she discovered they had no current in the house because Ronald sold the bronze wire connected to the electric meter. Then, appellant's co-workers came to fetch her. When she came back home, she was drunk. Using a hanger, she hit Ronald several times until the hanger snapped. Still, she did not stop. She got hold of the broom and using its wooden handle, hit Ronald's head and body. At that time, Rhey was lying on the lower bunk of their double-deck bed. He cried when he saw what was going on. His two other siblings Racel and Raymart also cried.[11]

When Rhey woke up around 6 o'clock the next morning, he saw vomit on Ronald's bed and his jogging pants were wet with urine. Ronald could not eat and looked very weak. Meanwhile, appellant asked Ronald why he sold the bronze electrical wire. Ronald confessed he sold the bronze electrical wire because he needed money for his project. She then again took hold of the broom and inserted its handle into Ronald's mouth. Later in the evening, when Rhey arrived home, he learned that their aunt Glena Gonzales brought Ronald to the East Avenue Medical Center.

---

[10] TSN, February 22, 2010, pp. 3-4.

[11] *Id.* at 5-10.

Together with his uncle Teody Gonzales, he went to the hospital to check Ronald's condition. Ronald died around 10 o'clock in the evening of September 17, 2009.[12]

Racel Gonzales

She was the younger sister of Ronald. She was eleven years old at the time of the incident. She saw appellant scold and hit Ronald with a hanger while he lay on the bed. Appellant hit Ronald's legs, arms, and head with the handle. The following morning, she saw vomit on Ronald's mouth, on the bed, and on the floor. She also noticed that Ronald was very weak. Later in the afternoon, she went to the East Avenue Medical Center to visit Ronald. Appellant was at the hospital when Ronald was pronounced dead.[13]

Glena Gonzales

She was appellant's sister-in-law and Ronald's aunt. They were neighbors. About 9 o'clock in the morning of September 17, 2009, she went to appellant's house. Only appellant and Ronald were there. She saw Ronald unconscious and very pale. When she could not feel Ronald's pulse, she carried him shouting they should bring him to the hospital. Appellant replied that Ronald was just pretending. Together with a certain Mommy Ludy, she rushed Ronald to Tiga Clinic in Manggahan where he was given oxygen. Appellant remained in the house.[14]

After an hour, the clinic caretaker told them to transfer Ronald to the East Avenue Medical Center. There, the doctor said Ronald was comatosed and only had 50% chance of survival. Ronald died around 11 o'clock in the evening.[15]

---

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

[13] TSN, June 21, 2010, pp. 3-10.

[14] TSN, August 23, 2010, pp. 3-8.

[15] *Id*. at 8-10.

Dr. Filemon C. Porciuncula, Jr.

He was the Medico-Legal Officer of the PNP Crime Laboratory who examined Ronald's body on September 18, 2009. He found that Ronald sustained one external injury (swelling) and one internal injury (brain hemorrhage). In his expert opinion, the injuries were caused by a forcible blow using a blunt object. The direct cause of death was a blood clot in his head.[16] The possibility that the deceased sustained it because he fell from a high elevation was very remote.[17]

The Defense's Evidence

Appellant testified that on September 16, 2009, around 5:30 in the afternoon, she got home but it was dark inside. Racel told her Ronald cut the electrical wiring and sold it. When Ronald arrived from school, he admitted selling the copper wire to buy something. She ordered him to lay his hands on the table. She hit them once with a hanger. Racel and Raymart[18] saw her hit Ronald's hands. It was painful for her as a mother so she went out and returned around 9 o'clock in the evening. At that time, her children were already asleep. She hugged Ronald and told him, "*pasensia ka na kong nasaktan kita, kasi kasalanan mo*." She went to sleep shortly after.[19]

Early the next day, she heard a noise and saw Ronald sitting and leaning on the ladder of the double-deck bed. When she asked what happened, Ronald said he slipped and fell. Ronald went to the comfort room and went back to sleep. About 5 o'clock in the morning, she told Rhey to wake up Ronald. At that time, Ronald was vomiting. She gave Ronald a hot drink thinking her son was "*nalamigan*." Meantime, Rhey left to

---

[16] TSN, February 28, 2011, pp. 3-7.

[17] *Id*. at 10.

[18] Appellant has four children; Rhey, Ronald, Racel, and the youngest is Raymart; CA *rollo*, p. 28.

[19] TSN, September 5, 2011, pp. 3-7.

bring Racel to school. When he returned, she told him to help Ronald take a bath. After the bath, Ronald lay on the bed while she washed clothes outside.[20]

When she noticed that Ronald was very weak, she told him to go to his Tita Glena's house. Glena brought Ronald to the clinic for treatment. They were told though that his heartbeat was very weak and they needed to bring him to the hospital. She followed them to the clinic, and together with Glena, brought Ronald to the East Avenue Medical Center. Between 9 o'clock and 10 o'clock in the evening, Ronald died.[21]

The Trial Court's Ruling

As borne by Judgment dated May 20, 2013,[22] the trial court rendered a verdict of conviction, *viz*:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused Salve Gonzales y Torno, GUILTY beyond reasonable doubt of the crime of Parricide defined and penalized under Article 246 of the Revised Penal Code and she is hereby sentenced to suffer the penalty of Reclusion Perputua (sic) and to indemnify private complainants the amounts of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.
>
> SO ORDERED.[23]

The trial court found that the elements of parricide were all present in the case. Rhey and Racel Gonzales positively testified that appellant severely beat up their brother Ronald first with a hanger until it broke, and then, with the broom's wooden handle. Appellant hit Ronald all over his body, including his head. This caused traumatic injuries which resulted in Ronald's death.[24]

---

[20] *Id*. at 7-9.

[21] *Id*. at 9-10.

[22] CA *rollo*, pp. 20-32.

[23] *Id*. at 31-32.

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

The Proceedings Before the Court of Appeals

On appeal, appellant faulted the trial court for finding her guilty of parricide despite the prosecution's alleged failure to prove her guilt beyond reasonable doubt. She denied killing her son. She insisted Ronald just slipped.[25] She also argued that even assuming she killed Ronald, the mitigating circumstance of lack of intention to commit so grave a wrong must be appreciated in her favor.[26]

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Karl B. Miranda and Senior State Solicitor Noel Cezar T. Segovia[27] countered that the straightforward testimonies of the prosecution witnesses clearly established that appellant's acts toward her thirteen-year old son were sadistic, not just corrective.[28] Her defense of denial cannot outweigh her children's positive testimonies.[29] Lastly, the mitigating circumstance of lack of intention to commit so grave a wrong cannot favor appellant since there was no notable disparity between the means she employed in beating up Ronald and the resulting injuries which caused his death.[30]

The Court of Appeal's Ruling

The Court of Appeals affirmed. It held that appellant's defense of denial cannot prevail over the positive testimonies of her own children.[31] Also, the mitigating circumstance of lack of intention to commit so grave a wrong cannot work in appellant's favor since her acts were reasonably sufficient to cause Ronald's death.[32]

---

[25] *Id*. at 48.

[26] *Id*. at 39-52.

[27] *Id*. at 72-85.

[28] *Id*. at 79.

[29] *Id*. at 81.

[30] *Id*. at 82.

[31] *Rollo*, p. 20.

[32] *Id*. at 21.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for her acquittal. In compliance with Resolution dated June 17, 2015,[33] both appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.[34]

Ruling

We deny the appeal.

Parricide and its elements proven

Article 246 of the Revised Penal Code defines parricide, *viz*:

> **Article 246.** *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

Parricide is committed when (1) a person is killed; (2) the accused is the killer; and (3) deceased is either the legitimate spouse of the accused, or any legitimate or illegitimate parent, child, ascendant or descendant of the accused.[35]

Here, the presence of the **third element** is undisputed. Appellant is Ronald's mother.[36] Ronald's birth certificate (Exhibit "C")[37] showed this fact.

As for the **first and second elements**, appellant's minor children Rhey and Racel Gonzales categorically identified appellant as the person who killed Ronald. They each gave an

---

[33] *Id*. at 34-35.

[34] *Id*. at 38-40 and 43-45.

[35] *People v. Andaya*, G.R. No. 219110, April 25, 2018.

[36] Records, pp. 40-41.

[37] *Id*. at. 38.

eyewitness account of how appellant inflicted multiple blows on Ronald's head and body, first using a hanger until it snapped, and then, the broom's wooden handle, thus:

Rhey Gonzales

Q: You said that after arrival of your mother she started hitting your brother Ronald Gonzales with a hanger?
A: Yes, sir. After she arrived she hit Baron with a hanger. And then when the hanger was broken she got a broom and the handle of the broom is *yantok*. She hit Baron with the handle of the broom.

Q: You said that the handle of the broom is *yantok*?
A: Yes, sir.

Q: What part of the broom hit the body of Ronald?
A: The handle, sir.

Q: The *yantok*?
A: Yes, sir.

Q: Okay, what part of the body of Ronald was hit by that *yantok*?
A: At first on his legs, arms, body and after a while I heard that he was hit on his head.

Q: The *yantok* hit the head of your brother?
A: Yes, sir.

Q: As far as you know, how many times did the *yantok* hit the head of your brother?
A: Once only, sir.

Q: What did Ronald, your brother, the victim in this case do when he was hit by that *yantok*?
A: He was saying *tama na, tama na, hindi na po mauulit*. But my mother continued hitting him.[38]

x x x x x x x x x

Q: By the way, did your mother stop hitting Ronald?
A: When he was hit at the head, and after hitting him again on

---

[38] TSN, February 22, 2010, pp. 9-10.

his body for a few times and then she stopped.[39]

Racel Gonzales

Q: What part of the body of your Kuya Ronald was hit by your mother?
A: His legs, arms and head, sir.

Q: What particular object was used by your mother in hitting your brother?
A: At first she used hanger but when the hanger was broken, she used the broom.

Q: And you said that your brother Ronald was hit by that *tambo* in different parts of his body, what particular part of the *tambo* was used in hitting the body of your brother?
A: The handle, sir.[40]

x x x x x x x x x

Q: What was the position of Ronald when he was hit by your mother?
A: He was lying down sir.[41]

x x x x x x x x x

Q: Were you able to hear words coming from your brother while he was being hit by your mother?
A: Yes, sir.

Q: What particular words were uttered by Ronald?
A: *Huwag na po hindi na po ako uulit.*[42]

The testimonies of Rhey and Racel Gonzales pointing to their own mother as the person who, without mercy, beat up their thirteen-year old brother on the night of September 16, 2009, and again the next morning, deserve full faith and credence. These children would not impute such a heinous crime as parricide

---

[39] *Id.* at 10-11.

[40] TSN, June 21, 2010, p. 6.

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

[42] TSN, June 21, 2010, p. 7.

on their own mother if it were not true. More so because these children, young as they were, only had appellant to take care of them as their father had already died. The testimonies of children against their own flesh and blood are given great weight, especially when no ill will is shown,[43] as in this case.

Too, the positive testimonies of Rhey and Racel Gonzales firmly interlocked with the **anatomical sketch**[44] and **Medico-Legal Report**[45] of Dr. Filemon C. Porciuncula, Jr. His findings showed that the fatal blow caused blood clot in Ronald's head, causing his death, thus:

Q: On the second paragraph of this Medico Legal Report there is a notation "*HEAD: 1. Swelling, left temporo-parietal region measuring 7x6 cm., 7 from the midsagittal line. There is a cavitation at the epidural area of the left temporo-parietal region, measuring 10x10 cm. filled with blood and blood clots.*" Can you explain this term in layman's view?

A: My findings is indicated in the anatomical sketch the location of the swelling on the left side of the head and the swelling measures 7x6 cm. and 7 cm. from the midsagittal line and when I dissected the head of the victim there is a cavitation on the left side of the radium and this measures 10x10 cm. is filled with blood and blood clots which is the direct cause of the death of the victim which is epidural hemorrhage.[46]

x x x x x x x x x

Q: What may cause the injury?

A: The swelling and the internal injury sustained by the victim which is blood is caused by severe application called (sic) blunt caused by a blunt object, sir.

Q: So it may be caused by anything which is (sic) consists of wood or it would be any kind of ...?

A: Anything that is solid, sir.

---

[43] *People v. Dalag*, 450 Phil. 304, 324-325 (2003)

[44] Record, p. 75.

[45] *Id*. at 37.

[46] TSN, February 28, 2011, pp. 5-6.

Q: So as far as your finding is concerned, how many injuries you found in the head of the victim?
A: There is one external injury the swelling and one internal injury which is the brain hemorrhage which is cause(d) by blunt application of force.[47]

x x x x x x x x x

Q: You also testified a while ago that in your findings the direct cause of death was the blood clot you found on the head?
A: Yes, ma'am.[48]

Physical evidence is a mute but eloquent manifestation of truth. It rates highly in the hierarchy of trustworthy evidence. The physical evidence here is compatible with the testimonies of the prosecution witnesses but inconsistent with appellant's defense of denial. These testimonies, therefore, must prevail.[49] In any event, the Court has invariably ruled that denial is a weak defense which becomes even weaker in the face of positive identification of the accused by prosecution witnesses.[50]

Appellant's story that she only smacked Ronald's hands and that he fell from the top bunk of their double-deck bed is unworthy of belief. Again, it cannot prevail over her children's positive testimony that after beating up Ronald with a hanger all over his body, they also saw her hit Ronald in the head with the broom's *yantok* handle and even inserted it in his mouth. Being in the same room with appellant and Ronald, Rhey and Racel witnessed up close appellant's acts of cruelty inflicted on their helpless brother Ronald.

At any rate, Dr. Porciuncula, Jr. specifically ruled out appellant's theory that Ronald's fatal head injury resulted from his supposed fall from a relatively high elevation, *viz*:

---

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

[48] *Id*. at. 9.

[49] *People v. Carillo*, 388 Phil. 1010, 1021-1022 (2000)

[50] *People v. Gaspar* 731 Phil. 162, 168 (2014)

Q: Would it be possible, Mr. Witness, that a person who might have fallen from a relatively high days (sic) might have sustained the said swelling or internal injuries?
A: The possibility is very remote considering that there were no other injuries noted on the victim except for the swelling on the head.

Q: Are you saying that it is not possible?
A: The possibility is very remote.

Q: So it could still be possible?
A: Yes for percentage there is 1%.[51]

Dr. Porciuncula, Jr.'s expert testimony deserves respect and great weight as against appellant's incredible story.

No mitigating circumstance proven

In the alternative, appellant argues that the mitigating circumstance of lack of intention to commit so grave a wrong as that committed should be appreciated in her favor.

We are not persuaded.

Appellant was sufficiently shown to have used brute force on Ronald so much so that the hanger she initially used snapped. Even then, appellant did not stop; she got hold of the broom and using its wooden handle hit Ronald in the head and all over his body. The following morning, appellant saw Ronald's critical condition. There was vomit on his bed and on the floor. His jogging pants were wet with urine. He was so weak he could neither get up, nor hold a spoon. He later fell to the ground. But appellant still did not take pity on her young child. Once more, she got the broom and pushed its *yantok* handle inside Ronald's mouth.[52] Rhey's testimony on appellant's heartless assault on her thirteen-year old child was unwavering:

---

[51] TSN, February 28, 2011, p. 10.

[52] *Rollo*, p. 22.

Q: After you woke up what did you notice, if any?
A: When I woke up (I) noticed that there was vomit on the bed of Ronald as well as on my bed. And his jogging pants was wet with urine.

Q: So your mother was there also?
A: A: Yes, sir.

x x x x x x x x x

Q: Was she able to see the vomit and the urine?
A: Yes, sir.[53]

x x x x x x x x x

Q: What happened next after you cleaned up that mess?
A: After I was able to clean the mess, my mother already cooked our breakfast. And then she instructed Ronald to get up from his bed. But Ronald was not able to get up from his bed. I assisted him going down and my mother told him to eat but he could not eat because he was weak.[54]

x x x x x x x x x

Q: What happened after Ronald seated at the bed of your mother?
A: My mother asked him again why Ronald sold the bronze despite giving him an allowance. She again took the broom and put the end of the handle inside the mouth of Ronald.

Q: You said a broom, the broom used in that night in hitting your brother?
A: Yes, sir.

Q: So you are referring to the *yantok* which was put inside the mouth of your brother?
A: Yes, sir.

Q: Was the point of the *yantok* entered the mouth of your brother?
A: At his lips.

Q: But it was able to hit the mouth of your brother?
A: Yes sir. There was a wound in his lips.

---

[53] TSN, February 22, 2010, p. 12.

Q: What did your mother tell Ronald while she was pushing the *yantok* in his mouth?
A: She was asking Ronald, "*bakit mo ba ibinenta yung tanso?*" Ronald cannot speak.

Q: So what happened after that?
A: After a while when he was being hit by my mother in his lips, he was able to answer that he sold it because he will use the money for his project.[55]

x x x x x x x x x

Q: So what happened?
A: My mother stopped. After that the breakfast was ready so I was feeding Baron but he could not eat. He was too weak and then he fell down.[56]

x x x x x x x x x

Q: So, who was the one who fed Ronald that following morning?

A: He was given food but he was not able to eat because he cannot hold the spoon anymore and the food was falling.[57]

x x x x x x x x x

Q: You said that you notice that Baron/Ronald was too weak and he fell down?
A: Yes ma'am, I noticed that before I left for school.

Q: So, where was your mother at that time?
A: She was at home ma'am.

Q: You did not ask help from your mother?
A: No ma'am. My mother said not to mind Ronald because he was a drug addict, he was just pretending.[58]

---

[54] *Id*. at 13.

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

[56] *Id*. at 14-15.

[57] TSN, April 19, 2010, p. 13.

[58] *Id*. at 14.

Undoubtedly, appellant was motivated not by an honest desire to discipline Ronald tor his mistake but by an evil intent to ruthlessly beat up the helpless little boy.[59] She kept beating him up despite seeing him already so weak and frail. Worse, appellant never showed any sign of remorse, much less, love for her visibly dying child. She even refused to bring him to the hospital, saying he was just pretending.[60] As Rhey vividly recalled:

Q: Who brought him to the hospital?
A: My auntie ma'am.

Q: What is the name of your auntie?
A: Glena.

Q: Where was your mother at that time?
A: My mother was just at home.[61]

x x x x x x x x x

Q: What steps did your mother do to your brother, Ronald, inspite of the fact that his condition was unusual as far as you were concerned?
A: My mother did not do anything, because according to her Ronald was just pretending.[62]

Glena Gonzales recounted that when she saw how pale Ronald was and felt he had already lost his pulse, she immediately rushed him to the hospital. For her part, appellant did nothing, merely stayed home, and even mocked Ronald as a mere pretender, *viz:*

Q: You said that you brought Ronald Gonzales to the hospital, how come what was the reason why you brought Ronald to the hospital?
A: When Mommy Ludy called me and told me to see Ronald and when I opened the door, I saw Ronald lying down very

---

[59] *People v. Sales*, 674 Phil. 150, 162 (2011)

[60] *Rollo*, p. 22.

[61] TSN, April 19, 2010, p. 15.

[62] *Id*. at 19.

pale and when I looked at his pulse he has no pulse that's why I shouted and told them that we brought (sic) him to the hospital.

x x x x x x x x x

Q: Who was there or who were there in that very particular incident?
A: There were only two (2) his mother and Ronald, sir.[63]

x x x x x x x x x

Q: So what happened after you saw Ronald?
A: I carried him up but she told me that he was just pretending so I brought him inside our house and tried to give him milk.

Q: You said, "*sabi niya nagkukunwari*", whom you are referring to?
A: His mother, sir.

x x x x x x x x x

Q: By the way, what was the condition of Ronald during that very moment when you decided to bring him to your house?
A: He was unconscious so we carried him, sir.[64]

x x x x x x x x x

Q: Where was the accused when you were at the clinic?
A: She was left inside their house, sir.

Q: So you want to impress the Honorable Court that the accused did not go to the clinic?
A: I was alone because she doesn't want to bring her child to the hospital.[65]

Appellant's cruelty toward her young child wickedly defies human nature especially the mother's protective instinct toward her own. In the words of the Court of Appeals, "*it is*

---

[63] TSN, August 23, 2010, p. 6.

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

[65] *Id*. at 8.

inexplicably tragic that the very person who brought Ronald into this world, with the natural and unconditional obligation to protect and nurture him, was also the one who brought his life to a premature end at the very young age of thirteen (13)."[66] Plainly, appellant's brutish acts sufficiently produced, and did actually produce, her son's death. Appellant, therefore, cannot be credited with the mitigating circumstance of lack of intention to commit so grave a wrong.

All told, We affirm appellant's conviction for parricide. The penalty for parricide is *reclusion perpetua* to death.[67] There being no aggravating or mitigating circumstance proven, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua*. We affirm the award of ₱75,000.00 as civil indemnity.

In accordance with prevailing jurisprudence,[68] however, the awards of moral and exemplary damages should be increased to ₱75,000.00 each. Temperate damages of ₱50,000.00, in lieu of actual damages, are also granted. Finally, these amounts shall earn six percent interest *per annum* from finality of this Decision until fully paid.

ACCORDINGLY, the appeal is **DENIED**. The Decision dated July 1, 2014 of the Court of Appeals in CA-G.R. CR-H.C. No. 06227 is **AFFIRMED** with **MODIFICATION**.

Appellant **Salve Gonzales *y* Torno** is found **GUILTY** of **parricide** and sentenced to ***reclusion perpetua***. She is further required to **pay civil indemnity, moral damages, and exemplary damages of ₱75,000 each; and temperate damages of ₱50,000.00** to the heirs of Ronald Gonzales. These amounts shall earn six percent (6%) interest *per annum* from finality of this decision until fully paid.

---

[66] *Rollo*, p. 10.

[67] Under Article 246 of the Revised Penal Code, as amended by Republic Act (RA) No. 7659.

[68] *People v. Jugueta*, 783 Phil. 806, 832 (2016)

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *J. Reyes, Jr., JJ.*, concur.

Caguioa, J., on official leave.

SECOND DIVISION

[G.R. No. 218571. June 3, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLAN SISCAR *y* ANDRADE,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONY OF MINOR VICTIMS IS NORMALLY GIVEN FULL WEIGHT AND CREDIT.—** AAA's testimony was so replete with sordid details she could not have known them had she not actually experienced them. The trial court found AAA's testimony positive, straightforward, and categorical. Consequently, even standing alone, AAA's testimony is sufficient to support appellant's conviction for rape, given the intrinsic nature of the crime of rape where only two persons are usually involved. The Court has ruled that it is instinctive for a young, unmarried woman to protect her honor and it is thus difficult to believe that she would fabricate a tale of rape, allow the examination of her private parts, and permit herself to be subject of a public trial had she not really been raped. Moreover, We have consistently held that the testimony of minor victims is normally given full weight and credit.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; WHEN THE RAPE VICTIM'S DETAILED, POSITIVE AND CATEGORICAL TESTIMONY ABOUT THE SEXUAL VIOLATION SHE EXPERIENCED CONFORMS WITH THE MEDICAL FINDING**

OF HYMENAL LACERATION, THE SAME IS SUFFICIENT TO SUPPORT A VERDICT OF CONVICTION.— [A]ppellant's conviction was not based alone on AAA's testimony. The trial court also considered Dr. Bae's corroborative medical findings and testimony pertaining to AAA's non virgin state, lacerated hymen at 3 o'clock and 9 o'clock positions, and contusions and abrasions she sustained on her lower back and shoulders. A hymenal laceration is the best evidence of forcible sexual penetration. It does not matter whether it is healed or fresh. Indeed, when the rape victim's detailed, positive and categorical testimony about the sexual violation she experienced solidly conforms with the medical finding of hymenal laceration, the same is sufficient to support a verdict of conviction.

3. **ID.; ID.; ID.; MAY BE COMMITTED EVEN IN PLACES WHERE PEOPLE CONGREGATE, IN PARKS, ALONG ROADSIDE, WITHIN SCHOOL PREMISES, INSIDE AN OCCUPIED HOUSE, AND EVEN WHERE OTHER MEMBERS OF THE FAMILY ARE SLEEPING.—** As for appellant's theory that he could not have raped AAA in a place near the road and surrounding residential houses without alerting people to come and help her, the Court has consistently recognized that rape may be committed even in places where people congregate, in parks, along roadside, within school premises, inside an occupied house, and even where other members of the family are sleeping. For lust is no respecter of time or place.

4. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PREVAIL OVER THE VICTIM'S POSITIVE AND UNWAVERING IDENTIFICATION OF THE ACCUSED AS THE PERSON WHO COMMITTED THE CRIME.—** Alibi is the weakest of all defenses because it can easily be fabricated. More so, when as in this case, it is unsubstantiated, nay, devoid of any showing that it was impossible for the accused to be at the *locus criminis* on the day and time the crime was committed. In any event, alibi cannot prevail over the victim's positive and unwavering identification of the accused as the one who succeeded in having carnal knowledge of her through force and violence.

5. **ID.; ID.; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS THEREON, ESPECIALLY WHEN THE SAME CARRY THE CONCURRENCE OF THE COURT OF APPEALS, ARE ACCORDED FULL RESPECT.—** [A]ppellant's

assigned errors all dwell on the issue of credibility. Suffice it to state that the Court generally accords full respect to the trial court's factual findings on the credibility of witnesses especially when the same carry the concurrence of the Court of Appeals. In the absence of any showing that the trial court had misapprehended the facts or disregarded the evidence on record, there is no valid reason to depart from such factual findings.

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

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision[1] dated July 31, 2014 of the Court of Appeals affirming the trial court's verdict[2] of conviction against appellant for rape.

The Information

By Information dated March 18, 2008,[3] appellant Allan Siscar y Andrade was charged with rape, as follows:

That on or about the 15th day of March, 2008, at 4:00 o'clock in the afternoon, more or less, at Sitio XXX, Barangay YYY, Municipality of ZZZ, Province of Oriental Mindoro, Philippines, and within the

---

[1] Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Romeo F. Barza and Ramon A. Cruz, *rollo*, pp. 2-13.

[2] Under Decision dated November 26, 2012, penned by Judge Tomas C. Leynes, RTC, Br. 40, Calapan City, Oriental Mindoro, CA *rollo*, pp. 37-46.

[3] Record, p. 1.

jurisdiction of this Honorable Court, the above-named accused with lust, lewd and unchaste desire and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one AAA, a seventeen (17) year-old minor, against her will and without her consent, to the damage and prejudice of said AAA.[4]

The case was raffled to the Regional Trial Court, Branch 40, Calapan City, Oriental Mindoro.

The Proceedings before the Trial Court

On arraignment, appellant pleaded not guilt.[5] During the trial, seventeen year old AAA,[*] her father BBB, and Dr. Edelina F. Munoz-Bae testified for the prosecution. On the other hand, appellant Allan Siscar y Andrade alone testified for the defense.

The Prosecution's Version

AAA testified that in the afternoon of March 15, 2008, she and her father BBB arrived at Barangay YYY, Municipality of ZZZ, Province of Oriental Mindoro. They went there to join her group do a house to house solicitation for their attendance and participation in the then forthcoming International Youth

---

[4] *Id.*

[5] *Id.* at 23.

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

Congress.[6] Appellant's house was among those she visited.[7] After completing her task, she took the road along the cemetery and walked toward the group's designated meeting place. As she was walking, however, something hit her head from behind, thrusting her to the ground. Then she felt someone punch her twice in the stomach.[8] It was appellant.[9]

He dragged her to a grassy area, forced her to lie down, and undressed her.[10] She tried to shout but he covered her mouth and punched her again in the stomach.[11] He removed his *maong* short pants and white t-shirt, inserted his penis in her vagina and made pumping motions while kissing her lips and mashing her breast.[12] He also forced his penis into her mouth, kissed her breast, licked her private part, and spat in her mouth.[13]

After appellant left, she put on her clothes and proceeded to the group's meeting place. Her father was there waiting.[14] After telling her father about the incident, they immediately went to the police.[15] A police officer readily responded and accompanied them to appellant's house but he was nowhere in sight. Outside, she noticed a pair of *maong* short pants hanging on the clothesline. She at once recognized it was the same *maong* short pants appellant wore when he raped her.[16] From

---

[6] TSN, February 12, 2009, p. 7.

[7] *Id.* at 12.

[8] *Id.* at 11.

[9] *Id.*

[10] *Id.* at 13 and 15.

[11] *Id.* at 17.

[12] *Id.* at 17-21.

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

[14] *Id.* at 29.

[15] *Id.* at 30-32.

[16] TSN, March 19, 2009, p. 4.

appellant's house, they rushed to the hospital for her physical examination.[17]

BBB testified that on the day of the incident, he was waiting for his daughter AA A to complete her solicitation task.[18] She later came to him crying, her hair was disheveled, her arms and elbows scratched, her clothes dirty and bloodstained on the back.[9] She told him she got raped. He immediately brought her to the police station.[20] They searched for appellant but did not find him.[21] AAA underwent medical examination.[22]

Dr. Edelina F. Muñoz-Bae testified that her physical examination of AAA yielded findings of contusions and abrasions on AAA's lower back, hematoma on her left shoulder, evident signs of injuries in her genitals, and a stellate-shaped hymenal laceration.[23] Her medical report bore the following findings, viz.:

General Physical Examination:
x x x x x x x x x
(+) contusion-abrasion, lower back, (+) hematoma, left shoulder

Genital Examination:
Pubic hair, fully grown, scanty. Labia majora, gaping, Labia minora, coaptated. Fourchette lax; Vestibular mucosa, pinkish from 3:00 to 9:00 o'clock positions. Hymen, measures @ 2cm in length, thick, with stellate shaped laceration, edges are pinkish and edematous. Hymenal orifice, measures @ 2.0 cm in diameter. Vaginal walls, tight. Rugosities, prominent.

---

[17] TSN, February 12, 2009, p. 33.

[18] TSN, June 25, 2009, p. 4.

[19] *Id.* at 5.

[20] *Id.* at 5.

[21] *Id.* at 5.

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

[23] TSN, March 11, 2010, pp. 10-13.

Conclusions:

1. Evident signs of extragenital injuries were noted on the body of the subject at the time of examination.

2. Stellate-shaped hymenal laceration, present.

x x x x x x x x x[24]

The Defense's Version

Appellant claimed that on the date and time AAA got raped, he was in Sabang, Puerto Galera, working.[25] He received his pay around 4 o'clock in the afternoon and got home two hours later.[26]

On March 17, 2008, while he was in Puerto Galera, his wife texted him that he was a suspect in a rape case.[27] He immediately went to the police station to inquire about the case. There, he was taken in custody and no longer allowed to leave.[28] He saw AAA for the first time when she came to the police station.[29] She initially identified another detainee as her assailant but later pointed him out after the guard disclosed he was Allan Siscar.[30] The *maong* short pants hanging on the clothesline belonged to him but the same went missing the day after the incident.[31]

The Trial Court's Ruling

By Decision[32] dated November 26, 2012, the trial court rendered a verdict of conviction, thus:

---

[24] Record, p. 57.

[25] TSN, July 23, 2012, pp. 3-5.

[26] *Id.* at 16.

[27] *Id.* at 9 and 13.

[28] *Id.* at 9 and 12.

[29] *Id.* at 5.

[30] *Id.* at 6.

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

[32] CA *rollo*, pp. 37-46.

Accordingly, finding herein accused Allan Siscar y Andrade **GUILTY** beyond reasonable doubt of the crime of Rape punishable under Article 266-A of the Revised Penal Code, said accused is hereby sentenced to suffer the penalty of **Reclusion Perpetua** with all the accessory penalties as provided for by law.

Said accused is hereby directed to indemnify the private complainant the amount of One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, Seventy Five Thousand Pesos (₱75,000.00) as moral damages and Fifty Thousand Pesos (₱50,000.00) as exemplary damages.

SO ORDERED.

The trial court gave full credence to AAA's straightforward and categorical testimony and rejected appellant's denial and alibi. According to the trial court, it was not physically impossible for appellant to have been at the *locus criminis* on the date and time in question. It sentenced him to *reclusion perpetua* with all the accessory penalties. It further directed him to pay complainant ₱100,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of rape despite AAA's alleged failure to clearly, directly, and spontaneously identify him as the assailant. He stressed that since the supposed *locus criminis* was adjacent to the road and numerous residential houses, it was highly improbable for people not to have come to help complainant, if truly she got raped there.

In refutation, the Office of the Solicitor General (OSG), through Assistant Solicitor General Reynaldo L. Saludares and Associate Solicitor Ron Winston A. Reyes averred that AAA positively identified appellant as the one who sexually ravished her near the cemetery around 4 o'clock in the afternoon of March 15, 2008. The trial court found her testimony credible in contrast with appellant's unsubstantiated, nay, inherently weak denial and alibi.

In its assailed Decision dated July 31, 2014, the Court of Appeals affirmed. It found that AAA did not identify appellant solely on the basis of the *maong* short pants she saw on the clothesline outside his house. It concurred with the trial court's finding that she positively identified appellant as the predator who sexually violated her. She clearly recognized him because earlier that day, she went to his house and personally saw appellant there. She even handed a solicitation letter to his wife.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution[33] dated August 5, 2015, both the OSG and appellant manifested that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.[34]

Issue

Did the Court of Appeals err in affirming appellant's conviction for rape?

Ruling

The appeal must fail.

AAA recounted in detail how appellant sexually violated her around 4 o'clock in the afternoon of March 15, 2008 in a grassy area near the cemetery, *viz*:

COURT:

Q: By the way, will you please tell this Court how the accused Allan Siscar raped you?

A: **I was then about to go to our group meeting place when somebody hit my head near the cemetery, Your Honor.**

x x x x x x x x x

---

[33] *Rollo*, pp. 18-19.

[34] *Id.* at 20-22 and 30-32.

Q: And you lost consciousness?
A: **I initially felt dizzy then I fell down and the accused then delivered two punches on (sic) my abdomen.**

Q: **And did you recognize who was that person who did that to you?**
A: **Yes, Your Honor.**

Q: **And who was he?**
A: **Allan Siscar.**

Q: The accused in this case?
A: Yes, Your Honor.

Q: **And how come that you knew the accused?**
A: **Because I vividly saw his face.**

Q: **Do you know him personally?**
A: **I did not know him personally although I gave him a solicitation paper previously.**

x x x x x x x x x

Q: Now, according to you, you were boxed two (2) times at (sic) your abdomen by the accused. What happened next after that?
A: **He thereafter dragged me to a grassy area.**

x x x x x x x x x

Q: **xxx. What else happened after that?**
A: **He made me lie down and undressed me.**

x x x x x x x x x

Q: Did you shout?
A: Yes, but the accused was covering my mouth, Your Honor.

x x x x x x x x x

Q: So after you were undressed, then the accused undressed himself, is that what you mean?
A: Yes, Your Honor.

x x x x x x x x x

Q: **What were you doing while he was removing his T-shirt, shorts and brief?**
A: **I was still on a lying position because of too much weakness since the accused again boxed me on my stomach.**

PROS. DOLOR:

Q: **What happened next, Madam Witness, after you felt weak after the accused boxed you again on your stomach?**

A: **He inserted his sex organ, sir.**

COURT:

Q: **Where?**

A: **To my sex organ, Your Honor.**

Q: **What did the accused do after he inserted his sex organ in your sex organ?**

A: **He kissed my lips, Your Honor.**

Q: What else?

A: **He mashed my breast, Your Honor.**

x x x x x x x x x

Q: What did you do when he kissed your lips?

A: I was crying, Your Honor.

Q: **And what was he doing while his penis was inserted in your vagina?**

A: **He was doing pumping motions, Your Honor.**

x x x x x x x x x

PROS. DOLOR:

May we respectfully manifest that the witness is crying while testifying.

x x x x x x x x x

Q: Now, after 30 minutes of push and pull or pumping motions of the accused while on top of you, what happened?

A: **The accused forced me to insert his penis into my mouth, Your Honor.**

Q: And were you able to follow his instruction?

A: I was trying not to follow his instruction but he was holding my mouth in a way that it would widely open.

Q: And was he successful in putting his penis inside your mouth?

A: Yes, Your Honor.

x x x x x x x x x

Q: After that, what happened?
A: **The accused then removed his penis from my mouth and kissed my breast, Your Honor.**

Q: Then, what happened next?
A: **He licked my private part, Your Honor.**

x x x x x x x x x

Q: And after licking your private part, what happened next?

A: **He spit into my mouth, sir.**

Q: And after that, what happened next?

A: He wiped my entire body and left me still totally naked, sir.[35]
(Emphases supplied)

AAA's testimony was so replete with sordid details she could not have known them had she not actually experienced them.[36] The trial court found AAA's testimony positive, straightforward, and categorical. Consequently, even standing alone, AAA's testimony is sufficient to support appellant's conviction for rape, given the intrinsic nature of the crime of rape where only two persons are usually involved.[37] The Court has ruled that it is instinctive for a young, unmarried woman to protect her honor and it is thus difficult to believe that she would fabricate a tale of rape, allow the examination of her private parts, and permit herself to be subject of a public trial had she not really been raped.[38] Moreover, We have consistently held that the testimony of minor victims is normally given full weight and credit.[39]

As it was, appellant's conviction was not based alone on AAA's testimony. The trial court also considered Dr. Bae's corroborative medical findings and testimony pertaining to AAA's

---

[35] TSN, February 12, 2009, pp. 8-25.

[36] *See People vs. Obogne*, 730 Phil. 354, 359 (2014).

[37] *See People vs. Ronquillo*, G.R. No. 214762, September 20, 2017, 840 SCRA 405, 414; *See* also *People vs. Garrido*, 763 Phil. 339, 347 (2015).

[38] *See People vs. Ortega*, 680 Phil. 285, 299-300 (2012).

[39] *People vs. Ramos*, 743 Phil. 344, 356 (2014).

non virgin state, lacerated hymen at 3 o'clock and 9 o'clock positions, and contusions and abrasions she sustained on her lower back and shoulders. A hymenal laceration is the best evidence of forcible sexual penetration. It does not matter whether it is healed or fresh.[40] Indeed, when the rape victim's detailed, positive and categorical testimony about the sexual violation she experienced solidly conforms with the medical finding of hymenal laceration, the same is sufficient to support a verdict of conviction.[41]

Notably, appellant himself did not impute any ulterior motive which could have impelled AAA to falsely charge him with such heinous crime as rape.[42] In fact, he even testified that he only saw AAA for the first time when she came to the police station where he got detained.

Appellant, nonetheless, attempts to destroy AAA's credibility citing some purported improbabilities in her testimony. On this score, he raises two points: *first*, AAA failed to identify him at the police station; and *second*, he could not have raped AAA near the road and surrounding residential houses without alerting people to come and give succor to her.

We are not persuaded.

AAA testified she knew appellant because she went to his house to solicit funds for her group's attendance and participation at the International Youth Congress. Appellant was there and so was his wife. Before she left, she handed a solicitation letter to appellant's wife. Then the rape incident happened. But right after, she and her father reported appellant's crime to the police station. Along with the police officer, they proceeded to appellant's house but he was not there. She recognized, though, a pair of *maong* short pants hanging on the clothesline outside the house to be the same pair appellant wore when he raped her. In fine,

---

[40] *See People vs. Sabal*, 734 Phil. 742, 746 (2014).

[41] *See People vs. Ronquillo*, G.R. No. 214762, September 20, 2017, 840 SCRA 405, 411.

AAA consistently and positively identified appellant, and no other, as the sexual predator who violated her.

We, therefore, reject appellant's claim that AAA initially pointed to someone else when she visited the police station and turned to him only when prodded by the police. At any rate, it is settled that in rape cases, the identity of the offender is often indelibly printed in the mind of the victim.[43]

As for appellant's theory that he could not have raped AAA in a place near the road and surrounding residential houses without alerting people to come and help her, the Court has consistently recognized that rape may be committed even in places where people congregate, in parks, along roadside, within school premises, inside an occupied house, and even where other members of the family are sleeping.[44] For lust is no respecter of time or place.[45]

We now reckon with appellant's denial and alibi. He claims he was working in Sabang, Puerto Galera when the incident took place at Barangay YYY, Municipality of ZZZ, Province of Oriental Mindoro.

Alibi is the weakest of all defenses because it can easily be fabricated. More so, when as in this case, it is unsubstantiated, nay, devoid of any showing that it was impossible for the accused to be at the *locus criminis* on the day and time the crime was committed.[46] In any event, alibi cannot prevail over the victim's positive and unwavering identification of the accused as the one who succeeded in having carnal knowledge of her through force and violence.[47] So must it be.

---

[42] *See People vs. Senieres*, 547 Phil. 674, 687 (2007).

[43] *See People vs. Dela Cruz*, 390 Phil. 961, 983 (2000).

[44] *See People vs. Lor*, 413 Phil. 725, 736 (2001).

[45] *People vs. Agudo*, G.R. No. 219615, June 07, 2017, 827 SCRA28, 40.

[46] *See People vs. Villanueva*, G.R. No. 211082, December 13, 2017.

[47] *See People vs. Vitero*, 708 Phil. 49, 63 (2013).

Another piece of evidence appellant attempts to destroy is the *maong* short pants hanging on the clothesline outside his house right after the incident. Appellant asserts that the *maong* short pants which belonged to him went missing the day after the incident. Appellant's theory is flimsy. For one, he was not convicted based alone on these *maong* short pants. He was convicted mainly on the bases of AAA's positive identification of him as the one who hit her head, punched her in the stomach, dragged her to a grassy area, forced her to lie on the ground, undressed her, punched her one more time, and inserted his penis in her vagina. Then there were the corroborative medical findings of, Dr. Bae regarding AAA's non-virgin state and lacerated hymen. Appellant's pair of *maong* short pants seen hanging on the clothesline was just another piece of corroborative evidence of AAA's positive identification of appellant as the one who raped her.

Be that as it may, appellant's assigned errors all dwell on the issue of credibility. Suffice it to state that the Court generally accords full respect to the trial court's factual findings on the credibility of witnesses especially when the same carry the concurrence of the Court of Appeals. In the absence of any showing that the trial court had misapprehended the facts or disregarded the evidence on record, there is no valid reason to depart from such factual findings.[48]

All told, the Court of Appeals did not err in affirming appellant's conviction for rape and the penalty of *reclusion perpetua* imposed on him. This is in accordance with in Article 266-A, in relation to 266-B of the Revised Penal Code, viz:

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;

---

[48] *See People vs. Gersamio*, 763 Phil. 523, 533 (2015).

x x x x x x x x x

Article 266-B. Penalty. – **Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.**

x x x x x x x x x

(Emphases supplied)

The Court, however, modifies the awards of civil indemnity and exemplary damages. In accordance with prevailing jurisprudence,[49] the award of civil indemnity should be reduced from ₱100,000.00 to ₱75,000.00 while the award of exemplary damages, increased from ₱50,000.00 to ₱75,000.00. On the other hand, the grant of ₱75,000.00 as moral damages is affirmed. Further, the Court imposes six percent interest *per annum* on these amounts from finality of this decision, until fully paid.[50]

Accordingly, the appeal is **DENIED** and the assailed Decision dated July 31, 2014 of the Court of Appeals, **AFFIRMED WITH MODIFICATION**.

Appellant Allan Siscar y Andrade is found guilty of "**Rape**" and sentenced to ***Reclusion Perpetua***. He is further ordered to pay ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. A six percent interest *per annum* is imposed on these amounts from finality of this Decision until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *Reyes, J. Jr., JJ.*, concur.

Caguioa, J., on official leave.

---

[49] *See People vs. Jugueta*, 783 Phil. 806, 849 (2016).

[50] *See People vs. Palanay*, 805 Phil. 116, 129 (2017).

THIRD DIVISION

[G.R. No. 218771. June 3, 2019]

VILLAMOR & VICTOLERO CONSTRUCTION COMPANY, ERWIN VICTOLERO, AND RHEENA BERNADETTE C. VILLAMOR, *petitioners, vs.* **SOGO REALTY AND DEVELOPMENT CORPORATION,** *respondent.*

[G.R. No. 220689. June 3, 2019]

SOGO REALTY AND DEVELOPMENT CORPORATION, *petitioner, vs.* **VILLAMOR & VICTOLERO CONSTRUCTION COMPANY, RHEENA BERNADETTE C. VILLAMOR, AND ERWIN VICTOLERO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; WHEN PRESENT; FORUM SHOPPING IS AN ACT OF MALPRACTICE THAT IS PROHIBITED AND CONDEMNED BECAUSE IT TRIFLES WITH THE COURTS AND ABUSES THEIR PROCESSES.—** Time and again, the Court has held that forum shopping exists when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court. It is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It also degrades the administration of justice and adds to the already congested court dockets.

2. **ID.; ID.; ID.; ANY VIOLATION OF THE RULES AGAINST FORUM SHOPPING RESULTS IN THE DISMISSAL OF A CASE.—** "[T]he grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions.

Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. [Thus, t]o avoid the resultant confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case." This rule is embodied in Rule 7, Section 5 of the Revised Rules of Court x x x.

3. **ID.; ID.; ID.; EXISTS WHEN A FINAL JUDGMENT IN ONE CASE AMOUNTS TO *RES JUDICATA* IN ANOTHER OR WHEN THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT.—** [T]he test for determining the existence of forum shopping is whether a final judgment in one case amounts to *res judicata* in another or whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.

4. **ID.; ID.; MOTION TO DISMISS; *LITIS PENDENTIA*; IDENTITY OF PARTIES; ABSOLUTE IDENTITY OF PARTIES IS NOT REQUIRED, AND WHERE A SHARED IDENTITY OF INTEREST IS SHOWN BY THE IDENTITY OF RELIEF SOUGHT BY ONE PERSON IN A PRIOR CASE AND THE SECOND PERSON IN A SUBSEQUENT CASE, SUCH IS DEEMED SUFFICIENT.—** [T]here is identity of parties in the Petition for *Certiorari* and in the Petition for Review. Settled is the rule that there is identity of parties not only when the parties in the cases are the same, but also between those in privity with them, such as between their successors-in-interest. Absolute identity of parties is not required, and where a shared identity of interest is shown by the identity of relief sought by one person in a prior case and the second person in a subsequent case, such was deemed sufficient. Here, while the members of the CIAC Tribunal were included as respondents in the Petition for *Certiorari*, it cannot be denied that there still exists an identity of parties between the Petition for *Certiorari* and the Petition for Review.

5. ID.; ID.; ID.; ID.; IDENTITY OF RIGHTS ASSERTED AND RELIEFS PRAYED FOR; OBTAINS WHEN THE SAME EVIDENCE NECESSARY TO SUSTAIN THE SECOND CAUSE OF ACTION IS SUFFICIENT TO AUTHORIZE A RECOVERY IN THE FIRST, EVEN IF THE FORMS OR THE NATURE OF THE TWO ACTIONS IS DIFFERENT FROM EACH OTHER.— [T]here is an identity of rights asserted and reliefs prayed for in both petitions. Jurisprudence dictates that this requisite obtains where the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions is different from each other. If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not. x x x [T]he petitions filed by Villamor, et al. practically raise one and the same issue: the CIAC's lack of jurisdiction to hear and decide the present case. In both petitions, Villamor, et al. asserted the same arguments and legal bases in support of their respective position. In both petitions, Villamor, et al. relied on the same pieces of evidence to substantiate their causes of action, which are essentially hinged on the alleged lack of jurisdiction of the CIAC.

APPEARANCES OF COUNSEL

Jeremiah Villanueva for petitioners.
Francisco Gutierez for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court are consolidated cases docketed as G.R. No. 218771 and G.R. No. 220689. In G.R. No. 218771, Villamor & Victolero Construction Company (*VVCC*), Erwin Victolero, and Rheena Bernadette C. Villamor (collectively, *Villamor, et al.*) filed a Petition for Review on *Certiorari*[1] under

[1] *Rollo* (G.R. No. 218771), pp. 11-23.

Rule 45 of the Rules of Court assailing the Decision[2] and the Resolution,[3] dated November 12, 2014 and May 26, 2015, respectively, of the Special Tenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 126320. In G.R. No. 220689, Sogo Realty and Development Corporation (*Sogo Realty*) questioned, through a Petition for Review on *Certiorari*[4] under Rule 45 of the Rules of Court, the Decision[5] and the Resolution, dated February 9, 2015[6] and September 21, 2015, respectively, of the Fifteenth Division of the CA in CA-G.R. SP No. 125273.

The antecedent facts are as follows.

On December 14, 2011, Sogo Realty filed a Complaint (With Application for Interim Measures)[7] against Villamor, et al. before the Construction Industry Arbitration Commission (*CIAC*) alleging that on December 1, 2009, the parties entered into a Construction Agreement by virtue of which Sogo Realty, as owner and developer of a subdivision known as "Ciudad Verde Homes – Phases 2 and 3," located at Paradahan 1, Tanza, Cavite (*the Project*), engaged the services of Villamor, et al. as its contractor. In particular, Villamor, et al. guaranteed to accomplish the works of the Project which include land development such as road works and road preparation works, for a period of one (1) year from the date of final acceptance, as well as to make good all possible defects within a guarantee

---

[2] *Id.* at 141-148; penned by Associate Justice Nina G. Antonio-Valenzuela, with the concurrence of Associate Justices Vicente S.E. Veloso and Carmelita Salandanan-Manahan.

[3] *Id.* at 139-140; penned by Associate Justice Nina G. Antonio-Valenzuela, with the concurrence of Associate Justices Myra V. Garcia-Fernandez and Carmelita Salandanan-Manahan.

[4] *Rollo* (G.R. No. 220689), pp. 3-10.

[5] *Rollo* (G.R. No. 218771), pp. 67-79; penned by Associate Justice Samuel H. Gaerlan, with the concurrence of Associate Justices Normandie B. Pizarro and Zenaida T. Galapate-Laguilles.

[6] *Rollo* (G.R. No. 220689), p. 4.

[7] *Rollo* (G.R. No. 218771), pp. 34-41.

period and at their own expense. According to Sogo Realty, after the completion of the works, the roads constructed by Villamor, et al. began to show ominous signs of defects in workmanship and deficiencies in the materials used therefor. Specifically, Sogo Realty called attention to the fact that despite ordinary and expected use of the roads, they began showing large cracks and are breaking apart. Tests were then conducted on the roads which confirmed the alleged defects. Consequently, Sogo Realty sent a demand letter dated November 16, 2011 to Villamor, et al. directing the latter to remove the defective structures and reconstruct them according to the agreed plans and specifications. Villamor, et al., however, did not take any action.[8] Hence, Sogo Realty's complaint before the CIAC.

As for its decision to submit its issues to arbitration, Sogo Realty alleged that the parties agreed to do so in a handwritten and signed statement in a letter dated September 22, 2011. The arbitration letter was signed for and on behalf of VVCC, by its Estimation and Marketing Manager, Lawrence Napoleon F. Villamor, and for and on behalf of Sogo Realty, by its Vice President for Administration, Francisco M. Gutierrez.[9] The letter states:

> I agree to the proposal to submit to Arbitration, in case we do not agree to the report.
>
> 10/5/11 sgd. Lawrence Napoleon F. Villamor[10]

Thus, Sogo Realty prayed that the CIAC: (1) grant the interim measure of preliminary attachment and examination of the land development works; and (2) issue an arbitral award ordering Villamor, et al. to pay actual damages, exemplary damages, attorney's fees, and costs of arbitration.

---

[8] *Id.* at 68-70.

[9] *Id.* at 70.

[10] *Id.*

In response, Villamor, et al. filed a Motion to Dismiss[11] the Complaint on the ground that CIAC had no jurisdiction over the same. According to them, the Construction Agreement signed by the parties does not contain an arbitration agreement. They also asserted that VVCC did not consent to the submission of issues to arbitration and that Lawrence was not authorized to enter into any arbitration agreement with Sogo Realty. The fact that Lawrence signed the Construction Agreement did not mean that he was likewise given authority to enter into a subsequent agreement to arbitrate on behalf of VVCC.[12]

In an Order[13] dated March 21, 2012, the CIAC denied Villamor, et al.'s Motion to Dismiss, as well as their motion seeking a reconsideration of said denial. According to the CIAC, there is no reason for Sogo Realty to doubt the authority of Lawrence as to being the authorized representative of VVCC considering that it has dealt with him from the inception of the contract. It is clear from the signature appearing on the arbitration letter that the same was Lawrence's and that he was aware of what he was agreeing to. Thus, the CIAC has jurisdiction over the case.[14] As such, it directed Villamor, et al. to file an Answer to the Complaint and scheduled the Preliminary Conference. Villamor, et al., however, did not file their Answer. Instead, they informed the CIAC Arbitral Tribunal during the preliminary conference that they were not submitting themselves to its jurisdiction and that they would be filing a petition for *certiorari*. Thus, proceedings ensued without their participation.[15]

True to their word, Villamor, et al. filed a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court against Sogo Realty and the members of the CIAC Tribunal before

---

[11] *Id.* at 43-45.

[12] *Id.* at 71.

[13] *Id.* at 46-48.

[14] *Id.* at 72-74.

[15] *Id.* at 143.

theCA docketed as CA-G.R. SP No. 125273. In the petition, they imputed grave abuse of discretion on the CIAC Tribunal for issuing the Order denying their Motion to Dismiss and Motion for Reconsideration. In the meantime, however, the CIAC rendered its Final Award[16] in favor of Sogo Realty ordering Villamor, et al. to pay Sogo Realty ₱3,523,650.27 worth of damages, fees, and costs. Aggrieved, Villamor, et al. filed a Petition for Review under Rule 43 of the Rules of Court before the CA assailing the CIAC ruling and insisted that the CIAC did not have jurisdiction over the case.[17]

In a Decision[18] dated November 12, 2014, the CA, Special Tenth Division, dismissed Villamor, et al.'s Petition for Review, finding them guilty of forum shopping. First, the parties in the Petition for Review are the same parties in the Petition for *Certiorari*. *Second*, in both petitions, Villamor, et al. raised the issue of the CIAC's lack of jurisdiction. *Third*, a judgment in the Petition for *Certiorari* would amount to *res judicata* in the Petition for Review. Thus, the dismissal of the Petition for Review is in order.[19]

In another Decision[20] dated February 9, 2015, however, the CA, Fifteenth Division, granted Villamor, et al.'s Petition for *Certiorari* and declared as null and void the orders of the CIAC. Citing Article 1818 of the Civil Code, the CA held that except when authorized by the other partners or unless they have abandoned their business, one or more, but less than all the partners, have no authority to submit a partnership claim or liability to arbitration. The general rule is that powers not specifically delegated in a partnership agreement are presumed to be withheld. According to the appellate court, while Lawrence is VVCC's Estimation and Marketing Manager, it still remains

---

[16] *Id.* at 80-100.

[17] *Id.* at 144.

[18] *Supra* note 2.

[19] *Rollo* (G.R. No. 218771), pp. 145-147.

[20] *Supra* note 5.

that he is not a partner in said partnership. The fact that he is the husband of Rheena Villamor, one of the partners, is of no moment as it does not give him the personality of a partner. The CA further disagreed with the finding of the CIAC that there is no reason for Sogo Realty to doubt the authority of Lawrence as the authorized representative of VVCC. On the contrary, Sogo Realty, as a corporation conversant with business usages, and one which acts through its board of directors, officers, and agents, should have easily determined whether Lawrence was, in fact, clothed with authority. Thus, since VVCC was represented by one without capacity to enter into a binding arbitration, and in the absence of an arbitration clause in their Construction Agreement, the CA ruled that the CIAC had no jurisdiction over the issues brought before it.[21]

On October 20, 2015, Sogo Realty filed its Petition for Review on *Certiorari*[22] before the Court, docketed as G.R. No. 220689, alleging that Villamor, et al. are guilty of forum shopping, that the CIAC has jurisdiction over the case, and that the parties entered into a valid arbitration agreement.[23]

On August 20, 2015, Villamor, et al. filed their Petition for Review on *Certiorari*[24] before the Court, docketed as G.R. No. 218771, arguing that they are not guilty of forum shopping. They claim that in the Petition for *Certiorari* that they filed before the CA, the only issue raised was whether the CIAC had jurisdiction over the complaint; while in their Petition for Review, likewise filed before the CA, apart from the issue of jurisdiction, they raised the additional issue of whether the CIAC erred in awarding damages, fees, and costs in favor of Sogo Realty. As such, the causes of action between the two petitions are different. Villamor, et al. also alleged that they correctly declared in their Certification Against Forum Shopping the

---

[21] *Rollo* (G.R. No. 218771), pp. 76-78.

[22] *Supra* note 4.

[23] *Rollo* (G.R. No. 218771), pp. 3-9.

[24] *Supra* note 1.

pending Petition for *Certiorari* before the CA and that despite said Petition for *Certiorari*, the CIAC proceeded with the case, to their damage and prejudice. Thus, they were left with no other recourse, but to file their Petition for Review to assail the Final Award of the CIAC.[25]

In a Resolution[26] dated November 9, 2015, the: Court consolidated G.R. No. 220689 with G.R. No. 218771 as both cases proceeded from the same set of facts, involved identical parties and raised interrelated issues. The Court also resolved to defer action on the Petition for Review on *Certiorari* filed by Sogo Realty in G.R. No. 220689 and required said party to submit to the Court clearly legible duplicate originals or certified true copies of the assailed decision and resolutions within five (5) days from notice.

Sogo Realty, however, failed to comply with the directive in the November 9, 2015 Resolution, requiring the submission of clearly legible duplicate originals or certified true copies of the assailed decision and resolutions. Thus, in a Resolution[27] dated July 25, 2016, the Court resolved to deny Sogo Realty's petition in G.R. No. 220689 for its failure to obey a lawful order of the Court pursuant to Section 5(e), Rule 56 of the 1997 Rules of Civil Procedure, as amended. Thereafter, the July 25, 2016 Resolution became final and executory and was duly recorded in the Book of Entries of Judgment, as evidenced by an Entry of Judgment[28] dated September 27, 2016.

Thus, what remains pending before the Court is the following argument raised by Villamor, et al. in their Petition for Review on *Certiorari* docketed as G.R. No. 218771:

A. WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION FOR REVIEW OF THE PETITIONERS

---

[25] *Rollo* (G.R. No. 218771), pp. 17-19.

[26] *Rollo* (G.R. No. 220689), pp. 13-14.

[27] *Id.* at 16-17.

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

AND IN DENYING THE PETITIONERS' MOTION FOR RECONSIDERATION[.]

We resolve to deny Villamor, et al.'s petition.

Time and again, the Court has held that forum shopping exists when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court. It is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It also degrades the administration of justice and adds to the already congested court dockets.[29]

It is equally settled, moreover, that "[t]he grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. [Thus, t]o avoid the resultant confusion, this Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case."[30] This rule is embodied in Rule 7, Section 5 of the Revised Rules of Court:

> Sec. 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter

---

[29] *Fontana Development Corp., et al. v. Vukasinovic*, 795 Phil. 913, 920 (2016).

[30] *Id.*, citing *Dy v. Mandy Commodities Co., Inc.*, 611 Phil. 74, 84 (2009).

learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Thus, the test for determining the existence of forum shopping is whether a final judgment in one case amounts to *res judicata* in another or whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.[31]

After a careful scrutiny of the facts of the instant case, we find that all of the foregoing elements are present. As borne by the records, it is undisputed that Villamor, et al. filed two (2) petitions before the CA: (1) a Petition for *Certiorari* under Rule 65; and (2) a Petition for Review under Rule 43.

First of all, there is identity of parties in the Petition for *Certiorari* and in the Petition for Review. Settled is the rule

---

[31] *Bernardo S. Zamora v. Emmanuel Z. Quinan, Jr., et al.*, G.R. No. 21139, November 29, 2017.

that there is identity of parties not only when the parties in the cases are the same, but also between those in privity with them, such as between their successors-in-interest. Absolute identity of parties is not required, and where a shared identity of interest is shown by the identity of relief sought by one person in a prior case and the second person in a subsequent case, such was deemed sufficient.[32] Here, while the members of the CIAC Tribunal were included as respondents in the Petition for *Certiorari*, it cannot be denied that there still exists an identity of parties between the Petition for *Certiorari* and the Petition for Review. In both petitions, Villamor, et al. essentially refuted Sogo Realty's claim to damages, and the CIAC Tribunal's jurisdiction and decision to grant said claim.

Second of all, there is an identity of rights asserted and reliefs prayed for in both petitions. Jurisprudence dictates that this requisite obtains where the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions is different from each other. If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not.[33]

On this score, we sustain the findings of the appellate court. On the one hand, Villamor, et al. argued in their Petition for *Certiorari* that the CIAC's denial of their Motion to Dismiss and Motion for Reconsideration was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction because the CIAC did not have jurisdiction over the case. Thus, among others, they prayed that judgment be rendered: (1) declaring null and void the orders of the CIAC denying their motions; and (2) ordering the CIAC to dismiss the complaint for lack of jurisdiction. On the other hand, in their Petition for Review,

---

[32] *Guerrero v. Director, Land Management Bureau, et al.*, 759 Phil. 99, 113 (2015); citations omitted .

[33] *Senator Leila M. De Lima v. Hon. Juanita Guerrero, etc., et al.*, G.R. No. 229781, October 2017.

Villamor, et al. argued that the CIAC's Final Award was erroneous for it did not have jurisdiction over the case. Thus, among others, they prayed that judgment be rendered: (1) setting aside the Final Award of the CIAC; and (2) dismissing the case for lack of jurisdiction.[34]

There is no denying, therefore, that the petitions filed by Villamor, et al. practically raise one and the same issue: the CIAC's lack of jurisdiction to hear and decide the present case. In both petitions, Villamor, et al. asserted the same arguments and legal bases in support of their respective position. In both petitions, Villamor, et al. relied on the same pieces of evidence to substantiate their causes of action, which are essentially hinged on the alleged lack of jurisdiction of the CIAC. Thus, we cannot give credence to Villamor, et al.'s conclusion that they are innocent of the charge of forum shopping for the simple reason that unlike in the Petition for *Certiorari*, where they alleged the lone issue of the CIAC's jurisdiction, the Petition for Review raised an additional issue of the CIAC's alleged error in awarding damages, fees, and costs in Sogo Realty's favor. A cursory perusal of both petitions would show that Villamor, et al. basically pray for one and the same thing: that the CIAC judgment be dismissed, again, on the ground of its lack of jurisdiction.

Third and finally, with the identity of the two preceding particulars, the Court finds that the third requisite obtains in the present case such that any judgment rendered in the Petition for *Certiorari*, specifically on the question of whether the CIAC has jurisdiction over the arbitration proceedings, will, regardless of which party is successful, amount to *res judicata* in the Petition for Review.

In view of the foregoing, the Court finds no cogent reason to reverse the ruling of the CA, Special Tenth Division, finding that Villamor, et al. engaged in forum shopping. As the appellate court correctly puts it, when Villamor, et al. filed the two distinct

---

[34] *Rollo* (G.R. No. 218771), p. 146.

petitions before the same court, they placed said tribunal in a "quandary," making the possibility of two separate and contradictory decisions on the issue of the CIAC's jurisdiction all "too imminent and real." Indeed, one division may uphold the CIAC's jurisdiction while another may rule otherwise and reverse the CIAC's ruling. To the Court, this is the very evil that the proscription on forum shopping seeks to avoid. Thus, it is in keeping with the orderly administration of justice that we remind litigants to exercise prudence and vigilance in seeing to it that forum shopping is avoided so as to prevent not only the undue inconvenience upon the other party, but also the congestion of the already burdened dockets of the courts.[35]

WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Decision and Resolution dated November 12, 2014 and May 26, 2015, respectively, of the Special Tenth Division of the Court of Appeals are **AFFIRMED**.

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Inting, JJ.*, concur.

SECOND DIVISION

[G.R. No. 222492. June 3, 2019]

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

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE, AS AMENDED; RAPE; ELEMENTS.— Rape is defined and penalized under

---

[35] *Bernardo S. Zamora v. Emmanuel Z. Quinan, Jr., et al., supra* note 31.

Article 266-A, paragraph 1 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353 x x x. Rape requires the following elements: (1) the offender had carnal knowledge of a woman; and (2) the offender accomplished such act through force or intimidation, or when the victim was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS ON THE COMPLAINANT'S CREDIBILITY ARE ACCORDED RESPECT ON APPEAL, ESPECIALLY WHEN THESE FACTUAL FINDINGS CARRY THE FULL CONCURRENCE OF THE COURT OF APPEALS.—** [T]he prosecution had established beyond moral certainty the element of carnal knowledge. Complainant positively identified appellant, her own flesh and blood, as the man who had carnal knowledge of her against her will. She vividly described how he did it x x x. The thirteen-year-old complainant could not have merely concocted these ugly details had she not actually experienced them in the hands of her own father. x x x Besides, no child would charge the father she naturally revered and respected with such heinous crime as rape had it not been true. x x x As it was, the trial court found complainant's testimony spontaneous and straightforward. The Court respects the trial court's factual findings on complainant's credibility. More so because these factual findings carry the full concurrence of the Court of Appeals.

3. **CRIMINAL LAW; REVISED PENAL CODE, AS AMENDED; RAPE; WHEN A RAPE VICTIM'S STRAIGHTFORWARD AND TRUTHFUL TESTIMONY CONFORMS WITH THE MEDICAL FINDINGS OF THE EXAMINING DOCTOR, THE SAME IS SUFFICIENT TO SUPPORT A CONVICTION FOR RAPE.—** While appellant's conviction was primarily based on complainant's testimony, the same solidly conforms with the physical evidence through the medical findings of Dr. Dean Cabrera that complainant sustained hymenal lacerations at 3 and 9 o'clock positions showing blunt penetrating trauma. The Court has consistently ruled that when a rape victim's straightforward and truthful testimony conforms with the medical findings of the examining doctor, the same is sufficient to support a conviction for rape.

4. ID.; ID.; ID.; FORCE OR INTIMIDATION; UNNECESSARY IN RAPE CASES COMMITTED BY A CLOSE KIN, ESPECIALLY BY THE VICTIM'S FATHER HIMSELF, FOR MORAL INFLUENCE OR ASCENDANCY TAKES THE PLACE OF VIOLENCE OR INTIMIDATION.— Appellant x x x asserts that complainant's failure to shout for help negates the claim that she got raped. But as held in many cases, the victim's failure to shout for help does not disprove rape. Even the victim's lack of resistance, especially when the sexual predator is her own father, does not signify consent. For in rape cases committed by a close kin, especially by the victim's father himself, the use of actual force or intimidation is unnecessary; moral influence or ascendancy takes the place of violence or intimidation.

5. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERSON WHO COMMITTED THE CRIME.— [A]ppellant's defenses boil down to denial and alibi. These are the weakest of all defenses — easy to contrive but difficult to disprove. As between complainant's credible and positive identification of appellant as the person who had carnal knowledge of her against her will, on one hand, and appellant's bare denial and alibi, on the other, the former indubitably prevails.

6. CRIMINAL LAW; REVISED PENAL CODE, AS AMENDED; RAPE; QUALIFIED BY MINORITY AND RELATIONSHIP; PENALTY IN CASE AT BAR.— Here, the Information properly alleged that complainant was only thirteen years old at the time of rape and the offender was her own father, herein appellant. Complainant's minority and her relationship with appellant were sufficiently proved by complainant's birth certificate on record. The death penalty would have been imposed on appellant were it not for the enactment of RA 9346 prohibiting the imposition of death penalty in the country. Consequently, the Court of Appeals correctly sentenced appellant to *reclusion perpetua* without eligibility for parole in accordance with Section 3 of RA 9346 x x x.

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

LAZARO-JAVIER, *J.*:

The Case

This appeal[1] seeks to reverse and set aside the Decision[2] dated December 23, 2014 of the Court of Appeals in CA G.R. CR-HC No. 06517 which affirmed the trial court's verdict of conviction[3] against appellant XXX for rape. Its dispositive portion reads:

> WHEREFORE, premises considered, the appeal is DENIED for lack of merit. The assailed December 3, 2013 Decision of the Regional Trial Court of Quezon City, Branch 107, in Criminal Case No. Q-09-160296 is however MODIFIED. Finding appellant XXX GUILTY of one count of QUALIFIED RAPE, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay private complainant the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.
>
> Costs against the accused.
>
> SO ORDERED.[4]

The Information

Appellant XXX was charged with rape, as follows:

---

[1] *Rollo*, pp. 20-21; filed under Section 13(c), Rule 124 of the Rules of Court.

[2] *Id*. at 2-19; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

[3] CA *rollo*, pp. 40-46, Decision dated December 3, 2013 of the Regional Trial Court, Quezon City, Branch 107, in Criminal Case No. Q-09-160296.

[4] *Rollo*, pp. 18-19.

The undersigned upon prior sworn complaint of AAA* assisted by her mother BBB accuses XXX of the crime of Rape, committed as follows:

> That on or about the 19th day of August, 2009 in Quezon City, Philippines, the above-named accused, by means of force, and intimidation, did, then and there willfully, unlawfully, and feloniously have carnal knowledge with his daughter AAA, a minor, 13 years of age, by then and there inserting his organ on complainant's private part, all against her will and without her consent.
>
> CONTRARY TO LAW.[5]

The case was raffled to the Regional Trial Court of Quezon City, Branch 107 and docketed as Criminal Case No. Q-09-160296.

Arraignment and Plea

On arraignment, appellant pleaded "not guilty."[6]

During the trial, complainant AAA, her mother BBB, and barangay tanod Ruel Beaquin testified for the prosecution. On the other hand, appellant XXX testified as lone witness for the defense.

---

* Pursuant to Supreme Court Administrative Circular No. 83-2015 which mandates that the complete names of the women and children victims be replaced by fictitious initials. Also, *People v. Manjares*, G.R. No. 185844, November 23, 2011, decreed: "In line with Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC, the identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld. For purposes of discussion, the private offended party and her immediate family members shall be referred to using initials. See *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419) and *People v. Guillermo* (G.R. No. 173787, April 23, 2007, 521 SCRA 597)."

[5] Record, p. 1, Information dated August 25, 2009.

[6] *Id*. at 22.

The Prosecution's Version

Complainant AAA is the daughter of appellant XXX and BBB. She was born on December 20, 1995.[7]

In the afternoon of August 23, 2009, complainant and her mother, together with barangay tanods Roel Beaquin and Romeo Paza[8] and an unidentified woman[9] went to Police Station 9, Project 2, Quezon City to charge appellant with rape. Complainant executed an affidavit[10] narrating in detail how her own father sexually ravished her.

On the witness stand, complainant signified her desire to seek justice for what her father did to her. She testified that the first rape incident happened in March 2007 or days before her graduation from elementary. Appellant raped her in their house at Tagkawayan, Quezon.[11] In 2008, he again raped her in their house in Cruz na Ligas, Quezon City.[12] The third rape incident happened on August 19, 2009, around 4:30 in the morning, also inside their house.[13] This incident is now the subject of the present case.

Appellant's family lived in the squatters area where houses were separated only by light thin walls.[14] The house where appellant's family lived measured 5x6 square meters. It was a one room affair. It served as sala, kitchen and bedroom all at the same time. The family slept in the sala. Appellant usually slept near the door; complainant, about two meters from the

---

[7] *Id*. at 104-105.

[8] Also referred to as BPSO Romeo Raz, *Id*. at 16

[9] Identified as BPSO Cherry Ann Madarang, *Id*. at. 16.

[10] TSN, November 8, 2011, pp. 7-13.

[11] TSN, June 8, 2010, pp. 4-7.

[12] *Id*. at 7.

[13] *Id*. at 8.

[14] TSN, September 14, 2010, p. 16.

door; and her mother and youngest sibling, in the middle. Her older brother was not staying with them.[15]

At the time of the incident, complainant, her brother CCC, and appellant were sleeping in the sala. Her mother and her nine-year old sibling had already left around 3:30 in the morning.[16]

After their mother had left, complainant tried to wake her brother CCC to ask him to turn off the light. When CCC did not respond, she stood up and turned off the light herself. As she walked back to her sleeping area, appellant blocked her way with his foot. He held her hand and directed her to lie down on his "higaan." She obeyed. She did not shout, nor stomp her feet, or knock to catch CCC's attention.[17]

Appellant removed her t-shirt, shorts, and underwear. She pleaded with him to stop, but he ignored her. He took off his brief, put himself on top of her, and inserted his "ari" in her "ari." She felt intense pain. She did not see him actually insert his penis in her vagina. She tried to push herself up to evade his penetration, but it was in vain. When it was over, he instructed her to cook rice.[18]

The following day, she left the house to avoid appellant. She went to the workplace of her friend Carmina Morales. She confided to the latter what happened to her and told Carmina she could send appellant to jail for what he did.[19]

Later that day, appellant went to Carmina's place looking for complainant. When Carmina told him complainant was not there, he did not believe her and tried to box her. As a result, both Carmina and appellant went to the barangay office to file

---

[15] *Id.* at 2-13.

[16] *Id.* at 3-8.

[17] TSN, June 8, 2010, pp. 9-10; TSN, September 14, 2010, pp. 13-18.

[18] TSN, June 8, 2010, pp. 10-13; TSN, September 14, 2010, pp. 18-20.

[19] TSN, June 8,2010, pp. 13-15.

their respective complaints against each other while the victim stayed hiding in Carmina's place.[20]

After Carmina had filed the complaint, she went back to her place and accompanied complainant to the barangay office. The barangay officials summoned complainant's mother. In front of complainant's mother, the barangay officials asked complainant why she left the house. Complainant replied her father was raping her. When complainant's mother heard this, she cried. The barangay officials immediately proceeded to appellant's workplace and arrested him. They took him to Police Station 9 where he got detained pending investigation. Meantime, complainant underwent physical and medical examination at Camp Crame.[21] Based on the medical examination, attending Doctor PC/Insp. Dean Cabrera did on complainant, the latter sustained deep healed lacerations at 3 and 9 o'clock positions, showing blunt penetrating trauma.[22]

The prosecution offered in evidence complainant's birth certificate[23] (Exhibit "A"); complaint affidavit[24] (Exhibit "B"); Initial Medico-Legal Report under Case No. R09-1610 dated August 23, 2005[25] (Exhibit "C"); sworn statement of BPSO Ruel Beaquin, BPSO Romeo Raz and Cherry Anne Madarang[26] (Exhibit "D"); PNP Crime Laboratory Medico-Legal Report dated August 24, 2009[27] (Exhibit "E"); request for genital medical examination[28] (Exhibit "F"); PNP Sexual Crime Protocol[29]

---

[20] *Id*. at 15-16.

[21] *Id*. at 16-21.

[22] TSN, March 22, 2012, p. 18.

[23] Record, pp. 104-105.

[24] *Id*. at 106-107.

[25] *Id*. at 108.

[26] *Id*. at 109.

[27] *Id*. at 110.

[28] *Id*. at 111.

[29] *Id*. at 112.

(Exhibit "G"); and manifestation of consent to medico-legal examination[30] (Exhibit "H").

The Defense's Version

Appellant denied the charge. According to him, he could not bear to harm his own daughter. At the time the alleged rape happened on August 19, 2009, he was in his workplace at Mega World. He only went home around 7 o'clock in the morning. Each time he would go home from work, he would usually be very sleepy and could no longer eat his meal.[31]

The defense did not present any documentary evidence.

The Trial Court's Ruling

By Decision[32] dated December 3, 2013, the trial court rendered a verdict of conviction, *viz*:

> WHEREFORE, the Court finds the accused guilty beyond reasonable doubt as charge(d) in the aforequoted Information, he is hereby sentenced to suffer the penalty of reclusion perpetua. Accused is further directed to pay the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages. Costs against the accused.
>
> The Jail Warden of Quezon City Jail is directed to commit the accused at the National Bilibid Prison, Muntinlupa City for the service of his sentence. The period of detention undergone by the accused is credited in full in the service of his sentence.
>
> SO ORDERED.[33]

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of rape despite the victim's alleged incredulous testimony

---

[30] *Id*. at 113.

[31] TSN, March 14, 2013, pp. 3-12.

[32] CA *rollo*, pp. 40-46; penned by Presiding Judge Jose L. Bautista, Jr.

[33] *Id*. at 46.

and the prosecution's purported failure to establish the element of carnal knowledge. Appellant essentially argued: (1) Complainant's testimony was hardly straightforward, much less, categorical, thus, casting doubt on the presence of the element of penile penetration; and, complainant's attitude and actions after the alleged rape were inconsistent with the usual actions of a real rape victim, hence, cannot serve to validate complainant's otherwise unreliable testimony.

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Marissa Macaraig-Guillen and State Solicitor Jillian Marie B. Co maintained that the prosecution was able to prove with moral certainty that appellant had carnal knowledge of complainant against her will. Her consistent and positive identification of appellant as the man who raped her prevails over appellant's self-serving denial and alibi.

The Court of Appeals' Ruling

In its assailed Decision[34] dated December 23, 2014, the Court of Appeals affirmed, with modification. It found appellant guilty of qualified rape in view of the presence of the qualifying circumstances of minority and relationship. It affirmed the penalty of *reclusion perpetua* but imposed the proviso "without eligibility for parole."

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution[35] dated March 9, 2016, appellant and the People both manifested[36] that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.

---

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

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

[36] *Id*. at 33-35, 27-28.

Issue

Did the Court of Appeals err in convicting appellant of qualified rape?

Ruling

Rape is defined and penalized under Article 266-A, paragraph 1 of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8353, *viz*:

> Art. 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. (Emphasis supplied)

Rape requires the following elements: (1) the offender had carnal knowledge of a woman; and (2) the offender accomplished such act through force or intimidation, or when the victim was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented.

Here, the prosecution had established beyond moral certainty the element of carnal knowledge. Complainant positively identified appellant, her own flesh and blood, as the man who had carnal knowledge of her against her will. She vividly described how he did it, *viz*:

> ACP PAGDILAO: (To the witness)
>
> x x x x x x x x x

Q. Who raped you?

A- XXX, ma'am.

Q. Your father?

A- Yes, ma'am.

Q. How old are you, AAA?

A- 14 years old, ma'am.

Q. What is your birthdate?

A- December 20, 1995 ma'am.

x x x x x x x x x

Q. And the last, where (did it) happen?

A- In our house in Village C, ma'am.

Q. Where is that Village C?

A- In our present residence ma'am.

Q. Do you recall when exactly did that happen?

A- August 19, 2009 ma'am.

Q. What time did it happen, AAA?

A- 4:30 in the morning, ma'am.

Q. And where were you at that time?

A- In our house, ma'am.

Q. And what were you doing then?

A- I was still lying down sleeping ma'am.

Q. In what part of the house were you sleeping?

A- At the sala ma'am.

Q. By the way, how many bedrooms are there in your house?

A- Our house has no rooms and we would sleep altogether in the sala ma'am.

Q. And when you said that you were at that time sleeping in the sala, where was the accused?

A- He was also there at the farthermost area also sleeping ma'am.

Q. And aside from the accused who else were sleeping with you at the sala?

A- My other sibling, second to the youngest ma'am.

Q. What is the name?

A- CCC ma'am.

Q. How old is CCC?

A- 10 years old ma'am.

x x x x x x x x x

Q. Now, you said that you were raped and this was the last time, will you please narrate to us how it did happen?

A- When my mother left, I was waking up my other sibling to turn off the light.

x x x x x x x x x

Q. And what happened next?

A- I was the one who turned off the light instead ma'am.

Q. And then after you turned off the light, what happened next?

A- When I returned to my sleeping area he blocked my way with his foot ma'am.

Q. And then what happened when he blocked your way with his foot?

A- And then he held me in my hand ma'am. And he made me to go to his sleeping area.

Q. And then what happened next?

A- And then he made me (lie) down to his 'higaan.'

Q. Then what did he do after that?

A- He undressed me ma'am.

x x x x x x x x x

Q. And then what happened?

A- He also removed my shorts, ma'am.

Q. What were you doing at that time when he is removing your shorts?

A- I was still lying down and asking him not to remove it ma'am.

Q. And did he stop when you told him to stop?

A- He still continued ma'am.

x x x x x x x x x x x x

Q. After removing your underwear, what did he do?

A- He placed himself on top of me ma'am.

x x x x x x x x x x x x

Q. And what did he do with his briefs?

A- He also removed it ma'am.

Q. And then when he removed his briefs what did he do?

A- After placing himself on top of me, he was already raping me ma'am.

Q. When you said Miss Witness, that after removing his brief he placed himself on top of you and raped you, what do you mean?

A- 'Inilalagay po niya iyong ari niya sa ari ko', ma'am.

Q. When you said that 'Inilalagay iyong ari niya sa ari (ko)', what exactly did you feel at that time?

A- It was very painful. I was trying to push myself up for him not (to) be able to penetrate.

Q. But were you able to stand up?

A- No ma'am, I was lying down.[37]

x x x x x x x x x x x x

---

[37] TSN, June 8, 2010, pp. 4-13.

ATTY. LAGASCA

Q. And you do not know, you can not distinguish the feel or the touch of what was inserted to your vagina was a penis or a finger?

A- It was his penis, ma'am."[38]

Complainant made a clear, candid and positive narration of how her father blocked her with his foot when she was about to go back to sleep, held her, and made her lie down on his sleeping area, undressed her, and inserted his penis in her vagina. The thirteen-year-old complainant could not have merely concocted these ugly details had she not actually experienced them in the hands of her own father. *People vs. Balcueva*[39] is in point:

> x x x Verily, a young girl would not concoct a sordid tale of a crime as serious as rape at the hands of her very own father, allow the examination of her private part, and subject herself to the stigma and embarrassment of a public trial, if her motive was other than a fervent desire to seek justice. Hence, there is no plausible reason why AAA would testify against her own father, imputing to him the grave crime of rape, if this crime did not happen.

Besides, no child would charge the father she naturally revered and respected with such heinous crime as rape had it not been true. In *People v. Mangitngit*,[40] the Court ordained:

> We reiterate that a rape victim's testimony against her parent is entitled to great weight since Filipino children have a natural reverence and respect for their elders. These values are so deeply ingrained in Filipino families and it is unthinkable for a daughter, or daughters in this case, to brazenly concoct a story of rape against their/her father, if such were not true.

---

[38] TSN, September 14, 2010, p. 20.

[39] G.R. No. 214466, July 01, 2015, 761 SCRA 489, 495.

[40] G.R. No. 171270, September 20, 2006, 502 SCRA 560, 574.

As it was, the trial court found complainant's testimony spontaneous and straightforward. The Court respects the trial court's factual findings on complainant's credibility.[41] More so because these factual findings carry the full concurrence of the Court of Appeals.

Appellant, nonetheless, harps on the prosecution's alleged failure to prove penile penetration as an element of carnal knowledge. He zeroes in on complainant's testimony that she did not actually see him insert his penis in her vagina.

On this score, We reckon with complainant's graphic account "*Inilalagay po niya iyong ari niya sa ari ko, ma'am*."[42] x x x "It was his penis, ma'am. [43] x x x "*It was very painful*."[44] If this is not penile penetration, what is?

While appellant's conviction was primarily based on complainant's testimony, the same solidly conforms with the physical evidence through the medical findings of Dr. Dean Cabrera that complainant sustained hymenal lacerations at 3 and 9 o'clock positions showing blunt penetrating trauma. The Court has consistently ruled that when a rape victim's straightforward and truthful testimony conforms with the medical findings of the examining doctor, the same is sufficient to support a conviction for rape.[45] So must it be.

Appellant further asserts that complainant's failure to shout for help negates the claim that she got raped. But as held in many cases, the victim's failure to shout for help does not disprove rape. Even the victim's lack of resistance, especially when the sexual predator is her own father, does not signify consent.[46]

---

[41] *People v. Hirang*, G.R.No. 223528, January 11, 2017, 814 SCRA 315, 330.

[42] TSN, June 8, 2010, p. 12.

[43] TSN, September 14, 2010, pp. 19-20.

[44] TSN, June 8, 2010, p. 13.

[45] *People v. Caoili*, G.R. No. 196342, August 08, 2017, 835 SCRA 107, 139; *People v. Sumingwa*, 618 Phil. 650, 665 (2009).

[46] *People v. Arcillo*, 790 Phil. 153, 160 (2016).

For in rape cases committed by a close kin, especially by the victim's father himself, the use of actual force or intimidation is unnecessary; moral influence or ascendancy takes the place of violence or intimidation.[47] *People v. Dominguez, Jr.*[48] ordained:

> We find completely understandable AAA's silence and apparent assent to the sexual abuses of her father for a period of time. No standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. **More importantly, in incestuous rape cases, the father's abuse of the moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants. Otherwise stated, the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.** x x x (*Emphasis supplied*)

Notably, although complainant was not able to repel the sexual acts of her father, thereafter, she immediately left the house and reported it first to her friend Carmina, and later to the barangay officials. She also promptly submitted herself to physical examination. Her swift and courageous actions against her own father are eloquent proofs that she was truly wronged and she wanted the wrongdoer to be punished accordingly.

At any rate, appellant's defenses boil down to denial and alibi. These are the weakest of all defenses - - - easy to contrive but difficult to disprove. As between complainant's credible and positive identification of appellant as the person who had carnal knowledge of her against her will, on one hand, and appellant's bare denial and alibi, on the other, the former indubitably prevails.[49]

---

[47] *People v. Caoili*, G.R.No. 196342, August 8, 20117, 835 SCRA 107, 140.

[48] 650 Phil. 492, 518-519 (2010).

[49] *Etino v. People*, G.R. No. 206632, February 14, 2018; *People v. Candellada*, 713 Phi1. 623, 637 (2013).

Article 266-B of the Revised Penal Code, as amended by Republic Act 8353,[50] provides:

> Article 266-B. Penalty. – Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.
>
> x x x x x x x x x
>
> The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
>
> 1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;
>
> x x x x x x x x x

Here, the Information properly alleged that complainant was only thirteen years old at the time of rape and the offender was her own father, herein appellant. Complainant's minority and her relationship with appellant were sufficiently proved by complainant's birth certificate[51] on record. The death penalty would have been imposed on appellant were it not for the enactment of RA 9346[52] prohibiting the imposition of death penalty in the country.

Consequently, the Court of Appeals correctly sentenced appellant to *reclusion perpetua* without eligibility for parole in accordance with Section 3 of RA 9346, *viz*:

> SEC 3. Persons convicted of offenses punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

---

[50] The Anti-Rape Law of 1997.

[51] Record, pp. 104-105.

[52] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

Finally, pursuant to prevailing jurisprudence,[53] the awards of civil indemnity and moral and exemplary damages here should be increased to ₱100,000.00 each.

ACCORDINGLY, the appeal is **DENIED**. The Decision dated December 23, 2014 of the Court of Appeals is **AFFIRMED WITH MODIFICATION**.

Appellant is found guilty of rape, qualified by minority and relationship. He is sentenced to *reclusion perpetua*, without eligibility for parole. He is further ordered to pay ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and ₱100,000.00 as exemplary damages. All monetary awards are subject to six percent (6%) interest *per annum* from finality of this decision until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *Reyes, Jr., J., JJ.*, concur

Caguioa, J., on official leave.

---

[53] *People v. Jugueta*, 783 Phil. 806, 848 (2016).

"II. For Simple Rape/Qualified Rape:

1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:

a. Civil indemnity – ₱100,000.0
b. Moral damages – ₱100,000.0
c. Exemplary damages – ₱100,000.00"

SECOND DIVISION

[G.R. No. 223098. June 3, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NESTOR DOLENDO *y* FEDILES ALIAS "ETOY,"** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1613 (THE NEW ARSON LAW); ARSON; ELEMENTS.—** Arson requires the following elements: (1) a fire was set intentionally; and (2) the accused was identified as the person who caused it. The *corpus delicti* rule is satisfied by proof of the bare fact of the fire and that it was intentionally caused.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES REFERRING TO TRIVIAL MATTERS.—** Appellant next harps on the alleged inconsistencies in the testimonies of witnesses pertaining to who among the children were inside the house when it was set on fire and what exactly appellant uttered about Leonardo Sr.. Surely, these alleged inconsistencies, if at all, refer to trivial matters which do not affect the credibility of the witnesses positively identifying appellant as the one who burned their dwelling, killing the six year old Leonardo Jr. as a result.

3. **ID.; ID.; ALIBI; CANNOT PREVAIL OVER THE POSITIVE, CLEAR, AND CATEGORICAL TESTIMONIES OF WITNESSES WHO IDENTIFIED THE ACCUSED AS THE PERSON WHO COMMITTED THE CRIME.—** We now reckon with appellant's denial and alibi. He claims he was working at *Pulong Buhangin,* Sta. Maria, Bulacan on the day and time the incident happened. To begin with, alibi is the weakest of all defenses. It is unreliable and can be easily fabricated. More so, when as in this case, it is unsubstantiated by any corroborative evidence. It further crumbles in the absence of any showing that the presence of the accused

in some other place precluded him from being physically present at the *locus criminis* on the day and time the crime was committed. Suffice it to state that appellant's alibi cannot prevail over the positive, clear, and categorical testimonies of Deolina and Jessie Perocho who all throughout identified him as the person who burned down their dwelling, killing Leonardo Jr. as a result.

4. ID.; ID.; CREDIBILITY OF WITNESSES; A RETRACTION DOES NOT NECESSARILY NEGATE AN EARLIER DECLARATION, ESPECIALLY WHEN A WITNESS EXECUTES IT AFTER CONVICTION.— On the affidavits of recantation executed by Deolina and Jessie Parecho, the Court looks upon retractions with disfavor because they can be easily obtained from witnesses through intimidation or for monetary consideration. Besides, retraction does not necessarily negate an earlier declaration, especially when a witness executes it after conviction. x x x In addition, We share the trial court's observation that the affidavits of recantation were too terse, if not grossly inadequate. They visibly failed to address a number of material evidence adduced on record. In any case, it is certainly incredulous that after going through the tedious process of filing of the complaint, followed by rigorous trial particularly the grilling cross examination, not to mention the stress, anxiety, tears, pain, and sleepless nights they had to bear before, during and after the seemingly unending quest for justice, Deolina and Jessie Perocho would now, after fifteen long years, claim that everything they said and did before including the pain, the tears, the stress, the sleepless nights they claimed to have suffered was just after all a figment of their imagination.

5. ID.; ID.; ID.; THE COMPETENCE OF A JUDGE TO EVALUATE THE EVIDENCE ON RECORD AND THE CREDIBILITY OF WITNESSES AND BASED THEREON, ASCERTAIN WITH ACCURACY THE FACTS OF THE CASE IS NOT AT ALL DIMINISHED SIMPLY BECAUSE ANOTHER JUDGE HEARD AND TRIED THE CASE.— [A]ppellant attacks the competence of Judge Arturo Clemente B. Revil to accurately ascertain the facts and the credibility of witnesses considering that another judge heard and tried the case from beginning to end. The challenge must fail. On several occasions, the Court has clarified

that the competence of a judge to evaluate the evidence on record and the credibility of witnesses and based thereon, ascertain with marked accuracy the cold facts of the case is not at all diminished simply because another judge heard and tried the case. The judge assigned to decide the case can rely on the transcripts of stenographic notes of the testimonies of the witnesses and calibrate them in conformity with rules of evidence *vis-à-vis* men's common experience, knowledge and observations.

6. CRIMINAL LAW; PRESIDENTIAL DECREE NO. 1613 (THE NEW ARSON LAW); ARSON; IF THE MAIN OBJECTIVE IS THE BURNING OF THE BUILDING OR EDIFICE, BUT DEATH RESULTS BY REASON OR ON THE OCCASION OF ARSON, THE CRIME IS SIMPLY ARSON, AND THE RESULTING HOMICIDE IS ABSORBED; PENALTY IN CASE AT BAR.— The Court of Appeals correctly modified appellant's conviction from arson with homicide to simple arson conformably with prevailing jurisprudence. In *People vs. Malngan,* the Court pronounced: Accordingly, in cases where both burning and death occur, in order to determine what crime/crimes was/were perpetrated – whether arson, murder or arson and homicide/murder, it is *de rigueur* to ascertain the main objective of the malefactor: (a) **if the main objective is the burning of the building or edifice, but death results by reason or on the occasion of arson, the crime is simply *arson,* and the resulting homicide is absorbed**; x x x. Sec. 5 of PD 1613 provides, *viz*: "(i)f by reason of or on the occasion of the arson death results, the penalty of *Reclusion Perpetua* to death shall be imposed." On this score, since no aggravating circumstance was alleged or proved here, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua.*

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

LAZARO-JAVIER, *J.*:

This appeal assails the Decision[1] dated March 18, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05400, entitled *People of the Philippines vs. Nestor Dolendo y Fediles alias "Etoy,"* modifying the trial court's verdict of conviction against appellant from **arson with homicide** to **simple arson**.

The Proceedings before the Trial Court

By Information dated January 15, 1997,[2] appellant Nestor Dolendo y Fediles was charged with arson resulting in the death of Leonardo Perocho, Jr. (Leonardo Jr.), viz:

> That on or about September 18, 1996 in the afternoon thereof, at sitio (sic) Kapatagan, Barangay Capsay, Municipality of Aroroy, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously set on fire a house owned by Leonardo Perocho, Sr., knowing it to be occupied at that time by one or more persons and as a result thereof LEONARDO PEROCHO, JR., 6 yrs. (sic) old boy suffered massive bums and injuries which directly caused his death thereafter.
>
> CONTRARY TO LAW.

The case was docketed Criminal Case No. 8307 and raffled to the Regional Trial Court (RTC), Branch 48, Masbate City. Appellant had remained at large for five years until he got arrested on February 23, 2001.[3]

---

[1] Penned by Associate Justice Ramon A. Cruz and concurred in by Associate Justices Remedios A. Salazar-Fernando and Marlene Gonzales-Sison, *rollo*, pp. 2-15.

[2] Record, p. 1.

[3] *Id.* at 17.

On arraignment, appellant pleaded "not guilty."[4] During the trial, Deolina Perocho and Jessie Perocho testified for the prosecution. On the other hand, only appellant testified for the defense.

The Prosecution's Evidence

Complainant Deolina Perocho testified that on September 18, 1996, around 4 o'clock in the afternoon while she and her children, Ivy (one year old), Isalyn (three years old), and Janice (five years old) were eating in their house at Sitio Kapatagan, Barangay Capsay, Municipality of Aroroy, Province of Masbate,[5] she heard appellant shouting "Leonardo, I am already here!"[6] Leonardo Perocho, Sr. (Leonardo Sr.) was Deolina's husband. She also saw appellant Nestor Dolendo y Fediles alias "Etoy" holding a gun. She and her children immediately ran upstairs and called for help.[7] But since their house was far from their neighbors, no one came to help.[8]

She saw appellant gather dried coconut leaves and set their porch on fire.[9] She and her three children jumped from the rear window and hid in a grassy area.[10] After a while, they heard her six year old son Leonardo Jr. crying. She then realized she had totally forgotten about Leonardo Jr. who was asleep when the house fire began. By the time they came out from their hiding place, the house had been completely burned and Leonardo Jr. had died.[11]

---

[4] *Id.* at 29.

[5] TSN, August 13, 2003, pp. 8-9

[6] *Id.* at 10.

[7] *Id.* at 11

[8] *Id.*

[9] *Id.* at 13.

[10] *Id.* at 14.

[11] *Id.*

Appellant and her husband were not in good terms as they had a previous altercation. Leonardo Sr. had since avoided appellant.[12]

Jessie Perocho, Deolina's 18-year old son testified that he was working at a nearby farm when the incident took place. He saw appellant light a torch made of coconut leaves and use it to set their house on fire.[13] He got so scared he could not do anything to stop appellant.[14]

Dr. Conchita Ulanday's post-mortem Medical Report on Leonardo, Jr. bore the following findings:

> The cadaver was reduced in size, both extremities, upper and lower were missing as a result of burning. Skull was massively burned exposing burn (sic) brain tissue. Muscles of the face was also gone as a result of burning. Mandible bone and teeth were exposed. Skin and muscles of the upper and lower part of the body were massively burned. All internal organs were exposed and burned.
>
> Due to the above mentioned examination was made that death was due to massive burned (sic).[15]

The Defense's Evidence

Appellant invoked denial and alibi. He claimed to have been in Pulong Buhangin, Sta. Maria, Bulacan at the time of the incident.[16] He knew the Perochos because Leonardo Sr. was one his mother's workers.[17] He asserted that the prosecution witnesses could not have positively identified him from afar.[18]

---

[12] *Id.* at 16.

[13] TSN, July 5, 2006, p. 5.

[14] *Id.* at 6.

[15] Record, p. 137.

[16] TSN, September 16, 2009, p. 2.

[17] *Id.* at 5.

[18] *Id.* at 6.

He admitted though that he had a misunderstanding with the Perochos pertaining to gold panning activities.[19]

The Trial Court's Ruling

By Decision[20] dated September 23, 2011, the trial court found appellant guilty of arson with homicide. It gave credence to the testimonies of the prosecution witnesses and disregarded appellant's defense of alibi, thus:

> WHEREFORE, in view of the foregoing, accused NESTOR DOLENDO y FEDILES is found guilty beyond reasonable doubt of the crime of ARSON with Homicide defined and penalized under Article 320 of the Revised Penal Code of the Philippines as amended by Republic Act No. 7659. He is hereby sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the heirs of the victim ₱75,000 as civil indemnity, ₱75,000 as moral damages and ₱30,000 as exemplary damages without subsidiary imprisonment in case of insolvency;
>
> The period of detention of accused NESTOR DOLENDO y FEDILES shall be credited in his favor.
>
> The Provincial Jail Warden of the Provincial Jail, Masbate is directed to immediately transfer NESTOR DOLENDO y FEDILES to the National Bilibid Prison, Muntinlupa City.
>
> SO ORDERED.[21]

On November 18, 2011, appellant filed a motion for new trial[22] based on the respective affidavits of recantation[23] of Deolina and Jessie Perocho. Deolina claimed that the fire came from a lighted kerosene lamp which fell and hit the wall of the house. Jessie, on the other hand, said he was nowhere near their house at the time of the incident.

---

[19] *Id.*

[20] Penned by Judge Arturo Clemente B. Revil.

[21] CA *rollo*, pp. 19-20.

[22] Record, pp. 189-193.

[23] *Id.* at 194-195.

Under Order dated November 25, 2011, the trial court denied the motion.[24] It noted that the affidavits of recantation were executed fifteen years long after the incident and the affidavits of recantation did not address all the matters established during trial.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for convicting him of arson with homicide. He argued: **first**, the prosecution witnesses gave inconsistent testimonies pertaining to who exactly among the children were inside the house when it was set on fire and what appellant exactly uttered about Leonardo Sr. before he burned the house; **second**, the affidavits of recantation should have resulted in his acquittal; and **third**, the judge who penned the verdict of conviction was not the same judge who heard and tried the case.

On the other hand, the Office of the Solicitor General (OSG), through Assistant Solicitor General Ma. Antonia Edita C. Dizon and Associate Solicitor Mercedita L. Flores countered that the alleged inconsistencies referred to trivial matters which did not affect the credibility of the prosecution witnesses. As for the affidavits of recantation, the OSG agreed with the trial court that the same should be disregarded in view of the lapse of fifteen years from the time the incident took place, not to mention that the affidavits did fail to address all the matters presented during the trial. The OSG also argued that based on several decisions of the Court, the fact alone that a different judge rendered the decision other than the one who heard it, does not invalidate said decision. Finally, the OSG recommended that appellant's conviction be modified from arson with homicide to simple arson.

Under Decision dated March 18, 2015, the Court of Appeals affirmed with modification. Instead of arson with homicide, it found appellant guilty of simple arson, thus:

---

[24] *Id.* at 201-206.

WHEREFORE, premises considered, the appeal is hereby DISMISSED and the September 23, 2011 Decision and the November 25, 2011 Order of the Regional Trial Court of Masbate City, Branch 48, in Criminal Case No. 8307, are AFFIRMED WITH MODIFICATION, in that Nestor Dolendo y Fediles is found guilty beyond reasonable doubt of the crime of simple arson.

SO ORDERED.[25]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution[26] dated June 15, 2016, both the OSG and appellant manifested that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.[27]

Issues

1.) Did the Court of Appeals err in affirming the trial court's factual findings on the credibility of witnesses?
2.) Was the prosecution able to prove appellant's guilt beyond reasonable doubt?
3.) Was the trial court's verdict of conviction rendered invalid considering that the judge who rendered it was not the same judge who heard and tried the case?
4.) Did the Court of Appeals err in modifying appellant's conviction from arson with homicide to simple arson?

Ruling

The appeal must fail.

Section 3 of Presidential Decree 1613 (PD 1613), otherwise known as the New Arson Law[28] reads:

---

[25] CA *rollo*, pp. 165-166.

[26] *Rollo*, pp. 21-22.

[27] *Id.* at 23-25 and 28-30.

[28] PD 1613 repealed Arts. 320 to 326-B of The Revised Penal Code.

Section 3. *Other Cases of Arson*. The penalty of Reclusion Temporal to Reclusion Perpetua shall be imposed if the property burned is any of the following:
1. Any building used as offices of the government or any of its agencies;
2. Any inhabited house or dwelling;
3. Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel;
5. Any plantation, farm, pastureland, growing crop, grain field, orchard, bamboo grove or forest;
6. Any rice mill, sugar mill, cane mill or mill central; and
7. Any railway or bus station, airport, wharf or warehouse.

Further, Sec. 5 reads:

Section 5. *Where Death Results from Arson*. If by reason of or on the occasion of the arson death results, the penalty of Reclusion Perpetua to death shall be imposed.

Arson requires the following elements: (1) a fire was set intentionally; and (2) the accused was identified as the person who caused it. The *corpus delicti* rule is satisfied by proof of the bare fact of the fire and that it was intentionally caused.[29]

Here, Deolina Perocho positively testified:

Q: Kindly tell the court what the incident was about.
A: At 4:00 o'clock in the afternoon of September 18, 1996, this Nestor Dolendo was shouting at my husband.

x x x x x x x x x

Q: And did you personally see this Nestor Dolendo shouting?
A: Yes, sir.

x x x x x x x x x

Q: You saw him with a gun?
A: Yes, sir.

x x x x x x x x x

---

[29] *See People vs. Murcia*, 628 Phil. 648 (2010).

Q: And after you kept shouting for help but none came, what happened next?
A: We jumped passing over the window at the back of the house together with my three children and Leonardo, Jr. was left.

Q: Why did you jump at the back window of your house?
A: Because he already set fire [on] our terrace.

x x x x x x x x x

Q: By the way, how did you come to know that Nestor Dolendo had set fire on your porch?
A: **I saw him getting dried coconut leaves.**

Q: And what did he do with that porch?
A: **He set fire [on] our porch as well as the roofing made of coco leaves.**

Q: What did you do upon Nestor Dolendo having blazed the posts of your house with the torch?
A: We jumped out of the window.

x x x x x x x x x

Q: How many of you were able to jump out of the window?
A: We were four, three children and I.

Q: Who were the children who were able to jump?
A: Isalyn, Ivy and Janice.

Q: After you jumped out of the window, where did you go together with your four children?
A: We hid at the grassy place.

Q: How about Leonardo?

A: He was left because he was [asleep].

Q: That was 4:00 o'clock in the afternoon?

A: Yes maam.

Q: You were not able to awaken him?

A: Because I was rattled and I was also carrying my youngest child.[30]

---

[30] TSN, August 13, 2003, pp. 10-16.

Jessie Perocho corroborated his mother's testimony, viz:

Q: **How did you know that the accused was the one who blazed the house?**
A: **I saw him.**

Q: How did he blaze the house?
A: **He lighted a torch made of bundle of coconut leaves and burned the house.**

x x x x x x x x x[31]

Both Deolina and Jessie Perocho recounted in detail their harrowing experience as a family in the cruel hands of appellant when he burned down their dwelling, killing six year old Leonardo Jr. as a result. Deolina and three of her children had to jump out of the window to escape the fire and hide in a grassy area. It was appellant whom they saw setting their dwelling on fire after he proudly announced his arrival to the head of the family Leonardo Sr. who was not around at that time.

The trial court gave full credence to the positive testimony of both Deolina and Jessie Perocho on that it was indeed appellant who set their dwelling on fire, killing six year old Leonardo Jr. as a result. The credible testimonies of these eyewitnesses are sufficient to prove the *corpus delicti* and support a conviction for arson against appellant.[32]

Appellant, nonetheless, imputes ill-motive to have tainted the credibility of the witnesses because he had a previous altercation with Leonardo Sr., Deolina's husband and Jessie's father.

The record speaks for itself. Both Deolina and Jessie were categorical, consistent and firm in their narrations of the incident and the appellant's identity as the one who set their dwelling on fire.

---

[31] TSN, July 5, 2006, pp. 4-5.

[32] *Supra*, Note 29.

As the trial court keenly observed, despite the grilling cross-examination, both Deolina and Jessie firmly stood by their respective testimonies, particularly on their positive identification of appellant as the person who burned down their dwelling.

Another, because of the fire, Deolina lost her six year old son Leonardo Jr.; and Jessie, his younger brother. Hence, if at all they were impelled by a certain motive to testify against appellant and point him out as the offender, it was solely to exact justice from the person who truly caused the fire and definitely not from just any innocent fall guy.[33]

Appellant next harps on the alleged inconsistencies in the testimonies of witnesses pertaining to who among the children were inside the house when it was set on fire and what exactly appellant uttered about Leonardo Sr.. Surely, these alleged inconsistencies, if at all, refer to trivial matters which do not affect the credibility of the witnesses[34] positively identifying appellant as the one who burned their dwelling, killing the six year old Leonardo Jr. as a result.

We now reckon with appellant's denial and alibi. He claims he was working at *Pulong Buhangin*, Sta. Maria, Bulacan on the day and time the incident happened. To begin with, alibi is the weakest of all defenses. It is unreliable and can be easily fabricated.[35] More so, when as in this case, it is unsubstantiated by any corroborative evidence. It further crumbles in the absence of any showing that the presence of the accused in some other place precluded him from being physically present at the *locus criminis* on the day and time the crime was committed.[36]

Suffice it to state that appellant's alibi cannot prevail over the positive, clear, and categorical testimonies of Deolina and

---

[33] *See People vs. Ducabo*, 560 Phil. 709, 722 (2007).

[34] *See People vs. Gonzales*, 582 Phil. 412, 421 (2008).

[35] *See People vs. Gani*,710 Phil. 466, 473 (2013).

[36] *See People vs. Amoc*, G.R. No. 216937, June 05, 2017, 825 SCRA 608, 617.

Jessie Perocho who all throughout identified him as the person who burned down their dwelling, killing Leonardo Jr. as a result.

On the affidavits of recantation executed by Deolina and Jessie Parecho, the Court looks upon retractions with disfavor because they can be easily obtained from witnesses through intimidation or for monetary consideration. Besides, retraction does not necessarily negate an earlier declaration,[37] especially when a witness executes it after conviction.[38] *Firaza vs. People*[39] is *apropos*:

> Indeed, **it is a dangerous rule to set aside a testimony which has been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind**. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses.
>
> x x x x x x x x x
>
> This Court has always looked with disfavor upon retraction of testimonies previously given in court. The asserted motives for the repudiation are commonly held suspect, and the veracity of the statements made in the affidavit of repudiation are frequently and deservedly subject to serious doubt.
>
> x x x. **Especially when the affidavit of retraction is executed by a prosecution witness after the judgment of conviction has already been rendered, "it is too late in the day for his recantation without portraying himself as a liar." At most, the retraction is an afterthought which should not be given probative value.** (Emphasis supplied)

In addition, We share the trial court's observation that the affidavits of recantation were too terse, if not grossly inadequate. They visibly failed to address a number of material evidence adduced on record. In any case, it is certainly incredulous that

---

[37] *See People vs. Espenilla*, 718 Phil. 153, 166 (2013).

[38] *See People vs. Lamsen*, 721 Phil. 256, 260 (2013).

[39] 547 Phil. 572, 584-585 (2007).

after going through the tedious process of filing of the complaint, followed by rigorous trial particularly the grilling cross examination, not to mention the stress, anxiety, tears, pain, and sleepless nights they had to bear before, during and after the seemingly unending quest for justice, Deolina and Jessie Perocho would now, after fifteen long years, claim that everything they said and did before including the pain, the tears, the stress, the sleepless nights they claimed to have suffered was just after all a figment of their imagination.[40]

In another vein, appellant attacks the competence of Judge Arturo Clemente B. Revil to accurately ascertain the facts and the credibility of witnesses considering that another judge heard and tried the case from beginning to end.

The challenge must fail. On several occasions, the Court has clarified that the competence of a judge to evaluate the evidence on record and the credibility of witnesses and based thereon, ascertain with marked accuracy the cold facts of the case is not at all diminished simply because another judge heard and tried the case. The judge assigned to decide the case can rely on the transcripts of stenographic notes of the testimonies of the witnesses and calibrate them in conformity with rules of evidence *vis-a-vis* men's common experience, knowledge and observations. *Sandoval Shipyards, Inc. vs. PMMA*[41] is in point, viz:

> x x x we have held in several cases that the fact that the judge who heard the evidence is not the one who rendered the judgment; and that for the same reason, the latter did not have the opportunity to observe the demeanor of the witnesses during the trial but merely relied on the records of the case does not render the judgment erroneous. Even though the judge who penned the decision was not the judge who heard the testimonies of the witnesses, such is not enough reason to overturn the findings of fact of the trial court on the credibility of witnesses. It may be true that the trial judge who conducted the hearing would be in a better position to ascertain the

---

[40] *Supra*, Note 38.

[41] *See* 708 Phil. 535, 545-546 (2013).

truth or falsity of the testimonies of the witnesses, but it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision. The efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial. That a judge did not hear a case does not necessarily render him less competent in assessing the credibility of witnesses. He can rely on the transcripts of stenographic notes of their testimony and calibrate them in accordance with their conformity to common experience, knowledge and observation of ordinary men. Such reliance does not violate substantive and procedural due process of law. (*Emphasis supplied*)

So must it be.

The Court of Appeals correctly modified appellant's conviction from arson with homicide to simple arson conformably with prevailing jurisprudence. In *People vs. Malngan*,[42] the Court pronounced:

> Accordingly, in cases where both burning and death occur, in order to determine what crime/crimes was/were perpetrated – whether arson, murder or arson and homicide/murder, it is *de rigueur* to ascertain the main objective of the malefactor: (a) **if the main objective is the burning of the building or edifice, but death results by reason or on the occasion of arson, the crime is simply *arson*, and the resulting homicide is absorbed**; (b) if, on the other hand, the main objective is to kill a particular person who may be in a building or edifice, when fire is resorted to as the means to accomplish such goal the crime committed is *murder* only; lastly, (c) if the objective is, likewise, to kill a particular person, and in fact the offender has already done so, but fire is resorted to as a means to cover up the killing, then there are two separate and distinct crimes committed — *homicide/murder and arson.* (Emphasis supplied)

We now tackle the imposable penalty. Sec. 5 of PD 1613 provides, viz: "(i)f by reason of or on the occasion of the arson death results, the penalty of *Reclusion Perpetua* to death shall be imposed." On this score, since no aggravating circumstance was alleged or proved here, both the trial court and the Court

---

[42] 534 Phil. 404, 431 (2006).

of Appeals correctly sentenced appellant to *reclusion perpetua*.[43]

As for the monetary awards, the Court sustains the grant of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. But the grant of ₱30,000.00 as exemplary damages should be increased to ₱75,000.00. In addition, ₱50,000.00 as temperate damages should be granted.[44] Finally, these amounts shall earn six percent interest per annum from finality of this Decision until fully paid.[45]

Accordingly, the appeal is **DENIED**, and the Decision dated March 18, 2015, **AFFIRMED WITH MODIFICATION**.

Appellant **Nestor Dolendo y Fediles alias "Etoy"** is found guilty of **Arson** and sentenced to ***reclusion perpetua***.

Appellant is ordered to pay ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages. These amounts shall earn six percent interest per annum from finality of this Decision until fully paid

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *Reyes, Jr. J., JJ.*, concur.

Caguioa, J., on official leave.

---

[43] *See People vs. Abayon*, 795 Phil. 291, 301 (2016).

[44] *People vs. Jugueta*, 783 Phil. 806, 853 (2016).

[45] *People vs. Banez*, 770 Phil. 40, 49 (2015).

SECOND DIVISION

[G.R. No. 223715. June 3, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCELINO SALTARIN *y* TALOSIG,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— Murder is defined and penalized under Article 248 of the Revised Penal Code x x x. Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) the killing does not amount to parricide or infanticide.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS THEREON ARE BINDING AND CONCLUSIVE ON THE REVIEWING COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS.— Both the trial court and the Court of Appeals gave full credence to Narido's eyewitness account of the incident. He was physically present at the *locus criminis* when it took place. He positively identified appellant as the assailant. His credible testimony was, thus, sufficient to support a verdict of conviction against appellant. More so because Narido's testimony firmly conformed with the victim's death certificate, stating that the latter died due to a "stab wound [on] the anterior thorax hitting the heart." Suffice it to state that, in this jurisdiction, the assessment of credibility is best undertaken by the trial court since it has the opportunity to observe evidence beyond what is written or spoken, such as the deportment of the witness while testifying on the stand. Hence, the trial court's factual findings on the credibility of witnesses are binding and conclusive on the reviewing court, especially when affirmed by the Court of Appeals, as in this case.

3. ID.; ID.; ID.; NOT AFFECTED BY UNCERTAINTIES IN THE TESTIMONY OF THE WITNESS REFERRING TO TRIVIAL

MATTERS.— [T]he alleged uncertainties in Narido's testimony pertaining to the exact date of the incident, the address of the junk shop where the *kuliglig* was parked, and whether he knew appellant prior to the incident and where he lived — wholly refer to trivial matters which do not affect Narido's credibility as an eyewitness. His positive identification of appellant as the one who slew his *tatay-tatayan* was consistent, unwavering, and firm.

4. **ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE ACCUSED'S POSITIVE IDENTIFICATION BY THE PROSECUTION WITNESS.—** For alibi and denial are inherently weak and courts have been viewed with disfavor by the courts. x x x [They] cannot prevail over the assailant's positive identification by the prosecution witness. The defense of denial further crumbles in view of appellant's admission that he was physically present at the *locus criminis* on the same date and time the victim got slain.

5. **CRIMINAL LAW; REVISED PENAL CODE; AGGRAVATING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS THAT THE ATTACK COMES WITHOUT A WARNING AND IN A SWIFT, DELIBERATE, AND UNEXPECTED MANNER, AFFORDING THE VICTIM NO CHANCE TO RESIST OR ESCAPE.—** Appellant's sudden, swift and unexpected attack rendered the victim totally unable to retaliate or defend himself. The means employed by appellant ensured the commission of the crime without exposing him to any risk which may come from the victim's act of retaliation or defense. This is treachery. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the victim no chance to resist or escape. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or herself or retaliate, ensuring its commission without risk to the aggressor.

6. **ID.; ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS; TO WARRANT A FINDING OF EVIDENT PREMEDITATION, IT MUST APPEAR THAT THE DECISION TO COMMIT THE CRIME IS THE RESULT OF MEDITATION, CALCULATION, REFLECTION, OR PERSISTENT ATTEMPT.—** Evident

premeditation requires the following elements: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused has clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts. To warrant a finding of evident premeditation, it must appear that the decision to commit the crime was the result of meditation, calculation, reflection, or persistent attempt. The prosecution is tasked to show how or when appellant's plan to kill was hatched and how much time had elapsed before it was carried out.

7. ID.; ID.; MURDER; PENALTY IN CASE AT BAR; THE PHRASE "WITHOUT ELIGIBILITY FOR PAROLE"; SHALL BE USED TO QUALITY THE PENALTY OF *RECLUSION PERPETUA* ONLY IF THE ACCUSED SHOULD HAVE BEEN SENTENCED TO SUFFER THE DEATH PENALTY HAD IT NOT FOR REPUBLIC ACT NO. 9346 (AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES).— [T]he Court of Appeals did not err in affirming appellant's conviction for murder. And in the absence of any aggravating circumstance, appellant was correctly sentenced to *reclusion perpetua*. On whether the decision must explicitly bear appellant's eligibility for parole, A.M. 15-08- 02 clarifies [that] the phrase *"without eligibility for parole"* shall be used to qualify the penalty of *reclusion perpetua* only if the accused should have been sentenced to suffer the death penalty had it not been for RA 9346. Here, appellant was sentenced to *reclusion perpetua* because such indeed is the correct penalty in the absence of any aggravating circumstance that would have otherwise warranted the imposition of the death penalty were it not for RA 9346. The phrase *"without eligibility for parole,"* therefore, need not be borne in the decision to qualify appellant's sentence.

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

LAZARO-JAVIER, *J.*:

The Case

This appeal assails the Decision dated February 26, 2015[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 06536 affirming with modification the trial court's verdict of conviction against appellant for murder.

The Proceedings before the Trial Court

The Charge

Appellant was charged with murder for the killing of Joval Benitez de Jesus, thus:

> That on or about November 6, 2011, in the City of Manila, Philippines, the said accused, with intent to kill, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and use personal violence upon the person of JOVAL BENITEZ DE JESUS, by then and there stabbing the latter with a bladed weapon ("kutsilyo") thrice, hitting him once on the chest, thereby inflicting upon him a mortal stab wound which was the direct and immediate cause of his death thereafter.
>
> ACTS CONTRARY TO LAW.[2]

The case was raffled to the Regional Trial Court-Branch 37, City of Manila.

On arraignment, appellant pleaded *not guilty*. During the pre-trial, the parties stipulated on the jurisdiction of the trial court, the identity of the accused, and the cause of death of the victim Joval Benitez de Jesus. Thereafter, trial followed.

---

[1] Penned by Associate Justice Mariflor P. Punzalan-Castillo and concurred in by Associate Justices Florito S. Macalino and Zenaida T. Galapate-Laguilles; *Rollo*, pp. 2-13.

[2] Records, p. 1.

The Prosecution's Evidence

Lone prosecution witness fifteen-year old **Gerry Narido**[3] testified that he considered the victim Joval Benitez de Jesus his *tatay-tatayan*. On November 6, 2011, around 11 o'clock in the evening, he and the victim were outside a junk shop when appellant asked for coins from them. The victim obliged but refused to give more when appellant asked a second time. After appellant left, he and the victim sat inside a *kuliglig* parked nearby.

When appellant returned, he handed a cigarette to the victim. The latter responded "*mabait ka naman pala*." Appellant stepped back a bit and instantly thrust a knife into the victim's chest. He delivered two more blows but missed. Appellant then fled.

He (Narido) got shocked and froze but soon regained his composure when he noticed the victim was already losing his strength. He took the victim out of the *kuliglig* and brought him to the Gat Andres Hospital. Little did he know that it was the last time he would be seeing his *tatay-tatayan* alive. The victim died that same night due to the stab wound hitting his heart.[4]

On cross, Narido clarified that although it was dark at the *locus criminis*, he clearly saw appellant because the latter was only an arm's length away when he stabbed the victim. Also, he saw the incident up close since he was seated right beside the victim on board the *kuliglig*.

During the trial, the parties further stipulated on the nature of the testimonies of (1) arresting officer **PO1 Christopher Razon**,[5] (2) attending doctor **Jesille Cui Baluyot**,[6] (3)

---

[3] TSN, March 21, 2013.

[4] Records, pp. 3-4.

[5] Order dated February 21, 2012; Records, pp. 27-28.

[6] Order dated May 3, 2012; Records, p. 42.

investigating officer **SP02 Edmundo Cabal**,[7] and (4) the victim's mother, **Teresita de Jesus**.[8]

The prosecution offered the following documentary exhibits: (1) Letter- Referral dated November 8, 2011 of the Manila Police District Homicide Section endorsing the case to the inquest prosecutor of Manila; (2) the victim's Certificate of Death; (3) SPO2 Cabal's Crime Report dated November 7, 2011; (4) Affidavit of Apprehension executed by PO2 Roman Fajardo and PO1 Christopher Razon; (5) the Booking Sheet; and (6) SPO2 Cabal's Arrest Report.[9]

The Defense's Evidence

Appellant testified as lone witness for the defense. According to him, on November 6, 2011, around 11 o'clock in the evening, while he was walking home, the victim blocked his path to ask for cigarette. He obliged then walked away. The victim followed him and this time asked for money. He replied he did not have any left. The victim suddenly held him by the arm and forced his hand inside his pocket. He resisted but the victim held his neck and drew a knife. He then realized the victim had four other companions, including Narido. They all surrounded him and the victim. He grappled for the knife and rolled with the victim on the ground. After getting back on his feet, he immediately ran home. The following morning, the victim's relatives came to his house and accused him of stabbing the victim. The next day, he got arrested in the church.

The Trial Court's Ruling

By Decision dated November 28, 2013,[10] the trial court found appellant guilty as charged, thus:

---

[7] Order dated September 18, 2012; Records, p. 51.

[8] Order dated January 24, 2013; Records, p. 62.

[9] Order dated July 16, 2013; Records, p. 78.

[10] Penned by Virigilio V. Macaraig; CA *Rollo*, pp. 35-43.

WHEREFORE, the Court finds accused Marcelino Saltarin y Talosig GUILTY beyond reasonable doubt of the crime of Murder and there being no mitigating or aggravating circumstances present, hereby sentences him to suffer the penalty of *reclusion perpetua*.

Accused is ordered to pay the heirs of the victim the sum of Php13,500.00 as actual damages, Php50,000.00 as civil indemnity, Php50,000.00 as moral damages, and Php30,000.00 as exemplary damages.

SO ORDERED.[11]

The trial court ruled that appellant's denial cannot prevail over Narido's positive identification of him as the one who fatally stabbed the victim. The trial court also appreciated treachery to have attended the killing since appellant's sudden and unexpected attack caught the victim off guard. It did not appreciate evident premeditation though for lack of any showing that appellant hatched a plan to kill the victim.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for finding him guilty of murder despite the lack of positive identification. Appellant pointed out that the crime happened around 11 o'clock in the evening along a dark street, rendering it impossible for Narido to recognize his offender. Appellant also cited the supposed uncertainties in Narido's testimony, *i.e.* Narido was unable to answer simple questions pertaining to the address of the junkshop where the *kuliglig* was parked, and the exact date of the incident. Narido claimed he did not know him before the incident, and yet, Narido mentioned his complete address when he testified in court.

Appellant likewise found it contrary to human nature that Narido did not shout for help despite the presence of other people in the vicinity. Finally, he imputed ill-motive on Narido who testified he would do everything to protect the interest of his *tatay-tatayan*.[12]

---

[11] CA *Rollo*, p. 43.

[12] CA *Rollo*, pp. 21-33.

On the other hand, the Office of the Solicitor General (OSG) through State Solicitor Maria Victoria V. Sardillo defended the trial court's verdict of conviction and the credibility of Narido's testimony. The OSG argued that despite the minor gaps in Narido's testimony, the same sufficiently established that appellant's sudden and unpredicted attack amounted to treachery. The OSG also emphasized that appellant's positive testimony prevailed over appellant's denial.

The Court of Appeals' Ruling

The Court of Appeals affirmed, with modification through its assailed Decision dated February 26, 2015, thus:

> **WHEREFORE**, the November 28, 2013 Decision of the Regional Trial Court of Manila, Branch 37, in Criminal Case No. 11-287986, finding accused-appellant Marcelino Saltarin guilty beyond reasonable doubt of murder is **AFFIRMED** with the following **MODIFICATIONS**:
>
> 1. Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* **without eligibility of parole**;
>
> 2. The awards of civil indemnity and moral damages are i**ncreased to ₱75,000.00 each**; and
>
> **3. All damages awarded shall earn an interest of 6% per annum computed from the finality of this judgment until fully paid.**
>
> In all other respects, the assailed decision is **AFFIRMED**.
>
> **SO ORDERED.**[13]

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution dated June 28, 2016,[14] both appellant and the OSG manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.[15]

---

[13] *Rollo*, p. 2-12.

[14] *Rollo*, p. 19.

[15] *Rollo*, pp. 21 and 16.

Issue

Did the Court of Appeals err when it affirmed appellant's conviction for murder, with modification of the penalty and monetary awards?

Ruling

The appeal must fail.

Murder is defined and penalized under Article 248 of the Revised Penal Code, *viz.*:

> Article 248. *Murder*. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;
>
> x x x x x x x x x

Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) the killing does not amount to parricide or infanticide.[16]

We focus on the second and third elements, the presence of which appellant vigorously disclaims.

Second Element: Appellant was positively identified as the assailant who fatally stabbed the victim

Fifteen-year old Gerry Narido recounted in detail how appellant stabbed the victim to death, thus:

x x x x x x x x x

---

[16] *People v. Villanueva*, 807 Phil. 245, 252 (2017).

Q Mr. Witness, do you know a person by the name of Juval de Jesus?
A Yes, sir.

Q Where is this person right now if you are aware?
A He is already dead, sir.

Q Do you know the reason why this person died?
A Yes, sir.

Q What is the reason why this person Juval died?
A At first Saleng was asking for coins from Juval and Juval was able to give Saleng coins.

Q Who is this Saleng you are referring to?
A Saleng

Q Is this person Saleng inside this court room right now?
A Yes, sir.

Q Will you kindly point him to us?

Interpreter

Witness is pointing to accused seated at the back row of the court room, third person from left wearing yellow t-shirt who, when asked by the Court, answered by the name of Marcelino Saltarin.

Q You said this Saleng asked for coins from Juval. Do you affirm that Mr. Witness?
A Yes, sir.

Q When did this Saleng ask coins from Juval?
A It was night time, sir.

Q Do you still remember the exact date?
A Yes, sir.

Q What is the exact date to your recollection Mr. Witness?
A It was eleven in the evening, sir.

Q What happened after Saleng asked coins from Juval?
A Saleng again asked coins from Juval and Juval said enough.

Q What happened after Juval refused to give Saleng more coins?
A Saleng went home and immediately got a knife.

Q Were you able to see where did Saleng got the knife?

A No, sir.

Q After Saleng got hold of the knife, what happened next?

A Juval and I immediately went to "*kuliglig*" and ride on it.

Q By the way, where were you Mr. Witness when Saleng asked coins from Juval?

A I was beside Juval.

Q How far were you from Juval?

A Side by side, sir.

Q How about accused, Saleng; how far was he when he asked coins from Juval?

A Saleng went home but immediately proceeded to our place.

Q You said that the incident happened at night. Why did you manage to identify Saleng despite your testimony that the incident happened at night time?

A Because I was beside Juval, sir.

x x x x x x x x x

Q x x x
You said that Saleng got hold of the knife after Juval refused to give him some more coins. What happened after that, Mr. Witness?

A Saleng handed to Juval a cigarette.

Q What did Juval do with the cigarette given by Saleng?
A Juval said: "*mabait ka naman pala*." Then Saleng moved backward and immediately stabbed Juval at the chest.

Q Could you estimate the distance of Juval when Saleng stabbed Juval?
A It's just an arm length distance, sir.

Q What was Juval doing when Saleng stabbed him?
A Juval was standing.

Q After Saleng stabbed Juval to chest what happened next?
A Saleng made another stab, sir. Fortunately, Juval was able to avoid the attack.

Q What transpired next after Juval evaded the second thrust of Saleng?
A Saleng made another blow and fortunately Juval was able to avoid the attack.

Q What happened after that?
A Saleng ran away, sir.[17] (emphases supplied)

Narido's detailed account started with appellant asking for coins from the victim who readily obliged but refused to give more when appellant asked a second time. Appellant left for a while and when he came back, he went straight to the victim and handed the latter a cigarette. In turn, the victim even commended appellant. As if acting on cue, appellant stepped back a bit, obviously for momentum, and instantly thrust a knife into the victim's chest. He followed-up with two more blows but missed. Then, he fled.

Both the trial court and the Court of Appeals gave full credence to Narido's eyewitness account of the incident. He was physically present at the *locus criminis* when it took place. He positively identified appellant as the assailant. His credible testimony was, thus, sufficient to support a verdict of conviction against appellant. More so because Narido's testimony firmly conformed with the victim's death certificate, stating that the latter died due to a "stab wound [on] the anterior thorax hitting the heart."[18]

Suffice it to state that, in this jurisdiction, the assessment of credibility is best undertaken by the trial court since it has the opportunity to observe evidence beyond what is written or spoken, such as the deportment of the witness while testifying on the stand.[19] Hence, the trial court's factual findings on the credibility of witnesses are binding and conclusive on the reviewing court, especially when affirmed by the Court of Appeals, as in this case.[20]

---

[17] TSN, March 21, 2013, pp. 5-15.

[18] Records, p. 4.

[19] *People v. Ocdol*, 741 Phil. 701, 710-711 (2014).

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

The fact that the incident happened around 11 o'clock in the evening along a dark street did not preclude Narido from clearly recognizing appellant as the assailant. Early on, appellant asked for coins from the victim who readily obliged but refused to give more a second time. Narido and the victim were together the whole time. Narido even saw appellant leave right after the victim declined to give him more coins. When appellant came back shortly after, Narido and the victim were still together, this time, seated side by side inside a parked *kuliglig*. Up close, Narido saw appellant approach and hand a cigarette to the victim who even praised appellant "*mabait ka naman pala*." Then, appellant's sudden and unexpected fatal attack happened. He thrust a knife into the victim's chest, causing the latter's death.

In fine, Narido positively and clearly identified appellant as the one who slew the victim.

At any rate, Narido's close relation with the victim whom he considered his *tatay-tatayan* is undisputed. But contrary to appellant's claim, it was precisely Narido's kindred spirit with his *tatay-tatayan* which impelled him to exact justice from appellant, the real assailant, and not just from some "fall guy". Besides, it is against the natural order of events, nay, human nature that a person would falsely testify against another if the latter had nothing to do with the crime.[21]

Narido's inability to shout for help during the incident was not unusual. Quite the opposite, it is but normal for him to be petrified when his *tatay-tatayan* was fatally stabbed before his very eyes. More, appellant's swift, deliberate and unexpected attack on the victim hardly gave Narido a chance to react. Notably, Narido was just fifteen years old at that time. He was not even an adult. And in any case, there is no standard form of reaction when facing a shocking and horrifying experience.

In another vein, the alleged uncertainties in Narido's testimony pertaining to the exact date of the incident, the address of the

---

[21] *People v. Jumanoy*, 221 SCRA 333, 344 (1993).

junk shop where the *kuliglig* was parked, and whether he knew appellant prior to the incident and where he lived — wholly refer to trivial matters which do not affect Narido's credibility as an eyewitness.[22] His positive identification of appellant as the one who slew his *tatay-tatayan* was consistent, unwavering, and firm.

In this light, appellant's bare denial must fail. For alibi and denial are inherently weak and courts have been viewed with disfavor by the courts. It cannot prevail over the assailant's positive identification by the prosecution witness.[23] The defense of denial further crumbles in view of appellant's admission that he was physically present at the *locus criminis* on the same date and time the victim got slain.

Third Element: Treachery attended the killing

As correctly ruled by the trial court and the Court of Appeals, treachery attended the killing of Joval Benitez de Jesus.

Narido testified that after the victim refused to give appellant more coins a second time, appellant left but returned shortly after. Appellant then approached the parked *kuliglig* where Narido and the victim were seated. Pretending to be a kind soul, appellant handed cigarette to the victim who even praised him "*mabait ka naman pala*." But like a wolf in sheep clothing, appellant, without any warning, stepped back a bit obviously for momentum and instantly thrust a knife into the chest of the unsuspecting hapless victim.

Appellant's sudden, swift and unexpected attack rendered the victim totally unable to retaliate or defend himself. The means employed by appellant ensured the commission of the crime without exposing him to any risk which may come from the victim's act of retaliation or defense. This is treachery. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner,

---

[22] *People v. Appegu*, 429 Phil. 467, 477 (2002).

[23] *People v. Peteluna*, 702 Phil. 128, 141 (2013).

affording the victim no chance to resist or escape.[24] What is decisive is that the execution of the attack made it impossible for the victim to defend himself or herself or retaliate, ensuring its commission without risk to the aggressor.[25]

Evident premeditation did not attend the killing

Evident premeditation requires the following elements: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused has clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts.[26] To warrant a finding of evident premeditation, it must appear that the decision to commit the crime was the result of meditation, calculation, reflection, or persistent attempt.[27] The prosecution is tasked to show how or when appellant's plan to kill was hatched and how much time had elapsed before it was carried out.

Here, both the trial court and the Court of Appeals found that the prosecution was not able to sufficiently establish evident premeditation.

We agree. Indeed, the victim's slay was more spontaneous than planned. Based on Narido's testimony, right after the victim refused to give appellant more coins, appellant left but returned shortly. The events which followed indicated that appellant had armed himself with a knife which he used to stab the victim in a sudden, swift, and unexpected manner.

There was no showing early on that appellant plotted to kill the victim. On the contrary, the attendant circumstances establish that he only decided to finish off the victim after the latter refused to give him more coins. There was no evidence that he had enough

---

[24] *People v. Orozco*, G.R. No. 211053, November 29, 2017.

[25] *People v. Pulgo*, 830 SCRA 220, 234 (2017).

[26] *People v. Kalipayan*, G.R. No. 229829, January 22, 2018.

[27] *People v. Dadivo*, 434 Phil. 684, 690 (2002).

time to reflect on the consequences of killing his victim before carrying it out. Too, it is not shown here that appellant performed any other overt act showing his determination to kill.[28]

In fine, evident premeditation cannot be appreciated as an aggravating circumstance in this case.

Penalty

All told, the Court of Appeals did not err in affirming appellant's conviction for murder. And in the absence of any aggravating circumstance, appellant was correctly sentenced to *reclusion perpetua*. On whether the decision must explicitly bear appellant's eligibility for parole, A.M. 15-08-02[29] clarifies:

> x x x the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "*without eligibility for parole*":
>
> (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; and
>
> (2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "*without eligibility for parole" shall be used* to qualify that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

Thus, the phrase "*without eligibility for parole*" shall be used to qualify the penalty of *reclusion perpetua* only if the accused should have been sentenced to suffer the death penalty had it not been for RA 9346.[30]

---

[28] *People v. Isla*, 699 Phil. 256, 270 (2012).

[29] GUIDELINES FOR THE PROPER USE OF THE PHRASE "*WITHOUT ELIGIBILITY FOR PAROLE*" IN INDIVISIBLE PENALTIES.

[30] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES

Here, appellant was sentenced to *reclusion perpetua* because such indeed is the correct penalty in the absence of any aggravating circumstance that would have otherwise warranted the imposition of the death penalty were it not for RA 9346. The phrase "*without eligibility for parole*," therefore, need not be borne in the decision to qualify appellant's sentence.

On the monetary awards, the Court affirms the award of actual damages in the amount of Php13,500.00 as the stipulated funeral expenses incurred by the victim's mother.[31] The Court of Appeals properly increased the grant of civil indemnity from Php50,000.00 to Php75,000.00, and moral damages from Php50,000.00 to Php75,000.00. As for exemplary damages, the same should be increased from Php30,000.00 to Php75,000.00 in accordance with prevailing jurisprudence.[32]

ACCORDINGLY, the appeal is **DENIED**. The Decision dated February 26, 2015 of the Court of Appeals in CA-G.R. CR-H.C. No. 06536 is **AFFIRMED with MODIFICATION**.

MARCELINO SALTARIN *y* TALOSIG is found **GUILTY** of Murder and sentenced to ***Reclusion Perpetua***. He is further required to pay Php13,500.00 as actual damages, Php75,000.00 as civil indemnity, Php75,000.00 as moral damages, and Php75,000.00 as exemplary damages.

These amounts shall earn six percent (6%) interest per annum from finality of this decision until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *Reyes, Jr., J., JJ.*, concur.

Caguioa, J., on official leave.

---

[31] Order dated January 24, 2013; Records, p. 62.

[32] *People v. Jugueta*, 783 Phil. 806, 839 (2016).

THIRD DIVISION

[G.R. No. 232870. June 3, 2019]

MANUEL G. ACOSTA, *petitioner, vs.* **MATIERE SAS AND PHILIPPE GOUVARY,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; REDUNDANCY; REQUIREMENTS FOR VALIDITY.—** Redundancy is recognized as one (1) of the authorized causes for dismissing an employee under the Labor Code. x x x The requirements for a valid redundancy program were laid down in *Asian Alcohol Corporation v. National Labor Relations Commission*: For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.

2. **ID.; ID.; ID.; ID.; GOOD FAITH CRITERIA; TO ESTABLISH GOOD FAITH, THE COMPANY MUST PROVIDE SUBSTANTIAL PROOF THAT THE SERVICES OF THE EMPLOYEES ARE IN EXCESS OF WHAT IS REQUIRED OF THE COMPANY, AND THAT FAIR AND REASONABLE CRITERIA ARE USED TO DETERMINE THE REDUNDANT POSITIONS.—** [T]his Court held that "[t]o establish good faith, the company must provide substantial proof that the services of the employees are in excess of what is required of the company, and that fair and reasonable criteria were used to determine the redundant positions." Here, respondents' only basis for declaring petitioner's position redundant was that his function, which was to monitor the delivery of supplies, became unnecessary upon completion of the shipments. However, upon

careful scrutiny, this Court finds that the Employment Agreement itself contradicts respondents' allegation.

3. ID.; ID.; ID.; ID.; FAIR AND REASONABLE CRITERIA; MAY TAKE INTO ACCOUNT THE PREFERRED STATUS, EFFICIENCY, AND SENIORITY OF EMPLOYEES TO BE DISMISSED DUE TO REDUNDANCY.— [R]espondents failed to show that they used fair and reasonable criteria in determining what positions should be declared redundant. In *Panlilio v. National Labor Relations Commission*, this Court held that fair and reasonable criteria may take into account the preferred status, efficiency, and seniority of employees to be dismissed due to redundancy. Yet, respondents never showed that they used any of these in choosing petitioner as among the employees affected by redundancy. Although he was among the five (5) employees dismissed, petitioner cannot be similarly situated with the other employees.

APPEARANCES OF COUNSEL

Aristeo Lastica, Jr. for petitioner.
Nunilo O. Marapao, Jr. for respondents.

D E C I S I O N

LEONEN, *J.*:

In redundancy, an employer must show that it applied fair and reasonable criteria in determining what positions have to be declared redundant. Otherwise, it will be held liable for illegally dismissing the employee affected by the redundancy.

This Court resolves a Petition for Review on Certiorari[1] assailing the April 7, 2017 Decision[2] and July 12, 2017

---

[1] *Rollo*, pp. 27-50. Filed under Rule 45 of the Rules of Court.

[2] *Id*. at 52-62. The Decision was penned by Associate Justice Maria Filomena D. Singh, and concurred in by Associate Justices Ricardo R. Rosario and Edwin D. Sorongon of the Fifteenth Division, Court of Appeals, Manila.

Resolution[3] of the Court of Appeals in CA-G.R. SP No. 140108.[4] The Court of Appeals upheld the January 30, 2015 Decision[5] and February 27, 2015 Resolution[6] of the National Labor Relations Commission, which had reversed and set aside the Labor Arbiter's August 18, 2014 Decision[7] holding petitioner Manuel G. Acosta's (Acosta) dismissal illegal.

Matiere SAS is a French company "engaged in the fabrication, supply[,] and delivery of unibridges and flyovers[.]"[8]

On October 29, 2008, Matiere SAS and the Department of Public Works and Highways executed a contract for the construction of flyovers and bridges.[9] On March 19, 2009, Matiere SAS also entered into a contract with the Department of Agrarian Reform to construct bridges for better access to agricultural lands.[10]

On November 1, 2009, Matiere SAS, represented by its resident manager Philippe Gouvary (Gouvary), executed a Consulting Agreement[11] with Acosta. Per the agreement, Matiere

---

[3] *Id*. at 64-65. The Resolution was penned by Associate Justice Maria Filomena D. Singh, and concurred in by Associate Justices Ricardo R. Rosario and Edwin D. Sorongon of the Fifteenth Division, Court of Appeals, Manila.

[4] *Id*. at 44.

[5] *Id*. at 522-532. The Decision was penned by Commissioner Mercedes R. Posada-Lacap, and concurred in by Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Dolores M. Peralta-Beley of the Fifth Division, National Labor Relations Commission, Quezon City.

[6] *Id*. at 549-552. The Resolution was penned by Commissioner Mercedes R. Posada-Lacap, and concurred in by Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Dolores M. Peralta-Beley of the Fifth Division, National Labor Relations Commission, Quezon City.

[7] *Id*. at 311-319. The Decision was penned by Labor Arbiter Vivian H. Magsino-Gonzalez of the National Labor Relations Commission, Quezon City.

[8] *Id*. at 53.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 97-100.

SAS engaged Acosta as its technical consultant for 12 months, with a monthly salary of ₱70,000.00.[12] Upon the Consulting Agreement's expiration, Matiere SAS hired Acosta as its technical assistant with the same ₱70,000.00 monthly salary.[13]

Under the Employment Agreement[14] dated November 1, 2010, Acosta was tasked to:

1. Prepare reports regarding WCI [Woodfields Consultants, Inc.] consultants.
2. Be the intermediary between the CAD operators in WCI and the management in the office.
3. Attend coordination meetings with consultant.
4. Evaluate billings.
5. Follow the SIT and prepare reports.
6. Prepare various reports as required by the resident manager.
7. Site visits.[15]

On December 14, 2011, Matiere SAS wrote Acosta a letter,[16] increasing his salary from ₱70,000.00 to ₱76,000.00, effective January 1, 2012. On the same day, Matiere SAS wrote Acosta another letter,[17] giving him a bonus of ₱30,000.00 for his good performance in the second half of 2011.[18]

---

[12] *Id*. at 53 and 98-99.

[13] *Id*. at 53 and 101.

[14] *Id*. at 101-102.

[15] *Id*. at 53 and 103.

[16] *Id*. at 104.

[17] *Id*. at 105.

[18] *Id*. at 54.

On June 27, 2013, Matiere SAS sent Acosta a letter[19] with the subject, "*Ending of the employment agreement*[.]"[20] It read:

> We have to inform you that your employment contract within the company MATIERE/EIFFAGE will end July 31, 2013.
>
> This decision is due to the cessation of our delivery operations and the diminution of our activities. We cannot find any reinstatement at the office. Nevertheless[,] we would like to thank you for your cooperation since the 01, November 2009.
>
> You are authorized not to report at the office starting July 1, 2013.
>
> Regarding the calculation of your separation pay, we will signify you the amount as soon as possible.[21]

In a June 26, 2013 letter,[22] Matiere SAS informed the Department of Labor and Employment that because its last shipment had been delivered,[23] it would have to terminate the employment of its five (5) workers: Wilson G. Comia (Wilson), Richard E. Comia (Richard), Alexander M. Menor (Menor), Alvin P. Roselim (Roselim), and Acosta. Matiere SAS stated that Wilson, Richard, and Menor were all based in Subic, while Roselim was based in Cagayan de Oro.[24] All four (4) of them were "assigned to the stripping operations[.]"[25] Meanwhile, Acosta, who was based in the office, was "primarily in charge [of] the monitoring of shipments."[26]

---

[19] *Id.* at 106.

[20] *Id.*

[21] *Id.* at 54 and 106.

[22] *Id.* at 133.

[23] *Id.*

[24] *Id.* at 54 and 135.

[25] *Id.* at 133.

[26] *Id.*

On June 28, 2013, Matiere SAS filed before the Department of Labor and Employment: (1) an Establishment Employment Report,[27] citing redundancy and the completion of delivery of supplies as its reasons for dismissing its employees; and (2) a List of Affected Workers by Displacements/Flexible Work Arrangements,[28] enumerating the five (5) dismissed employees. The employment termination was made effective on July 31, 2013.[29]

On July 23, 2013, Acosta filed before the National Labor Relations Commission a Complaint[30] for illegal dismissal against Matiere SAS and Gouvary.[31]

Mediation conferences were conducted but the parties failed to arrive at a settlement. Thus, they were required to submit their respective pleadings.[32]

While the case was pending, Matiere SAS and Gouvary, through their counsel, wrote Acosta a letter[33] dated July 29, 2013, offering him a separation pay of ₱322,998.60. Acosta, however, refused the offer.[34]

In her August 18, 2014 Decision,[35] Labor Arbiter Vivian Magsino- Gonzalez found Acosta's dismissal illegal. She held that Matiere SAS and Gouvary failed to prove the factual bases for the reduction of its workforce. She pointed out that while Matiere SAS submitted a Certificate of Completion from the Department of Public Works and Highways to support its claim

---

[27] *Id*. at 134

[28] *Id*. at 135.

[29] *Id*. at 54 and 134.

[30] *Id*. at 86-89.

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

[32] *Id*. at 55 and 311.

[33] *Id*. at 136.

[34] *Id*. at 529.

[35] *Id*. at 311-319.

of project completion, it submitted no such certificate from the Department of Agrarian Reform.[36]

Moreover, the Labor Arbiter noted that Matiere SAS failed to submit any redundancy plan.[37] It also failed to provide "fair and reasonable criteria in ascertaining what positions are redundant and how the selection of employees to be dismissed was made."[38] The Labor Arbiter pointed out:

> [I]f there are employees who should be affected by the reduction of workforce due to completion of deliveries, the field engineers in-charge of deliveries in the projects, and who supervised the stripping works/ removing the unibridges parts from the container vans, may be the first ones to go. These field engineers, however, are undisputedly retained by respondents.
>
> . . . While Alvin Roselim is a forklift operator, [Wilson, Richard, and Menor] are helpers who work under the supervision of field engineers. The latter were the ones in charge of deliveries and respondents may have had reasons to terminate them on [the] ground of redundancy. As a Technical Assistant whose duties include monitoring of projects until completion, there is no substantial basis why complainant was also affected by respondents' redundancy plan.[39]

The dispositive portion of the Labor Arbiter's Decision read:

> **WHEREFORE**, foregoing considered, complainant is hereby found to have been illegally dismissed. Respondent Matiere SAS is hereby ordered to pay complainant separation pay with backwages totaling **Php241,793.62**, inclusive of attorney's fees.
>
> Other claims are dismissed for lack of basis.
>
> **SO ORDERED.**[40] (Emphasis in the original)

---

[36] *Id.* at 315-316.

[37] *Id.* at 316.

[38] *Id.*

[39] *Id.* at 316-317.

[40] *Id.* at 319.

Both parties appealed the Labor Arbiter's Decision before the National Labor Relations Commission.[41] Praying that the award be modified to ₱1,846,389.44, Acosta argued in his Partial Memorandum of Appeal[42] that the computation of the Labor Arbiter's award should be based on his monthly salary before his employment termination, which was ₱78,280.00.[43] Meanwhile, in their Memorandum of Appeal,[44] Matiere SAS and Gouvary contended that Acosta's employment termination was valid and that they implemented the redundancy based on fair and reasonable criteria.[45]

In its January 30, 2015 Decision,[46] the National Labor Relations Commission reversed the Labor Arbiter's Decision.[47] It found that Matiere SAS and Gouvary proved that there was a significant decrease in the volume of their business when they presented before the National Labor Relations Commission a Certificate of Completion from the Department of Agrarian Reform. It noted that the completion of the government contracts would render unnecessary the services offered by Acosta, whose "main function was to monitor the delivery of materials . . . from France to the Philippines."[48]

The National Labor Relations Commission found that Acosta and the four (4) other employees were similarly situated, noting that even if Acosta had a higher position, their tasks were all related to the shipment of materials.[49] Moreover, since Acosta's dismissal was not done with ill motive or in bad faith, Matiere

---

[41] *Id*. at 55.

[42] *Id*. at 320-325.

[43] *Id*. at 323-324.

[44] *Id*. at 336-350.

[45] *Id*. at 344-347.

[46] *Id*. at 522-532.

[47] *Id*. at 55 and 532.

[48] *Id*. at 529.

[49] *Id*. at 530-531.

SAS and Gouvary's decision should be respected "as a valid exercise of a management prerogative."[50]

The dispositive portion of the National Labor Relations Commission Decision read:

> **WHEREFORE**, premises considered, the appeal of respondents Matiere SAS and Philippe Gouvary is **GRANTED** and the assailed Decision of the Labor Arbiter dated August 18, 2014 is **REVERSED** and **SET ASIDE**. Accordingly, the instant complaint for illegal dismissal is hereby **DISMISSED** for lack of merit.
>
> The Partial Appeal of complainant-appellant Manuel G. Acosta is **DENIED**.
>
> **SO ORDERED.**[51] (Emphasis in the original)

Acosta moved for reconsideration.[52] He submitted a certification[53] from Woodfields Consultants, Inc. and a certification[54] from the Department of Public Works and Highways to support his claim that his task was not limited to monitoring shipments. He also alleged that Matiere SAS hired a certain Charlie Desamito as his replacement.[55]

In its February 27, 2015 Resolution,[56] the National Labor Relations Commission partially granted Acosta's Motion. It amended the dispositive portion of its January 30, 2015 Decision to include the payment of Acosta's separation pay:

---

[50] *Id*. at 531.

[51] *Id*. at 532.

[52] *Id*. at 533-545.

[53] *Id*. at 547. Woodfields Consultants, Inc. is a firm composed of planners, architects, engineers, construction managers, and environment specialists. It was contracted by Matiere SAS for the design of the bridges' sub-structures under their supply contract with the Department of Public Works and Highways.

[54] *Id*. at 546.

[55] *Id*. at 538 and 541.

[56] *Id*. at 549-552.

IN VIEW OF THE FOREGOING, complainant's motion for reconsideration is **partially granted** and the dispositive portion of Our decision dated January 30, 2015 is hereby amended to read as follows:

> "***WHEREFORE**, premises considered, the appeal of respondents [Matiere] SAS and Philippe Gouvary is **GRANTED** and the assailed Decision of the Labor Arbiter dated August 18, 2014 is **REVERSED** and **SET ASIDE**. Accordingly, the instant complaint for illegal dismissal is hereby **DISMISSED** for lack of merit.*
>
> *Respondent-appellants are, however, ordered to pay complainant-appellant Manuel G. Acosta separation pay as provided by law.*
>
> *The Partial Appeal of complainant-appellant Manuel G. Acosta is DENIED.*"
>
> **SO ORDERED.**[57] (Emphasis in the original)

Thus, Acosta filed before the Court of Appeals a Petition for Certiorari.[58]

In its April 7, 2017 Decision,[59] the Court of Appeals denied Acosta's Petition. It held that Matiere SAS and Gouvary were able to establish that Acosta's position became redundant upon the completion of its contracts with the Department of Public Works and Highways and the Department of Agrarian Reform.[60] It added:

> Even assuming that Acosta's functions included reporting and coordination, he completely failed to show that these particular functions were not incidental only to the supply and delivery of the bridges. Acosta does not dispute the completion of the shipments for the covered projects. Neither did he ever dispute that the DPWH and the DAR projects were Matiere's only activities locally. It follows

---

[57] *Id*. at 551-552.

[58] *Id*. at 66-85.

[59] *Id*. at 52-62.

[60] *Id*. at 58.

clearly that with the completion of the shipments, Acosta's role became unnecessary. Despite the continuation of installation and erection of the bridges, Acosta cannot pretend any involvement in such activities. His task was indubitably office- and table-bound and not field work.[61]

Acosta moved for reconsideration, but his Motion was denied by the Court of Appeals in its July 12, 2017 Resolution.[62]

Hence, Acosta filed this Petition for Review on Certiorari[63] against Matiere SAS and Gouvary. Maintaining that the declaration of redundancy of his position was not based on fair and reasonable criteria, petitioner pointed out that he, the most senior engineer, was dismissed while the other engineers remained.[64]

As to the certifications from the Department of Public Works and Highways and the Department of Agrarian Reform, petitioner states that the completeness of delivery merely pertained to one (1) of his tasks as technical assistant. Thus, he claims that it was wrong to dismiss him based only on these certifications:[65]

> The supply contract of the Respondents could not have ended up upon completion of delivery. The supply contract satisfies only the delivery of the Supply of Bridging Material. The design, technical supervision during the erection, installation and commissioning were still ongoing and to be completed in 2016. Petitioner checks on the designs of the Design Consultants, coordinate[s] with them, evaluate[s] their billings. Such activities were still ongoing when the Petitioner was terminated.
>
> It is important to note that contracts of the Respondents they entered with the DPWH and DAR comprise of the following:

---

[61] *Id*. at 58-59.

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

[63] *Id*. at 27-50.

[64] *Id*. at 38.

[65] *Id*. at 39-43.

1. Supply of Bridging Materials.
2. Supply of Goods for the design, manufacture and delivery of modular steel unibridges.
3. Supply of Technical Advise / Services and Materials.
4. As well as variable services within the maximum provision for installation and commissioning of the Bridges.

Beyond completeness of the delivery of bridging materials to the projects, other aspects of the contracts have to be accomplished. The actual approved accomplishment for the design of DAR Bridges alone as of June 2013 was only 16%, or 68 out of 418 bridges. Petitioner then was still doing the checking, coordinating with the consultants and certifying billings of Woodfields Consultants, Inc[.] and Design Sciences, Inc. He could have continued doing his assign[ed] tasks if not for his untimely and unjustified termination.[66] (Citation omitted)

In their Comment,[67] respondents insist that they sufficiently established that petitioner's position was already redundant.[68] They cite the certifications from the Department of Agrarian Reform and the Department of Public Works and Highways to prove that "there was a significant diminution in the volume of materials business."[69] Claiming that the completion of the shipments rendered petitioner's position irrelevant, they argue that he failed to prove that his other tasks were not merely incidental to his main function. Thus, they were left with no choice but to legally dismiss him.[70]

Respondents further argue that they did not dismiss petitioner in bad faith, contending that they complied with labor law requirements in terminating his employment. They point out that he was given a notice of termination with computation of

---

[66] *Id*. at 43.

[67] *Id*. at 734-738.

[68] *Id*. at 735.

[69] *Id*.

[70] *Id*. at 736.

his separation pay, and that the Department of Labor and Employment was also notified.[71]

Lastly, respondents claim that petitioner did not deny that the shipments for their projects were already completed. Neither did he dispute that respondent Matiere SAS' projects in the Philippines were only those with the Department of Agrarian Reform and the Department of Public Works and Highways.[72]

The sole issue for this Court's resolution is whether or not petitioner Manuel G. Acosta was validly dismissed from employment on the ground of redundancy.

Redundancy is recognized as one (1) of the authorized causes for dismissing an employee under the Labor Code.[73] Article 298 of the Labor Code provides:

> ARTICLE 298. [283] *Closure of Establishment and Reduction of Personnel*. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, *redundancy*, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Emphasis supplied)

---

[71] *Id*.

[72] *Id*.

[73] *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Company, Inc.*, 809 Phil. 106, 122 (2017) [Per *J*. Leonen, Second Division].

In *Wiltshire File Company, Inc. v. National Labor Relations Commission*,[74] this Court explained:

> [R]edundancy, for purposes of our Labor Code, exists where the services of an employee are in excess of what is reasonably demanded by the actual requirements of the enterprise. Succinctly put, a position is redundant where it is superfluous, and superfluity of a position or positions may be the outcome of a number of factors, such as overhiring of workers, *decreased volume of business*, or dropping of a particular product line or service activity previously manufactured or undertaken by the enterprise. The employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.[75] (Emphasis supplied, citation omitted)

The requirements for a valid redundancy program were laid down in *Asian Alcohol Corporation v. National Labor Relations Commission*:[76]

> For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[77] (Citations omitted)

Assuming that respondents can declare some positions redundant due to the alleged decrease in volume of their business, they still had to comply with the above-cited requisites. This, they failed to do.

---

[74] 271 Phil. 694 (1991) [Per *J*. Feliciano, Third Division].

[75] *Id*. at 703.

[76] 364 Phil. 912 (1999) [Per *J*. Puno, Second Division].

[77] *Id*. at 930.

Respondents complied with the first and second requisites. There is no contention that they notified both petitioner and the Department of Labor and Employment at least a month before the planned redundancy.[78]

Petitioner also received a computation of his separation pay corresponding to at least one (1) month pay for every year of service with additional payment for economic assistance.[79]

However, as to the third and fourth requisites, this Court held that "[t]o establish good faith, the company must provide substantial proof that the services of the employees are in excess of what is required of the company, and that fair and reasonable criteria were used to determine the redundant positions."[80]

Here, respondents' only basis for declaring petitioner's position redundant was that his function, which was to monitor the delivery of supplies, became unnecessary upon completion of the shipments. However, upon careful scrutiny, this Court finds that the Employment Agreement itself contradicts respondents' allegation. Its pertinent provisions read:

Dear Mr Acosta:

In connection with your position as **Technical Assistant**, please be informed that you are subject to the following terms and condition:

1. . . . .

2. The Employee shall be employed in the capacity of Technical Assistant, the current duties and responsibilities of which are set out in Schedule "A" annexed hereto and forming part of this agreement. These duties and responsibilities may be

---

[78] Petitioner received the "Ending of the employment agreement" letter from respondents on June 27, 2013 (*rollo*, p. 132), while the Department of Labor and Employment received the Establishment Employment Report from respondents on June 28, 2013 (*rollo*, p. 134).

[79] *Rollo*, p. 136.

[80] *Manggagawa ng Komunikasyon sa Pilipinas v. Philippine Long Distance Telephone Company, Inc.*, 809 Phil. 106, 123 (2017) [Per *J.* Leonen, Second Division].

> amended from time to time in the sole discretion of the Employer, subject to formal notification of same being provided to the Employee.[81] (Emphasis in the original)

Under Schedule "A," petitioner's job description listed his tasks as a technical assistant:

1. Prepare reports regarding WCI [Woodfields Consultants, Inc.] consultants.
2. Be the intermediary between the CAD operators in WCI and the management in the office.
3. Attend coordination meetings with consultant.
4. Evaluate billings.
5. Follow the SIT and prepare reports.
6. Prepare various reports as required by the resident manager.
7. Site visits.[82]

There was no mention of monitoring shipments as part of petitioner's tasks. If his work pertains mainly to the delivery of supplies, it should have been specifically stated in his job description. Respondents did not even present any evidence to support their claim or to contradict petitioner's documentary evidence. There was, hence:, no basis for respondents to consider his position irrelevant when the shipments had been completed.

Likewise, respondents failed to show that they used fair and reasonable criteria in determining what positions should be declared redundant.

In *Panlilio v. National Labor Relations Commission*,[83] this Court held that fair and reasonable criteria may take into account the preferred status, efficiency, and seniority of employees to

---

[81] *Rollo*, p. 101.

[82] *Id*. at 53 and 103.

[83] 346 Phil. 30 (1997) [Per *J*. Romero, Third Division].

be dismissed due to redundancy.[84] Yet, respondents never showed that they used any of these in choosing petitioner as among the employees affected by redundancy.

Although he was among the five (5) employees dismissed, petitioner cannot be similarly situated with the other employees. Roselim was a forklift operator, while Richard, Wilson, and Menor were helpers assigned to field engineers. The four (4) employees work directly with the delivery of supplies. On the other hand, as already discussed, petitioner's duty is not limited to the monitoring of deliveries. Accordingly, this Court declares petitioner to have been illegally dismissed.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The April 7, 2017 Decision and July 12, 2017 Resolution of the Court of Appeals are **REVERSED** and **SET ASIDE**. Respondent Matiere SAS is ordered to pay petitioner Manuel G. Acosta the following:

1. full backwages and other benefits, both based on petitioner's last monthly salary, computed from the date his employment was illegally terminated until the finality of this Decision;

2. separation pay based on petitioner's last monthly salary, computed from the date he commenced employment until the finality of this Decision at the rate of one (1) month's salary for every year of service, with a fraction of a year of at least six (6) months being counted as one (1) whole year; and

3. attorney's fees equivalent to ten percent (10%) of the total award.

The total judgment award shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until its full satisfaction.[85]

---

[84] *Id*. at 35.

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

This case is **REMANDED** to the Labor Arbiter to make a detailed computation of the amounts due to petitioner, which must be paid without delay, and for the immediate execution of this Decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 234773. June 3, 2019]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALMASER JODAN *y* AMLA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE EXISTENCE OF THE *CORPUS DELICTI* IS ESSENTIAL TO A JUDGMENT OF CONVICTION.— 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 the *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; CHAIN OF CUSTODY RULE; COMPLIANCE THEREWITH IS

CRUCIAL IN PROSECUTIONS OF DRUG CASES, AS IT IS ESSENTIAL THAT THE PROHIBITED DRUG CONFISCATED FROM THE SUSPECT IS THE VERY SAME SUBSTANCE OFFERED IN COURT AS EXHIBIT, AND THAT THE IDENTITY OF SAID DRUG IS ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUIRED TO MAKE A FINDING OF GUILT.— In all drug cases, x x x compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/ confiscation to receipt in the forensic laboratory, to safekeeping, and to presentation in court for destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.

3. **ID.; ID.; ID.; INVENTORY AND PHOTOGRAPHING OF SEIZED ITEMS; THREE-WITNESS RULE; FAILURE TO STRICTLY COMPLY THEREWITH DOES NOT IPSO FACTO RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID BUT THE PROSECUTION MUST SATISFACTORILY PROVE THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** 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. Section 21(a), Article II of the IRR provides the details as to where the inventory and photographing of seized items should be done, and added a saving clause in case of non-compliance with the procedure. x x x Appellant committed the crime charged in 2007 and under the original provision of Section 21 of R.A. No. 9165 and its IRR, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of: (a) appellant or his counsel or representative; (b) a representative from the media; (c) a representative from the DOJ; and (d) any elected

public official, all of whom shall be required to sign copies of the inventory and be given a 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." An examination of the records failed to show that photographs of the drugs inventoried were taken and done in the presence of the required witnesses under Section 21 of R.A. No. 9165. x x x Although the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. No. 9165 and the 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. x x x The prosecution's unjustified non-compliance with the required procedures under Section 21 of R.A. No. 9165 and the IRR resulted in a substantial gap in the chain of custody of the seized items from appellant; thus, the integrity and evidentiary value of the drugs seized are put in question. Consequently, appellant must be acquitted of the crime charged.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS; CANNOT STAND IN CASE AT BAR, AS THE FAILURE TO OBSERVE THE PROPER PROCEDURE NEGATES THE OPERATION OF THE REGULARITY ACCORDED TO POLICE OFFICERS.— We find that the presumption of regularity in the performance of official functions by the police officers, as found by the lower courts, cannot stand as the failure to observe the proper procedure negates the operation of the regularity accorded to Police officers. Moreover, to allow the presumption to prevail, notwithstanding clear lapses on the part of the police, is to negate the safeguards precisely placed by the law to ensure that no abuse is committed.

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.*:

Before us is an appeal filed by appellant Almaser Jodan y Amla assailing the Decision[1] dated June 30, 2017 of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 08262 which affirmed the Judgment[2] dated June 19, 2015 of the Regional Trial Court *(RTC)* of Quezon City, Branch 78, in Criminal Case No. Q-08-150522, convicting him of violation of Section 5, Article II of Republic Act *(R.A.)* No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended.

In an Information[3] dated January 4, 2008, appellant was charged with violation of Section 5, Article II of R.A. No. 9165, as follows:

> That on or about [the] 4th day of October, 2007 in Quezon City, [Philippines,] accused without lawful authority did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction a dangerous drug, to wit:
>
> Zero point zero three (0.03) [gram] of white crystalline substance containing Methylamphetamine Hydrochloride also known as "SHABU".
>
> CONTRARY TO LAW.[4]

Appellant, duly assisted by counsel, was arraigned and pleaded not guilty to the charge.[5] Pre-trial and trial thereafter ensued.

---

[1] *Rollo*, pp. 2-10; penned by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles.

[2] CA *rollo,* pp. 46-60; penned by Presiding Judge Fernando T. Sagun, Jr.

[3] Records, pp. 1-2.

[4] *Id*. at 1.

[5] *Id.* at 45.

The prosecution presented, as witnesses: PO3 Leonardo Ramos, Jr., PO1 Alexander Jimenez, PO1 Teresita B. Reyes, and Police Chief Inspector Bernardino Banac, Jr. who established the following facts:

On October 3, 2007, PO1 Reyes was on duty at Camp Karingal, Quezon City, when a confidential informant (*CI)* arrived and gave information to a certain Police Inspector Palisoc regarding the illegal drug activities of one alias "Almaser" in Barangay Culiat, Quezon City.[6] PO1 Reyes and Police Inspector Palisoc advised their Chief about it and a buy-bust team was formed composed of PO1 Reyes who was designated as the poseur-buyer,[7] Police Inspector Palisoc, PO3 Ramos, PO2 Joseph Ortiz, PO1 Peggylynne Vargas and PO1 Jimenez.[8] PO1 Reyes prepared the buy-bust money where she put her initials "TBR" on the upper right hand portion thereof. PO2 Ortiz prepared the pre-operation report[9] and coordinated with the Philippine Drug Enforcement Agency which subsequently issued a certificate of coordination.[10] PO3 Ramos heard from their team leader, SPO2 Dante Nagera, that the latter called up the Department of Justice *(DOJ)* and the media, but no one was available at that time.[11]

At 6:25 a.m. of the following day, October 4, 2007, PO1 Reyes and the CI went to Mujahaden Street, Salam Mosque Compound, Culiat, Quezon City, on board a tricycle, while the other operatives had gone ahead to the said area.[12] Upon reaching the place, PO1 Reyes and the CI alighted in an alley and approached a man named "Almaser" who turned out to be

---

[6] TSN, June 2, 2009, pp. 15-16.

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

[8] *Id.* at 16-17.

[9] TSN, June 5, 2008, p. 15; TSN, June 2, 2009, p. 17

[10] TSN, June 5, 2008, pp. 15-16.

[11] *Id.* at 13.

[12] TSN, June 2, 2009, pp. 18-19.

appellant.[13] The CI then introduced PO1 Reyes to appellant as a *shabu* buyer and appellant asked PO1 Reyes, *"i-iskor ka ba?"* to which she replied, *"Oo, pakuha ng dos"* which meant ₱200.00 worth.[14] Appellant took the ₱200.00 from PO1 Reyes and handed her a plastic sachet containing white crystalline substance.[15] PO1 Reyes then executed the pre-arranged signal by touching her right ear.[16] At this point, the rest of the buy-bust team approached and introduced themselves as Police officers.[17] PO3 Ramos then proceeded to search appellant's pocket and was able to recover the buy-bust money and two more plastic sachets containing white crystalline substance.[18] While at the crime scene, PO1 Reyes marked the sachet she bought from appellant with her initials "TBR,"[19] and PO3 Ramos marked the two other sachets recovered from appellant's possession, with his initials "LRR-10-04-07 and LRR 10-04-07-1," as well as the buy-bust money.[20] An inventory receipt was also prepared at the crime scene where the same was signed by PO3 Ramos and by the other Policemen.[21]

Thereafter, the team brought appellant and the seized items to their Police station.

The seized items and the inventory receipt were all turned over to the investigator, PO1 Jimenez, who prepared the request for laboratory examination of the items seized from appellant.[22]

---

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

[14] *Id.* at 26.

[15] *Id.* at 27-28.

[16] *Id.* at 28.

[17] *Id.* at 29.

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

[19] TSN, August 4, 2009, p. 4.

[20] TSN, June 5, 2008, p. 19.

[21] TSN, November 18, 2008, pp. 3-5.

[22] *Id.;* TSN, September 30, 2008, pp. 3-4.

PO2 Ortiz was the one who brought the letter-request and the specimens to the crime laboratory for testing.[23] The specimens submitted tested positive for methamphetamine hydrochloride per Chemistry Report No. D-345-07 issued by the Forensic Chemist, Police Chief Inspector Banac.[24]

Appellant denied the charge and claimed that at 6:00 a.m. of October 4, 2007, he was sleeping with his family in a rented house in Culiat, Quezon City, when someone suddenly kicked the door of their room and four men entered and shouted *"mga pulis kami."*[25] The Police then started rummaging their belongings and when he asked them what the search was all about, one of the Policemen pointed a gun at him and handcuffed him.[26] His two children were crying and his wife was in shock.[27] He was brought outside and loaded in a private vehicle and taken to the precinct where he was asked his name and other personal information.[28] Later, PO1 Jimenez demanded the amount of ₱30,000.00 from him.[29] When he said that he has no relatives in Metro Manila and had no money, the Police uttered, *"pano yan tutuluyan ka na namin,"*and he was brought to the detention cell.[30] He was later brought for inquest.[31] He only saw the Policemen who arrested him for the first time on that day and had no previous quarrel with them.[32]

On June 19, 2015, the RTC issued its Judgment, the dispositive portion of which reads:

---

[23] TSN, September 30, 2008, p. 5.

[24] TSN, March 15, 2010, p. 6.

[25] TSN, March 21, 2011, pp. 8-10.

[26] *Id.* at 10-11.

[27] *Id.* at 11.

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

[29] TSN, May 30, 2011, p. 6.

[30] *Id.* at 7-8.

[31] *Id.* at 9.

[32] TSN, October 4, 2011, p. 10.

WHEREFORE, premises considered, the Court finds that the prosecution was able to prove the guilt of the accused ALMASER JODAN y AMLA beyond reasonable doubt for having violated the provisions of Section 5, Article II, of Republic Act No. 9165, more known as the Comprehensive Dangerous Drugs Act of 2002 and is hereby sentenced to suffer the penalty of Life Imprisonment, and to pay the fine of Php500,000.00 pesos, Philippine Currency, plus the cost of suit. The accused being a detention prisoner, his period of preventive imprisonment shall be properly credited in his favor in strict conformity with the provisions of existing rules and regulations on the matter.

The dangerous drug submitted as evidence in this case is hereby ordered to be transmitted to the Philippine Drug Enforcement Agency (PDEA) for destruction and /or disposition pursuant to the provisions of our laws, rules and regulations on the matter.

Let the Mittimus and necessary documents be prepared for the immediate transfer of the custody of accused to the Bureau of Corrections, National Bilibid Prisons in Muntinlupa City, pursuant to OCA Circular No. 4-92-A.

SO ORDERED.[33]

The RTC found that the integrity and evidentiary value of the drugs seized from appellant had been properly preserved, *i.e.,* the arresting officers immediately marked at the site the drugs seized and recovered from appellant; and that the same marked plastic sachets were sent for chemical analysis which yielded a positive result for dangerous drugs. Appellant was positively identified by the prosecution witnesses as the person who sold and possessed the *shabu* presented in court; and that the delivery of the contraband to the poseur buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction between the entrapping officers and appellant. The prosecution complied with the requirement of proving the *corpus delicti because* there were no substantial gaps in the chain of custody of the seized drugs that could raise doubt on the authenticity of the evidence presented

---

[33] CA *rollo,* p. 60.

in court. The Police officers were presumed to have performed their duties in a regular manner. The RTC found appellant's denial not substantiated by clear and convincing evidence.

Aggrieved, appellant appealed to the CA. After the filing of the parties' respective briefs, the case was submitted for decision.

On June 30, 2017, the CA issued its assailed Decision which denied appellant's appeal and affirmed the RTC Judgment.

The CA found that the integrity of the drugs seized remained unscathed. PO1 Reyes was in custody of the dangerous drugs from the time she recovered the same up to the Police station where she turned them over to the desk officer; that the assigned investigator prepared the request for laboratory examination; and that PO2 Ortiz personally delivered the specimens to the crime laboratory which when examined yielded a positive result for illegal drugs. There was no showing of any tampering of the specimens seized before their delivery to the Forensic Chemist. As to the non-presentation of the desk officer who received the items from the poseur buyer, it was not necessary that all persons who came in contact with the seized drugs be required to testify as long as the chain of custody of the seized drugs was clearly established not to have been broken and the prosecution properly identified the items seized.

Appellant filed an appeal with us. We required the parties to file their respective supplemental briefs if they so desire. Both parties filed their respective Manifestations stating that they were no longer filing their supplemental briefs since they had already adequately addressed the issues raised in their briefs filed before the CA.

The issue for resolution is whether the RTC and the CA erred in convicting appellant of the crime charged.

Appellant claims that the prosecution failed to comply with the required procedures on the custody and seizure of dangerous drugs as provided under Section 21, paragraph 1, Article II of R.A. No. 9165 and Article II, Section 21(a) of the Implementing Rules and Regulations of R.A. No. 9165 *(IRR);* and that the prosecution failed to establish the unbroken chain of custody

of the seized items from the poseur buyer to the investigator until the same were delivered to the Forensic Chemist.

We find merit in this 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.[34] The existence of the *corpus delicti* is essential to a judgment of conviction.[35] Hence, the identity of the dangerous drug must be clearly established.

In all drug cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation.[36] Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping, and to presentation in court for destruction.[37] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.[38]

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

---

[34] *People v. Morales y Midarasa,* 630 Phil. 215, 228 (2010).

[35] *People v. Jaafar,* 803 Phil. 582, 591 (2017).

[36] *People v. Nila Malana y Sambolledo,* G.R. No. 233747, December 5, 2018.

[37] *Id.,* citing *People v. Guzon,* 719 Phil. 441, 451 (2013).

[38] *Id.*

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 person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

Section 21(a), Article II of the IRR provides the details as to where the inventory and photographing of seized items should be done, and added a saving clause in case of non-compliance with the procedure.

(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[.]

R.A. No. 10640[39] amended Section 21 of R.A. No. 9165, incorporating the saving clause contained in the IRR and only requiring two (2) witnesses to be present during the conduct

[39] Took effect on July 23, 2014.

of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; and (b) a representative of 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."[40] Senator Poe stressed the necessity for the amendment of Section 21 of R.A. No. 9165 based on the public hearing that the Senate Committee on Public Order and Dangerous 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 comers 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 and thus, it is difficult to get the most grassroot elected public official to be a witness as required by law."[41]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of the 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."[42] Thus, he explained:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates.

---

[40] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[41] *Id.*

[42] *Id.*

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.

x x x x x x x x x

Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest Police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[43]

---

[43] *Id.* at 349-350.

Appellant committed the crime charged in 2007 and under the original provision of Section 21 of R.A. No. 9165 and its IRR, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of: (a) appellant or his counsel or representative; (b) a representative from the media; (c) a representative from the DOJ; and (d) any elected public official, all of whom shall be required to sign copies of the inventory and be given a 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."[44]

An examination of the records failed to show that photographs of the drugs inventoried were taken and done in the presence of the required witnesses under Section 21 of R.A. No. 9165. PO3 Ramos testified on cross-examination as follows:

Q: Did you strictly comply with the essential prerequisite in mandatory procedures in drug operation under Sec. 21 of RA 9165?
A: "Iyong Inventory Receipt lang po ang inexecute namin that time."

Q: You mean to tell the Honorable Court that what you mean by strict compliance in Sec. 21 [of] RA 9165 is the execution of the Inventory Receipt?
A: Yes, sir.

Q: That's all?
A: That's all, sir.[45]

In fact, the inventory receipt showed only the signatures of the Police officers. As PO3 Ramos admitted, appellant has no signature in the inventory receipt as the Police officers forgot to ask him to sign the same.[46]

---

[44] *People v. Sagana,* G.R. No. 208471, August 2, 2017, 834 SCRA 225, 247.

[45] TSN, September 30, 2008, pp. 11-12.

[46] TSN, November 18, 2008, pp. 5-6.

Although the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. No. 9165 and the 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, while PO3 Ramos testified that before they conducted the buy- bust operation, their team leader, SPO2 Nagera, called up the DOJ and the media, but was told that nobody was available that time;[47] however, he admitted on cross-examination that he had no personal knowledge about the call allegedly made by their team leader to the media and DOJ representatives as he was only told that nobody was available.[48] Any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness.[49] Section 36, Rule 130 of the Rules of Court provides that a witness can testify only to those facts which he knows of his own personal knowledge, that is, which are derived from his own perception; otherwise, such testimony would be hearsay. We found no plausible explanation or justification on record why the presence of the required witnesses under Section 21 of R.A. No. 9165 was not procured. 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.[50]

In *People v. Angelita Reyes, et al.,*[51] we have enumerated instances which may justify the absence of the required witnesses, to wit:

It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in

---

[47] TSN, June 5, 2008, p. 13.

[48] TSN, September 30, 2008, pp. 17-18.

[49] *Mira v. Vda. de Erederos, et al.,* 721 Phil. 772, 790 (2013).

[50] *People v. De Guzman y Danzil,* 630 Phil. 637, 649 (2010).

[51] G.R. No. 219953, April 23, 2018.

Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the Police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the Police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the Police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125[52] 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.

Also, in *People v. Vicente Sipin y De Castro,*[53] 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 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

---

[52] 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).

[53] G.R. No. 224290, June 11, 2018.

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. (Citation omitted.)

The prosecution's unjustified non-compliance with the required procedures under Section 21 of R.A. No. 9165 and the IRR resulted in a substantial gap in the chain of custody of the seized items from appellant; thus, the integrity and evidentiary value of the drugs seized are put in question. Consequently, appellant must be acquitted of the crime charged.

We find that the presumption of regularity in the performance of official functions by the Police officers, as found by the lower courts, cannot stand as the failure to observe the proper procedure negates the operation of the regularity accorded to Police officers. Moreover, to allow the presumption to prevail, notwithstanding clear lapses on the part of the Police, is to negate the safeguards precisely placed by the law to ensure that no abuse is committed.[54]

WHEREFORE, the appeal is **GRANTED.** The Decision dated June 30, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08262 is hereby **REVERSED** and **SET ASIDE.**Appellant Almaser Jodan y Amla is accordingly **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The Director of the Bureau of Corrections 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 of his action hereon within five (5) days from receipt of this Decision.

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Inting, JJ.,* concur

---

[54] *People v. Malou Alvarado y Flores, et al.,* G.R. No. 234048, April 23,

THIRD DIVISION

[G.R. No. 234841. June 3, 2019]

MANUEL BARALLAS RAMILO, *petitioner*, *vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT); MUST BE APPLIED WHEN THE VICTIMS OF SEXUAL ABUSES ARE CHILDREN OR THOSE PERSONS BELOW EIGHTEEN 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 PHYSICAL OR MENTAL DISABILITY OR CONDITION.— [I]nstead of rape through sexual assault under Article 266-A, paragraph 2, of the RPC, Manuel should be held liable for Lascivious Conduct under Section 5(b), Article III of Republic Act *(R.A.)* No. 7610. In *Dimakuta v. People,* the Court held that in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *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 Article 266-A, paragraph 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (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, aside from affording special protection and stronger deterrence against child abuse, R.A. No. 7610 is a special law which should clearly

prevail over R.A. No. 8353, which is a mere general law amending the RPC. In *People* v. *Chingh,* the Court noted that "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. 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."' It is undisputed that at the time of the commission of the lascivious act, AAA was twelve (12) years old.

2. **ID.; ID.; LASCIVIOUS CONDUCT UNDER SECTION 5(b), ARTICLE III; REQUISITES.—** [B]efore an accused can be held criminally liable for lascivious conduct under Section 5(b), Article III of R.A. No. 7610, the Court held in *Quimvel v. People* that the requisites of acts of lasciviousness as penalized under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5(b), Article III of R.A. No. 7610, namely: 1. That the offender commits any act of lasciviousness or lewdness; 2. That it is done under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; x x x 3. [That said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and 4. That the offended party is a child, whether male or female, below 18 years of age.] A review of the evidence presented by the prosecution reveals that the elements enumerated above were sufficiently established.

3. **ID.; ID.; ID.; CHILDREN EXPLOITED IN PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE; 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 ANY INFLUENCE OF ANY ADULT, SYNDICATE OR GROUP.—** "[A] child is deemed

exploited in prostitution or subjected to other sexual abuse when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit or any other consideration; or (b) under the coercion or any influence of any adult, syndicate or group." In [People v.] *Tulagan,* we explained that on the one hand, 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, indulges in sexual intercourse. 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 of "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.

4. ID.; REVISED PENAL CODE; RAPE; FORCE AND INTIMIDATION; IN CASES WHERE RAPE IS COMMITTED BY A RELATIVE, SUCH AS A FATHER, STEPFATHER, UNCLE, OR COMMON LAW SPOUSE, MORAL INFLUENCE OR ASCENDANCY TAKES THE PLACE OF FORCE AND INTIMIDATION AS AN ESSENTIAL ELEMENT OF RAPE.— It cannot be denied from the facts of the case that AAA was subjected to sexual abuse x x x. She is clearly a child who, due to the coercion or influence of Manuel, indulged in lascivious conduct. In fact, it must be stressed that Manuel is the father of AAA. As such, he has moral ascendancy over his minor daughter. Settled is the rule that in cases where rape is committed by a relative, such as a father, stepfather, uncle, or common law spouse, moral influence or ascendancy takes the place of "force and intimidation" as an essential element of rape.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONIES OF CHILD VICTIMS HAVE BEEN GIVEN FULL WEIGHT AND CREDIT, CONSIDERING THAT THEIR YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.— In view of the presence of all the elements of the crime, Manuel should be convicted of Lascivious Conduct under Section 5(b), Article III of R.A. No. 7610. As duly found by the trial court and affirmed by the appellate court, AAA positively and categorically stated that Manuel, her own biological father, inserted his finger into her vagina, and it was painful. She gave a direct and straightforward narration of her ordeal in his hands. In a long line of cases, this Court has given full weight and credit to the testimonies of child victims, considering that their youth and immaturity are generally badges of truth and sincerity. Indeed, leeway should be given to witnesses who are minors, especially when they are relating past incidents of abuse.

6. CRIMINAL LAW; REVISED PENAL CODE; RAPE; III MOTIVES BECOME INCONSEQUENTIAL IF THERE IS AFFIRMATIVE AND CREDIBLE DECLARATION FROM THE RAPE VICTIM WHICH CLEARLY ESTABLISHES THE LIABILITY OF THE ACCUSED.— Manuel x x x insists that AAA clearly had motive to fabricate the charges against him because, as shown by the testimonies heard during trial, AAA was a disobedient child who would always leave the house without permission causing Manuel to reprimand her. She was also heavily influenced by BBB who openly despised their father. The Court is unconvinced. Settled is the rule that ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused.

7. ID.; ID.; ID.; THE ABSENCE OF FRESH EXTERNAL SIGNS AND PHYSICAL INJURIES ON THE COMPLAINANT'S BODY DOES NOT NECESSARILY NEGATE THE COMMISSION OF RAPE, HYMENAL LACERATION AND LIKE VAGINAL INJURIES NOT BEING AN ELEMENT OF THE CRIME OF RAPE.— As for Manuel's contention that the absence of any finding of hymenal lacerations, injuries, or other signs of sexual abuse during the medical examination of AAA undeniably proves his innocence, case law dictates that the medical report on AAA is only corroborative of the finding of rape. "The absence of

fresh external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape, hymenal laceration and like vaginal injuries not being x x x an element of the crime of rape. What is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict."

8. REMEDIAL LAW; EVIDENCE; CREDIBILITY; THE TRIAL COURT'S FACTUAL FINDINGS, WHEN AFFIRMED BY THE APPELLATE COURT, ARE GENERALLY BINDING ON APPEAL.— "[W]hen the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts of weight, substance, or value are overlooked, misapprehended or misappreciated by the lower court which, if properly considered, would alter the result of the case. After a circumspect study of the records, the Court sees no compelling reason to depart from the foregoing principle."

9. CRIMINAL LAW; REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT); LASCIVIOUS CONDUCT UNDER SECTION 5(b), ARTICLE III; PENALTY; SHALL BE IMPOSED IN ITS MAXIMUM PERIOD WHEN THE PERPETRATOR IS THE PARENT OF THE VICTIM.— As for the penalty for the crime charged herein, considering that AAA was more than twelve (12) years old, but less than eighteen (18) years old when Manuel threatened to kill her should she tell anyone of his lascivious advances, forcibly placed his hand inside her shorts and underwear, and inserted his finger into her vagina, moving it in and out for about five (5) minutes, the imposable penalty is *reclusion temporal,* in its medium period, to *reclusion perpetua.* Since the perpetrator of the offense is the father of the victim, and such alternative circumstance of relationship was alleged in the Information and proven during trial, the same should be considered as an aggravating circumstance for the purpose of increasing the period of the imposable penalty. There being no mitigating circumstance to offset the said alternative

aggravating circumstance, the penalty provided shall be imposed in its maximum period, *i.e., reclusion perpetua.* This is also in consonance with Section 31(c), Article XII of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia,* the parent of the victim.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated May 19, 2017 and the Resolution[2] dated September 27, 2017 of the Court of Appeals *(CA)* in CA-G.R. CR No. 38601 which affirmed with modification the Decision[3] dated April 4, 2016 of the Regional Trial Court *(RTC)* of Marikina City, Branch 192, finding Manuel Barallas Ramilo guilty beyond reasonable doubt of rape through sexual assault.

The antecedent facts are as follows:

In an Information dated August 28, 2013, Manuel Barallas Ramilo was charged of violation of Article 266-A, paragraph 2, of the Revised Penal Code *(RPC),* the accusatory portions of which read:

That on or about the 27th day of August 2013, in the City of Marikina, Philippines and within the jurisdiction of this Honorable

---

[1] *Rollo,* pp. 31-51. Penned by Associate Justice Magdangal M. De Leon, with the concurrence of Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan.

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

[3] *Id.* at 72-82. Penned by Judge Alice C. Gutierrez.

Court, the above-named accused, with lewd design and by means of force, threat and intimidation and/or with grave abuse of parental authority did then and there willfully, unlawfully, knowingly and feloniously commit sexual abuse and lascivious conduct upon her daughter MDR MINOR-VICTIM INQ-13H-00553, a twelve (12) year old minor at the time of the commission of the offense, by then and there lying beside her then embracing her and inserting his fingers inside her vagina thereby causing serious danger to the normal growth and development of the child MDR MINOR-VICTIM INQ-13H-00553, to her damage and prejudice.

The crime is attended with the aggravating circumstance of relationship.

CONTRARY TO LAW.[4]

During arraignment, Manuel, assisted by counsel, pleaded not guilty to the charge. During pre-trial, the parties agreed to adopt the Report on the Preliminary Conference, for the purpose of the pre-trial conference. Subsequently, trial on the merits ensued. The prosecution presented six witnesses – private complainant AAA;[5] private complainant's sister, BBB; the school principal of Malanday Elementary School, Lino de Guzman; the medico-legal officer, Dr. Ma. Felicidad Mercedes Aulida; and investigating officers PO1 Bernard Pah-E and PO1 Christian Bonifacio.

---

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

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

AAA testified that she was born on February 5, 2001, as evidenced by her Certificate of Live Birth.[6] Her father, Manuel, was a painter while her mother, CCC, was a manicurist. She recalled that on August 27, 2013, she slept beside Manuel and her one (1) year old sister, and woke up at around 6:00 a.m. the next day. At that time, CCC was already busy downstairs. AAA was about to go downstairs with her sister when Manuel held her wrist. She knew that he was going to molest her again like what he had been doing in the past. According to AAA, she uttered to Manuel, "isusumbong ko kayo kay mama," but the latter replied "isusumbong mo ako, papatayin kita." Thereafter, Manuel pulled AAA and forced her to lie on the floor. He embraced her tightly and put his hand inside her shorts and panty. Then, he inserted his finger inside her vagina, moving it in and out for about five (5) minutes. When AAA's vagina became painful, she struggled and pushed Manuel's hand away. She stood up, went downstairs, and had breakfast. She did not tell anybody of the incident because she was scared of Manuel's threat to kill her. In the afternoon of the same day, AAA went to school at Malanday Elementary School. When her sister BBB arrived thereat, she was called to the principal's office. When her school principal talked to her, AAA disclosed to him the truth, that she was molested by Manuel. Thereafter, a *kagawad,* a representative from the Department of Social Welfare and Development and the police arrived. Subsequently, Manuel was apprehended. AAA was then brought to a doctor for medical examination.[7]

Next, BBB testified that she is the eldest sister of AAA. She claimed that in 2010, when AAA and their mother, CCC, visited her in her house in Pasig City, she noticed that AAA was acting differently. She was very quiet and astonished. Oftentimes, she became inattentive and would not respond immediately, as if she could not understand them. BBB shared that since she was molested by her father, Manuel, when she

---

[6] *Rollo,* p. 73.

[7] *Id.* at 33-34.

was nine (9) years old, she had a hunch that AAA was also abused sexually by their father, who was using prohibited drugs. As she wanted to know the truth, BBB went to AAA's school to investigate. There, the school principal volunteered to talk to AAA who confided in him which eventually led to Manuel's arrest. According to BBB, their mother, CCC, was angry with her at the outset when their father was arrested. At the *barangay* office, the police officer informed CCC that Manuel molested AAA and her other siblings. CCC told BBB to be the one to assist AAA in filing the case against Manuel as she was still undecided.[8]

Subsequently, Lino de Guzman stipulated in his testimony that he was the principal during the time of the incident and that BBB talked to him about the alleged abuse, which led him to ask AAA if it was true. AAA then admitted the same to him. It was also stipulated, however, that he has no personal knowledge of the incidents of the subject case. As for the testimony of prosecution witness Dr. Ma. Felicidad Mercedes Aulida, the parties dispensed with her presentation in court after stipulating that she conducted a medical examination on AAA and found no hymenal lacerations and no remarkable findings regarding her anus. She also found no injuries on her body. Similarly, the parties dispensed with the presentation of the arresting officers, PO1 Bernard Pah-E and PO1 Christian Bonifacio, after stipulating that they were the ones who arrested Manuel and that they have no personal knowledge of the incidents of the instant case.[9]

Manuel denied the charges against him and claimed that no unusual incident occurred on August 27, 2013 for he was just at home with AAA, CCC, and his other children in a fifty (50)-square meter house with two (2) floors. AAA slept on the second floor with her younger sister. Manuel explained that he

---

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

[9] *Id.* at 36-37. Bernard was erroneously spelled as "Nernard" in the CA Decision.

and CCC have seven (7) children, BBB being the eldest and AAA, the fourth child. He was a painter while his wife, CCC, was unemployed. Initially, CCC would handle their finances. But he took over when she mishandled the same. Because of their chaotic relationship, CCC would sometimes take their children to stay at her parents' house in Makati City as what she did with BBB. It was only when BBB turned nine (9) years old that they moved back to living with Manuel. According to Manuel, BBB openly manifested her disapproval of his relationship with CCC which began when he was not able to visit her during a medical operation. As for AAA, she remained in his custody ever since she was just two (2) months old. She grew up to be a kind and obedient daughter. Her behavior changed, however, in 2009 when BBB and CCC started living with them again. AAA began demanding for money, left the house at night without permission, and skipped school. She was heavily influenced by BBB, who stayed out late at night and engaged in drinking sprees with her friends in Makati City.[10]

CCC testified that she had a tumultuous relationship with Manuel. They intermittently separated and reconciled. When they lived together, CCC would work as a laundrywoman who sold *balut* at night while Manuel would take care of the children. According to CCC, Manuel often physically and psychologically abused her and their children. He often threatened their lives while holding a gun, sometimes a knife, and other times a hammer. Because of this, their children despised Manuel. In fact, their eldest child, BBB, filed complaints against Manuel. AAA, who was disobedient and often left the house without permission, constantly fought with Manuel. CCC added that Manuel often disciplined AAA with a paddle, and there were times that he would kick and punch her. She affirmed that she, Manuel and all their children slept in the second floor of their house. Thus, it is easily noticeable if someone were to move. In addition, AAA slept near the stairs separate from her parents and siblings. Finally, CCC testified that on August 27, 2013, Manuel arrived

---

[10] *Id.* at 37-38.

home, influenced by drugs and alcohol, and inadvertently slept beside AAA.[11]

On April 4, 2016, the RTC rendered its Decision finding Manuel guilty of the crime charged, disposing of the case as follows:

> WHEREFORE, the court finds the accused, MANUEL BARALLAS RAMILO, GUILTY BEYOND REASONABLE DOUBT of Sexual Assault under Article 266-A[,] paragraph 2, of the Revised Penal Code, as amended. Considering that the crime is attended by an aggravating circumstance of relationship, the accused is hereby sentenced to suffer an indeterminate penalty of twelve (12) years of *prision mayor,* as minimum, to twenty (20) years of *reclusion temporal,* as maximum. Further, consistent with jurisprudence, the accused is ORDERED TO PAY civil indemnity of FIFTY THOUSAND PESOS (Php50,000.00), moral damages of FIFTY THOUSAND PESOS (Php50,000.00), and exemplary damages of THIRTY THOUSAND PESOS (Php30,000.00).
>
> SO ORDERED.[12]

The RTC found that AAA positively and categorically stated that Manuel, who is her own biological father, inserted his finger into her vagina, and it was painful. She gave a direct and straightforward narration of her ordeal in the hands of her father. Moreover, the trial court also found that Manuel's defense of denial could not prevail over AAA's direct, positive, and categorical assertion. It was not persuaded by Manuel's flimsy statement that AAA was merely influenced by her sister, BBB, who allegedly has a grudge on him. Furthermore, the physical finding that AAA did not sustain any injury or hymenal laceration does not impair the prosecution's case.[13]

In a Decision dated May 19, 2017, the CA affirmed with modification the RTC Decision ordering Manuel to pay six percent (6%) interest *per annum* on all the amounts awarded reckoned from the date of finality of the judgment until the damages are

---

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

[12] *Id.* at 82.

[13] *Id.* at 39-40.

fully paid. According to the appellate court, there is no reason to overturn the trial court's finding that AAA's testimony deserves full credence in view of the settled doctrine that when the offended party is of tender age and immature, courts are inclined to give credit to her testimony for youth and immaturity are generally badges of truth and sincerity. Like the RTC, moreover, the CA also held that proof of hymenal laceration is not an element of rape.[14] Thus, the imposition of the penalty of twelve (12) years of *prision mayor,* as minimum, to twenty (20) years of *reclusion temporal,*as maximum, by the RTC was in order, in view of the fact that the sexual assault was committed against a child by her father, which is appreciated as an aggravating circumstance of relationship, pursuant to Article 266-B[15] of the RPC.

Aggrieved by the CA's denial of his motion for reconsideration, Manuel filed the instant petition on December 7, 2017 invoking the following argument:

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE PETITIONER'S CONVICTION FOR RAPE UNDER ARTICLE 266-A OF THE REVISED PENAL CODE NOTWITHSTANDING THE UNCORROBORATED AND INCREDULOUS TESTIMONY OF THE PRIVATE COMPLAINANT.[16]

According to Manuel, the charge against him was not proven beyond reasonable doubt. From the testimonies heard during trial, it is clear that AAA was a disobedient child who would always leave the house without permission causing Manuel to reprimand her. It is also clear that AAA was heavily influenced by BBB who openly despised their father. This shows motive

---

[14] *Id.* at 42-48.

[15] Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

x x x x x x x x x

Reclusion temporal shall be imposed if the rape is committed with any of the ten aggravating/qualifying circumstances mentioned in this article.

[16] *Rollo,* p. 19.

on the part of AAA to fabricate the charges against Manuel. In fact, AAA and BBB both previously filed criminal and child abuse charges against him in the past. Manuel further insists on his innocence of the crime charged due to the fact that there were no findings of any hymenal lacerations, injuries, or other signs of sexual abuse during the medical examination of AAA. Hence, this physical evidence should prevail over the testimonies presented by the prosecution. Thus, while denial may be generally looked upon with disfavor, it cannot be the basis for his conviction.

After a careful review of the records of this case, the Court finds no cogent reason to reverse the rulings of the RTC and the CA finding Manuel guilty of the acts charged against him. In view of the circumstances of the instant case, however, a modification of the penalty imposed, the damages awarded, and the nomenclature of the offense committed is in order. Thus, instead of rape through sexual assault under Article 266-A, paragraph 2, of the RPC, Manuel should be held liable for Lascivious Conduct under Section 5(b),[17] Article III of Republic Act *(R.A.)* No. 7610.

---

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

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 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.

In *Dimakuta v. People,*[18] the Court held that in instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Article 266-A, paragraph 2 of the RPC, which is punishable by *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 Article 266-A, paragraph 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (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, aside from affording special protection and stronger deterrence against child abuse, R.A. No. 7610 is a special law which should clearly prevail over R.A. No. 8353, which is a mere general law amending the RPC. In *People* v. *Chingh,*[19] the Court noted that "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. 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."'[20]

It is undisputed that at the time of the commission of the lascivious act, AAA was twelve (12) years old. Thus, based

---

[18] 771 Phil. 641 (2015).

[19] 661 Phil. 208 (2011).

[20] *Id.* at 222-223.

on the above discussion, Section 5(b), Article III of R.A. No. 7610 finds application herein. The provision 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 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 [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 w1der twelve (12) years of age shall be reclusion temporal in its medium period[.] (Emphasis ours.)

To achieve uniformity in designating the proper offense, moreover, the Court, in *People v. Caoili,*[21] 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 RPC 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; and (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

---

[21] G.R. Nos. 196342 and 196848, August 8, 2017, 835 SCRA 107.

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*.[22]

In our recent pronouncement, *People v. Salvador Tulagan,*[23] the Court further held that based on the *Caoili*[24] guidelines, it is only when the victim of the lascivious conduct is eighteen (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.* Thus, 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*[25] and *Caoili,*[26] it was ruled that on the one hand, if the acts constituting sexual assault are committed against a victim under twelve (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.*

However, before an accused can be held criminally liable for lascivious conduct under Section 5(b), Article III of R.A.

---

[22] *Id.* at 153-154.

[23] G.R. No. 227363, March 21, 2019.

[24] *Supra* note 21.

[25] *Supra* note 18.

[26] *Supra* note 21.

No. 7610, the Court held in *Quimvel v. People*[27] that the requisites of acts of lasciviousness as penalized under Article 336 of the RPC must be met in addition to the requisites for sexual abuse under Section 5(b), Article III of R.A. No. 7610, namely:

> 1. That the offender commits any act of lasciviousness or lewdness;
>
> 2. That it is done under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority;
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present; x x x
>
> 3. [That said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and
>
> 4. That the offended party is a child, whether male or female, below 18 years of age.][28] (Citation omitted.)

A review of the evidence presented by the prosecution reveals that the elements enumerated above were sufficiently established. *First,* through the credible testimony of AAA, the prosecution was able to show that Manuel committed lascivious conduct against AAA when he forced her to lie on the floor, embraced her tightly, put his hand inside her shorts and panty, and inserted his finger inside her vagina, moving it in and out for about five (5) minutes. As the trial court observed, AAA was able to narrate in detail how each of the incidents was done to her by her very own father, *viz.:*

---

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

[28] *Id* at 224-225.

Q: So, noong August 27, 2013, mga alas-6:00 ng umaga, nasaan ka noon?
A: Nasa bahay po.

Q: Anong ginagawa mo noong mga oras na iyon?
A: Gising na po kami noon, babangon na po kami. Yung mama ko po nasa baba nag-aasikaso po, tapos kasama ko po si [baby] girl at saka po yung papa ko. Bababa na po sana kami hinawakan po kami sa kamay.

Q: Ngayon ang sabi mo nasa baba si mama mo. So, may taas yung bahay ninyo?
A: Opo.

Q: So, sino yung nandoon sa itaas noong panahon na yon?
A: Si papa po, ako at saka si baby girl po.

Q: Ang sabi mo kagigising mo lang. So, saan kayo natulog?
A: Sa sahig po.

Q: So, sino ang kasama mong gumising noong oras na 'yon?
A: Si papa po at saka yung kapatid kong maliit si baby girl po.

Q: Ilang taon si baby girl?
A: One (1) year old po.

Q: So, magkatabi kayo ni papa mo matulog?
A: Opo.

Q: At si baby girl?
A: Opo.

Q: Nung sinabing hinawakan yung kamay mo ni papa mo, ano iyon nakahiga ka parin o nakatayo kana?
A: Nakatayo na po.

Q: **So, anong kamay ang hinawakan niya sa 'yo?**
A: **Yung kaliwa po.**

Q: Paano niya hinawakan?
A: **Ginanito po ng mahigpit.**

x x x x x x x x x

SR. ASST. CITY PROS. ONTALAN:
Q: Noong hinawakan ng papa mo yung wrist mo, nasaan nasi baby girl?

WITNESS:
A: Pababa na po pero nakaupo lang po doon sa hagdan.

Q: Pagkatapos hawakan ni papa mo yung wrist mo, anong sumunod na na[n]gyari?
A: **Sabi ko po 'isusumbong ko kayo kay mama[.]'**

Q: So sinabi mo kay papa mo iyon?
COURT INTERPRETER:

The witness is nodding.

SR. ASST. CITY PROS. ONTALAN:
Q: Anong sinabi ng papa mo sa iyo nung sinabi mong isusumbong mo siya kay mama mo?

WITNESS:
A: **"Isusumbong mo ako, papatayin kita."**

Q: Bakit mo nasabi sa kanya na isusumbong mo siya kay mama?
A: **Kasi babastusin niya po ako ulit.**

Q: Iyon bang sinasabi mong babastusin, yung binanggit mo kanina na ginawa niya sa'yo noon pa?
A: Opo.

Q: Pagkatapos na may sinabi sa iyo ang papa mo ano ang sumunod na nangyari?
A: **Hinila niya po ako pahiga.**

Q: Saan ka niya pinahiga?
A: **Doon sa may sahig po sa higaan namin.**

Q: Yung hinihigaan ninyo?
A: Opo.

Q: Tapos nasaan siya noong hinila ka niya pahiga?
A: Nasa likod ko po.

Q: Tapos anong ginawa niya?
A: **Niyakap po ako ng mahigpit.**

Q: So, kung nasa likod mo siya, niyakap ka niya sa likod ng mahigpit?
A: Opo.

Q: Bakit mo sinabing mahigpit yung yakap?
A: **Parang ayaw po ako pakawalan.**

Q: So, anong parte ng katawan mo ang niyakap niya?
A: Yung dito ko po.

COURT INTERPRETER:
The witness is pointing to her upper arm.

SR. ASST. CITY PROS. ONTALAN:
Q: Pagkatapos ka niyang niyakap, ano pang nangyari?

WITNESS:
A: **Yung kamay niya po pinasok na niya po sa short at panty ko po.**

Q: Anong suot mo noon?
A: Maluwag pong short.

Q: **Tapos saan niya ipinasok yung kamay niya, sa ibabaw ng short o sa ilalim ng short?**
A: **Sa ilalim po ng short.**

Q: **Tapos sa loob din ng panty mo?**
A: **Opo.**

Q: **Noong nasa [loob] na ng panty mo yung kamay niya, anong nangyaridoon?**
A: **Tinusok-tusok nya po yung pepe ko.**

Q: **Anong ibig sabihin mo na tinus[o]k-tusok, nilabas pasok niya yung daliri sa ari mo?**
A: **Opo.**

Q: **Sa butas ng ari mo?**
A: **Opo.**

Q: **Anong naramdaman mo nung ginagawa niya iyon?**
A: **Masakit po.**

Q: **Gaano katagal niya ginawa iyon?**
A: **Mga five (5) minutes po.**

Q: **Five (5) minutes na labas masok yung daliri niya?**
A: **Opo.**

Q: **Ano ang ginawa mo nung ginagawa niya iyon?**
A: **Nasasaktan po, tapos hinawakan ko po yung kamay niya tapos tinulak ko po, tapos [bumaba] na po ako, tapos nag-almusal.**

Q: So after five (5) minutes pumiglas ka at tumayo ka na?
A: **Opo.**

Q: Tapos nag-almusal kana?
A: **Opo.**

Q: Iniwan mo siya doon sa taas dahil bumaba kana?
A: Opo.[29] (Emphasis ours.)

It is clear from the foregoing account that Manuel molested his daughter, AAA, and even threatened to kill her should she tell anyone about the incident. These acts constitute sexual abuse and lascivious conduct as defined in the rules and regulations of R.A. No. 7610, known as the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases, which pertinently provide:

Section 2. Definition of Terms. — As used in these Rules, unless the context requires otherwise —

x x x x x x x x x

(g) "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or **coercion** of a child to engage in, or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children;

h) "Lascivious conduct" means the **intentional touching**, either directly or through clothing, of the **genitalia**, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to **abuse**, humiliate, harass, degrade, or arouse or **gratify the sexual desire of any person**, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person[.]

Second, in *Quimvel,*[30] we ruled that "'force and intimidation' is said to be subsumed under 'coercion and influence' and such terms are even used synonymously. This can be gleaned from

---

[29] *Rollo,* pp. 44-47.

[30] *Supra* note 27.

Black's Law Dictionary definitions of 'coercion' as 'compulsion; force; duress,' of 'influence' as 'persuasion carried over to the point of overpowering the will,' and of 'force' as 'constraining power, compulsion; strength directed to an end'; as well as from jurisprudence which defines 'intimidation' as 'unlawful coercion; extortion; duress; putting in fear."'[31] It is clear from the testimony of AAA that Manuel employed force, intimidation, coercion, and influence upon her when he hugged her tightly and even threatened to kill her should she tell anyone of his lascivious acts.

Third, "a child is deemed exploited in prostitution or subjected to other sexual abuse when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit or any other consideration; or (b) under the coercion or any influence of any adult, syndicate or group."[32] In *Tulagan,*[33] we explained that on the one hand, 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, indulges in sexual intercourse.

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 of "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

---

[31] *People v. Raul Macapagal,* G.R. No. 218574, November 22, 2017; citations omitted.

[32] *Id.;* citation omitted.

[33] *Supra* note 23.

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.[34]

It cannot be denied from the facts of the case that AAA was subjected to sexual abuse under the foregoing definitions. She is clearly a child who, due to the coercion or influence of Manuel, indulged in lascivious conduct. In fact, it must be stressed that Manuel is the father of AAA. As such, he has moral ascendancy over his minor daughter. Settled is the rule that in cases where rape is committed by a relative, such as a father, stepfather, uncle, or common law spouse, moral influence or ascendancy takes the place of "force and intimidation" as an essential element of rape.

Fourth, as previously mentioned, it is undisputed that AAA was only twelve (12) years old at the time of the commission of the offense.[35] Under Section 3(a) of R.A. No. 7610, the term "children" refers to persons below eighteen (18) years of age or those over, but unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

In view of the presence of all the elements of the crime, Manuel should be convicted of Lascivious Conduct under Section 5(b), Article III of R.A. No. 7610. As duly found by the trial court and affirmed by the appellate court, AAA positively and categorically stated that Manuel, her own biological father, inserted his finger into her vagina, and it was painful. She gave a direct and straightforward narration of her ordeal in his hands. In a long line of cases, this Court has given full weight and credit to the testimonies of child victims, considering that their youth and immaturity are generally badges of truth and sincerity.

---

[34] *Id.*

[35] *Rollo,* p. 73.

Indeed, leeway should be given to witnesses who are minors, especially when they are relating past incidents of abuse.[36]

Manuel, however, insists that AAA clearly had motive to fabricate the charges against him because, as shown by the testimonies heard during trial, AAA was a disobedient child who would always leave the house without permission causing Manuel to reprimand her. She was also heavily influenced by BBB who openly despised their father. The Court is unconvinced. Settled is the rule that ill motives become inconsequential if there is an affirmative and credible declaration from the rape victim, which clearly establishes the liability of the accused.[37]

As for Manuel's contention that the absence of any finding of hymenal lacerations, injuries, or other signs of sexual abuse during the medical examination of AAA undeniably proves his innocence, case law dictates that the medical report on AAA is only corroborative of the finding of rape. "The absence of fresh external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape, hymenal laceration and like vaginal injuries not being x x x an element of the crime of rape. What is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict."[38]

Indeed, "[w]hen the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts of weight, substance, or value are overlooked, misapprehended or misappreciated by the lower court which, if properly considered, would alter the result of the case. After a circumspect study

---

[36] *People v. Caoili, supra* note 21, at 139.

[37] *Id.* at 138.

[38] *People v. Llanas, Jr.,* 636 Phil. 611, 624 (2010); citations omitted.

of the records, the Court sees no compelling reason to depart from the foregoing principle."[39]

As for the penalty for the crime charged herein, considering that AAA was more than twelve (12) years old, but less than eighteen (18) years old when Manuel threatened to kill her should she tell anyone of his lascivious advances, forcibly placed his hand inside her shorts and underwear, and inserted his finger into her vagina, moving it in and out for about five (5) minutes, the imposable penalty is *reclusion temporal,* in its medium period, to *reclusion perpetua.* Since the perpetrator of the offense is the father of the victim, and such alternative circumstance of relationship was alleged in the Information and proven during trial, the same should be considered as an aggravating circumstance for the purpose of increasing the period of the imposable penalty. There being no mitigating circumstance to offset the said alternative aggravating circumstance, the penalty provided shall be imposed in its maximum period, *i.e., reclusion perpetua.* This is also in consonance with Section 31(c),[40] Article XII of R.A. No. 7610 which expressly provides that the penalty shall be imposed in its maximum period when the perpetrator is, *inter alia,* the parent of the victim. Moreover, Manuel should be ordered to pay the victim, AAA, civil indemnity, moral damages and exemplary damages in the amount of ₱75,000.00 each, pursuant to *People v. Jugueta*[41] and *People v. Salvador Tulagan,*[42] with interest at the rate of six percent (6%) *per annum* from

---

[39] *People v. Raul Macapagal, supra* note 31; citation omitted.

[40] Sec. 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.

[41] 783 Phil. 806 (2016).

[42] *Supra* note 23.

the date of finality of judgment until fully paid, and a fine in the amount of ₱15,000.00, pursuant to Section 31(f),[43] Article XII of R.A. No. 7610.

WHEREFORE, premises considered, the instant petition is **DENIED.** The assailed Decision dated May 19, 2017 and Resolution dated September 27, 2017 of the Court of Appeals are **AFFIRMED** with **MODIFICATION.** Manuel Barallas Ramilo is guilty of Lascivious Conduct under Section 5(b), Article III of Republic Act No. 7610, and is sentenced to suffer the penalty of *reclusion perpetua* and to pay a fine of ₱15,000.00. He is further ordered to pay the victim, AAA, civil indemnity, moral damages and exemplary damages, each in the amount of ₱75,000.00. The fine, civil indemnity and damages so imposed are subject to interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Inting, JJ.,* concur.

---

[43] Sec. 31. Common Penal Provisions. —

x x x x x x x x x

(f) A fine to be determined by the comt shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense.

SECOND DIVISION

[G.R. No. 237582. June 3, 2019]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **JULITO D. VITRIOLO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; NOT A MATTER OF RIGHT BUT ONE THAT IS INSTEAD ADDRESSED TO THE SOUND DISCRETION OF THE COURTS AND CAN BE SECURED ONLY IN ACCORDANCE WITH THE TERMS OF THE APPLICABLE STATUTE OR RULE.—** Jurisprudence defines intervention as a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceedings. It is, however, settled that intervention is not a matter of right, but one that is instead addressed to the sound discretion of the courts and can be secured only in accordance with the terms of the applicable statute or rule.

2. **ID.; ID.; ID.; ALLOWED WHEN THE MOVANT HAS LEGAL INTEREST IN THE MATTER IN CONTROVERSY; LEGAL INTEREST, DEFINED.—** Based on the Rules of Court, intervention, may be allowed when the movant has legal interest in the matter in controversy. Legal interest is defined as such interest that is actual and material, direct and immediate such that the party seeking intervention will either gain or lose by the direct legal operation and effect of the judgment. Likewise, the movant must file the motion to intervene *before* rendition of the judgment, intervention not being an independent action but merely ancillary and supplemental to an existing litigation.

3. **POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; LEGAL STANDING TO INTERVENE; THE OMBUDSMAN HAS A LEGAL STANDING TO INTERVENE IN APPEALS FROM ITS RULING IN ADMINISTRATIVE CASES BEFORE THE CA, PROVIDED**

THAT THE OMBUDSMAN MOVES FOR THE INTERVENTION BEFORE RENDITION OF JUDGMENT.— The Court has already clarified in *Ombudsman v. Bongais (Bongais)* that the Ombudsman has legal standing to intervene on appeal in administrative cases resolved by it. Even if not impleaded as a party in the proceedings, it has legal interest to intervene and defend its ruling in administrative cases before the CA, which interest proceeds from its duty to act as a champion of the people and to preserve the integrity of public service. As it stands, therefore, the Ombudsman's legal standing to intervene in appeals from its rulings in administrative cases has been settled and is the prevailing rule, in accordance with the Court's pronouncement in *Bongais, **provided,** that the Ombudsman moves for intervention before rendition of judgment,* pursuant to Rule 19 of the Rules of Court, lest its motion be denied. x x x After a meticulous review of the available records, x x x the Court finds that none of the excepting circumstances x x x obtain in this case; hence, the general rule provided under Section 2, Rule 19 of the Rules of Court applies.

4. ID.; ID.; ID.; ID.; ID.; THE RULE REQUIRING INTERVENTION BEFORE RENDITION OF JUDGMENT MAY BE RELAXED AND INTERVENTION MAY BE ALLOWED SUBJECT TO THE COURT'S DISCRETION AFTER CONSIDERATION OF THE APPROPRIATE CIRCUMSTANCES.— The rule requiring intervention before rendition of judgment, however, is not inflexible. Jurisprudence is replete with instances where intervention was allowed even beyond the period prescribed in the Rules of Court when demanded by the higher interest of justice; to afford indispensable parties, who have not been impleaded, the right to be heard; to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties; or, because of the grave legal issues raised. Stated otherwise, the rule may be relaxed and intervention may be allowed subject to the court's discretion after consideration of the appropriate circumstances, for after all, Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice; its purpose is not to hinder or delay, but to facilitate and promote the administration of justice.

APPEARANCES OF COUNSEL

Office of the Ombudsman, Office of the Legal Affairs, for petitioner.

Cappellan & Associates Law Office for respondent.

Argue Law Firm, collaborating counsel for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition[1] for review on *certiorari* are the Decision[2] dated August 17, 2017 and the Resolution[3] dated January 29, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 149063 which: (a) denied the Omnibus Motion to Intervene and To Admit Attached Motion for Reconsideration[4] (Omnibus Motion) filed by petitioner Office of the Ombudsman (Ombudsman); (b) upheld the administrative liability of respondent Julito D. Vitriolo (respondent) for violation of Section 5 (a) of Republic Act (R.A.) No. 6713,[5] otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees"; and (c) modified the penalty imposed upon him to suspension for thirty (30) days.

The Facts

At the time material to this case, respondent was the Executive Director of the Commission on Higher Education (CHED).

---

[1] *Rollo*, pp. 14-39.

[2] *Id*. at 41-68. Penned by Associate Justice Henri Jean Paul B. Inting (now a member of this Court) with Associate Justices Apolinario D. Bruselas, Jr. and Leoncia R. Dimagiba, concurring.

[3] *Id*. at 70-79. Penned by Associate Justice Henri Jean Paul B. Inting (now a member of this Court) with Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Apolinario D. Bruselas, Jr., concurring.

[4] *Id*. at 80-97.

[5] Approved on February 20, 1989.

In September 1996, the Pamantasan ng Lungsod ng Maynila (PLM) and the National College of Physical Education[6] (NCPE) entered into a Memorandum of Agreement (MOA) stipulating that programs for Bachelor of Science and Master's degrees in Physical Education shall be offered by NCOPE using the facilities of PLM without compensation, under the condition that PLM shall select the faculty members for the programs and issue the diplomas to the graduates.[7] However, on September 29, 2003, the Securities and Exchange Commission (SEC) revoked the registration of NCPE for non-compliance with reportorial requirements. Nonetheless, the MOA was renewed in September 2005. Subsequently, or on February 28, 2007, the Commission on Audit (COA) issued a memorandum finding the MOA to be prejudicial to the interest of PLM. Thus, then PLM President Adel Tamano suspended the MOA effective September 2008.[8]

On May 19, 2011, Oliver B. Felix (Felix), a former faculty member of the College of Physical Education (CPE) at PLM, filed a Complaint-Affidavit (First Complaint) against respondent before the Ombudsman for grave misconduct, gross neglect of duty, incompetence, and inefficiency in the performance of official duties.[9] Felix alleged that he submitted a letter-request to respondent on **May 21, 2010** requesting for a certification that, among others, PLM was not authorized by the CHED to implement the Expanded Tertiary Education Equivalent Accreditation Program (ETEEAP) under Executive Order (EO) No. 330. However, respondent prevented the issuance of said certification. Felix later found out that respondent made a "deal" with Atty. Gladys France J. Palarca (Atty. Palarca), PLM's then Acting Legal Counsel, that he would not issue a citation against PLM's infractions.[10]

---

[6] In 2009, NCPE changed its name to Integrated College of Physical Education and Sports (ICPES).

[7] *Rollo*, p. 42.

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

[9] *Id*. at 42.

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

Further, Felix alleged that on **June 29, 2010**, he wrote another letter to respondent to follow up on his concerns regarding PLM's alleged "diploma mill." However, the latter did not act upon Felix's letters. Additionally, Felix asserted that respondent colluded with Atty. Rafaelito M. Garayblas (Atty. Garayblas), Acting President of PLM, Dr. Lauro O. Domingo (Dr. Domingo), President of the PLM-NCPE Alumni Association, and Atty. Palarca for the issuance of diplomas and transcripts of records to bogus students of PLM.[11] Accordingly, respondent should be held administratively and criminally liable.

The Ombudsman held mediation conferences relative to Felix's First Complaint. At the mediation conference on August 9, 2011, the parties reached an agreement (August 9, 2011 agreement) whereby respondent endeavored to "act on [Felix's] May 21, 2010 and June 29, 2010 submissions and issue the necessary citations and sanctions to PLM, for it to CEASE and DESIST all illegal academic programs x x x."[12]

Felix subsequently wrote respondent on September 9, 2011 expressing his expectation that the latter would substantially comply with their August 9, 2011 agreement. In a letter dated September 22, 2011, respondent stated that he had "directed the Office of Programs and Standards (OPS) and the Office of the SUCs and LUCs Concerns to provide an update on the actions taken"[13] on Felix's **May 21, 2010** and **June 29, 2010** letters.

Three (3) years later, or on **June 30, 2014**, Felix sent respondent a letter captioned "Notice of Impending Legal Action" stating that despite their August 9, 2011 agreement, the latter tolerated the "diploma mill" of PLM, as CHED failed to conduct any investigation or hearing regarding the same.[14] In a letter

---

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

[12] *Rollo*, pp. 45-46.

[13] *Id*. at 46.

[14] *Id*. at 47.

dated **July 11, 2014**, respondent explained to Felix that the person assigned to look into his concerns had already retired but that a memorandum had already been issued to the concerned officials to provide updates on what was accomplished relative to the alleged "diploma mill" operations of PLM.[15]

Dissatisfied, Felix filed the present complaint on June 30, 2015 charging respondent with grave misconduct, gross neglect of duty, inefficiency and incompetence in the performance of official duties, as well as violations of Sections 5 (a), (c), and (d) of RA 6713 and Sections 3 (a), (e), and (f) of RA 3019,[16] alleging that respondent has not complied with the August 9, 2011 agreement. Likewise, Felix reiterated the allegation in his First Complaint that respondent made an illicit deal with Atty. Palarca encouraging the issuance of diplomas and transcripts of records to non-PLM graduates.

In defense,[17] respondent denied the charges and claimed that: (*a*) the August 9, 2011 agreement was not in the nature of a compromise agreement; (*b*) that he had issued various actions pertinent to the issue of PLM's "diploma mill"; (*c*) that he wrote a letter to Felix on **July 11, 2014**; and (*d*) that he referred Felix's letter to the Director of the OPS, who later referred the matter to CHED-National Capital Region. Moreover, respondent asserted that the alleged "illicit deal" with Atty. Palarca was misleading, as Felix based his allegation on a report issued by one Attorney III Rhuel D. Panis to the PLM Board of Regents, which made mention of his advice to PLM to issue diplomas and transcripts of records because it has to respect vested rights. Likewise, he contended that in order to make him liable for grave offenses under the civil service rules, his alleged acts must be attended with bad faith.[18]

---

[15] *Id*.

[16] Entitled the "*ANTI-GRAFT AND CORRUPT PRACTICES ACT*," approved on August 17, 1960.

[17] See *rollo*, pp. 111-112.

[18] *Id*. at 112.

The Ombudsman Ruling

In a Joint Resolution[19] dated December 29, 2016, the Ombudsman: (a) found probable cause to indict respondent for violations of Sections 3 (a) and (e) of RA 3019; and (b) as regards the administrative charges against respondent, found him guilty of violation of Sections 5 (a), (c) and (d) of RA 6713, gross neglect of duty, grave misconduct, inefficiency, and incompetence, and accordingly, meted upon him the penalty of dismissal from the service, with the corresponding accessory penalties. Anent the latter, the Ombudsman found that it was only on **July 11, 2014**, or more than four (4) years after Felix's **May 21, 2010** letter and three (3) years after his First Complaint was filed before the Ombudsman on May 19, 2011 that respondent replied to him. As such, respondent failed to promptly respond to Felix's letters and inform him about the status of the requested action. Likewise, it was pointed out that this was not respondent's first offense, as the Ombudsman had already suspended him for one (1) month without pay for misconduct, having signed a memorandum without authority to do so.[20]

Without filing a motion for reconsideration and without impleading the Ombudsman, respondent filed a petition for review[21] under Rule 43 of the Rules of Court before the CA, **which only took cognizance of the administrative aspect of the case, ratiocinating that the CA "has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only."**[22]

Proceedings Before the CA

In a Decision[23] dated August 17, 2017, the CA upheld the Ombudsman's ruling holding respondent administratively liable

---

[19] *Id*. at 101-128. Issued by Assistant Ombudsman Edna E. Diño and approved by Ombudsman Conchita Carpio Morales.

[20] *Id*. at 125-127.

[21] *Id*. at 129-190.

[22] *Id*. at 50.

[23] *Id*. at 41-68.

for violation of Section 5 (a)[24] of RA 6713 upon a finding that he failed to promptly reply to Felix's **May 21, 2010** and **June 29, 2010** letters within the prescribed period of fifteen (15) days. However, with respect to Felix's **June 30, 2014** letter,[25] respondent was able to reply thereto within nine (9) days from receipt through his letter dated **July 11, 2014**. Further, the CA noted that he took steps to address Felix's concerns by referring the same to the proper offices and followed-up on their actions as well. Moreover, records show that he ordered an investigation of PLM relative to the issue of irregularities thereat.

Thus, the CA concluded that respondent's only infraction was his failure to reply to Felix's **May 21, 2010** and **June 29, 2010** letters and to communicate to him the actions taken by his office. Accordingly, the CA found the penalty of dismissal to be too harsh and disproportionate to the infraction committed. Modifying the Ombudsman decision, the CA instead meted upon respondent the penalty of suspension for thirty (30) days pursuant to Rule 10, Section 46 (F)(12)[26] of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) which

---

[24] Section 5. *Duties of Public Officials and Employees*. – In the perfomance of their duties, all public officials and employees are under obligation to:

(a) Act promptly on letters and requests. – All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.

[25] Captioned as "Notice of Impending Legal Action."

[26] Section 46. *Classification of Offenses*. – Administrative offenses with corresponding penalties are classified into grave or light, depending on their gravity or depravity and effects on the government service.

x x x x x x x x x

F. The following light offenses are punishable by reprimand for the first offense; suspension of one (1) to thirty (30) days for the second offense; and dismissal from the service for the third offense:

x x x x x x x x x

12. Failure to act promptly on letters and requests within fifteen (15) working days from receipt, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees; x x x

classifies his infraction as a *light offense* and dismissed the charges of gross neglect of duty, grave misconduct, inefficiency and incompetence for lack of substantial evidence. Accordingly, he was ordered reinstated immediately to his former position without loss or diminution in salaries and benefits and to be paid his salary and other emoluments corresponding to the period he was out of the service by reason of the judgment of dismissal decreed by the Ombudsman.[27]

As the Ombudsman was not impleaded as respondent in the CA proceedings, it filed the Omnibus Motion seeking to intervene in the case and consequently, the reversal of the CA ruling. However, the CA denied the same in a Resolution[28] dated January 29, 2018, ruling that: (a) the Ombudsman, being the administrative agency that rendered the judgment appealed from, is *not a party* in the said appeal, and (b) its Omnibus Motion was filed out of time, having been filed only on September 28, 2017 while the CA's Decision was promulgated on August 17, 2017; hence, this petition filed by the Ombudsman insisting that the Omnibus Motion be granted and consequently, that it be allowed to intervene in the case and seek the reversal of the CA ruling on respondent's administrative liability.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in denying the Ombudsman's Omnibus Motion.

The Court's Ruling

Jurisprudence defines intervention as a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceedings.[29] It is,

---

[27] *Rollo*, pp. 67-68.

[28] *Id*. at 70-79.

[29] See *Ombudsman v. Samaniego*, 586 Phil. 497, 509 (2008), citing *Manalo v. CA*, 419 Phil. 215, 233 (2001). See also *Ombudsman v. Gutierrez*, 811 Phil. 389, 407 (2017).

however, settled that intervention is not a matter of right, but one that is instead addressed to the sound discretion of the courts[30] and can be secured only in accordance with the terms of the applicable statute or rule.[31]

Based on the Rules of Court, intervention, may be allowed when the movant has legal interest in the matter in controversy. Legal interest is defined as such interest that is actual and material, direct and immediate such that the party seeking intervention will either gain or lose by the direct legal operation and effect of the judgment.[32] Likewise, the movant must file the motion to intervene *before* rendition of the judgment, intervention not being an independent action but merely ancillary and supplemental to an existing litigation.[33]

The Court has already clarified in *Ombudsman v. Bongais*[34] (*Bongais*) that the Ombudsman has legal standing to intervene on appeal in administrative cases resolved by it. Even if not impleaded as a party in the proceedings, it has legal interest to intervene and defend its ruling in administrative cases before the CA, which interest proceeds from its duty to act as a champion. of the people and to preserve the integrity of public service.[35]

As it stands, therefore, the Ombudsman's legal standing to intervene in appeals from its rulings in administrative cases has been settled and is the prevailing rule, in accordance with the Court's pronouncement in *Bongais, **provided**, that the Ombudsman moves for intervention before rendition of*

---

[30] See *Ongco v. Dalisay*, 691 Phil. 462, 468-469 (2012).

[31] See *Ombudsman v. Samaniego*, *supra* note 29.

[32] *Magsaysay-Labrador v. CA*, 259 Phil. 748, 753-754 (1989).

[33] *Ongco v. Dalisay*, *supra* note 30; See Section 2, Rule 19 of the Rules of Court.

[34] See G.R. No. 226405, Juiy 23, 2018.

[35] *Id.*, citing *Ombudsman v. Samaniego*, 586 Phil. 497, 509 (2008), citing *Manalo v. CA*, 419 Phil. 215, 233 (2001). See also *Ombudsman v. Gutierrez, supra* note 29, at 405-406.

judgment, pursuant to Rule 19 of the Rules of Court,[36] lest its motion be denied.

The rule requiring intervention before rendition of judgment, however, is not inflexible. Jurisprudence is replete with instances where intervention was allowed even beyond the period prescribed in the Rules of Court when demanded by the higher interest of justice; to afford indispensable parties, who have not been impleaded, the right to be heard; to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties; or, because of the grave legal issues raised. Stated otherwise, the rule may be relaxed and intervention may be allowed subject to the court's discretion after consideration of the appropriate circumstances,[37] for after all, Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice; its purpose is not to hinder or delay, but to facilitate and promote the administration of justice.[38]

After a meticulous review of the available records, however, the Court finds that none of the excepting circumstances as above-enumerated obtain in this case; hence, the general rule provided under Section 2, Rule 19 of the Rules of Court applies. Therefore, while the Ombudsman had legal interest to intervene in the proceedings in CA-G.R. SP No. 149063, the CA correctly denied the intervention prayed for as records show that the Omnibus Motion was filed only on September 28, 2017, or a month after the promulgation of the CA's Decision on August 17, 2017.

---

[36] *Ombudsman v. Bongais*, *supra* note 34.

[37] *Ombudsman v. Bongais*, supra note 34, citing *Quinto v. Commission on Elections*, 627 Phil. 193, 218- 219 (2010), *Lim v. Pacquing,* 310 Phil. 722, 771 (1995). See also *Tahanan Development Corporation v. CA*, 203 Phil. 652 (1982); *Director of Lands v. CA*, 190 Phil. 311 (1981); and *Mago v. CA*, 363 Phil. 225 (1999). See also *Quinto v. Commission an Elections*, 627 Phil. 193, 219 (2010), citing *Heirs of Restrivera v. De Guzman*, 478 Phil. 592, 602 (2004).

[38] *Quinto v. Commission on Elections*, 627 Phil. 193, 218-219 (2010), citing *Lim v. Pacquing*, 310 Phil. 722, 771 (1995).

In fine, while it is now settled doctrine that the Ombudsman has legal standing to intervene in appeals from its rulings in administrative cases, it should, however, move for intervention before rendition of judgment lest the same be denied, unless warranted by certain excepting circumstances, which unfortunately do not obtain herein. Consequently, the present petition must be denied, and since intervention has been disallowed, there is no more need to delve into the merits of the substantive arguments raised by the Ombudsman on respondent's administrative liability.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated August 17, 2017 and Resolution dated January 29, 2018 of the Court of Appeals in CA-G.R. SP No. 149063 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*) and *Lazaro-Javier, JJ.*, concur.

Caguioa and *Carandang*,[*] *JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 238659. June 3, 2019]

FRANKLIN B. VAPOROSO AND JOELREN B. TULILIK, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

---

[*] Designated Additional Member per Raffle dated April 8, 2019; on official leave.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; IN CRIMINAL CASES, AN APPEAL CONFERS THE APPELLATE COURT FULL JURISDICTION OVER THE CASE AND RENDERS SUCH COURT COMPETENT TO EXAMINE RECORDS, REVISE THE JUDGMENT APPEALED FROM, INCREASE THE PENALTY, AND CITE THE PROPER PROVISION OF THE PENAL LAW.—** [I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **ID.; ID.; ARREST; ILLEGAL WARRANTLESS ARREST; FAILURE TO QUESTION THE LEGALITY OF THE ARREST CONSTITUTES A WAIVER ONLY AS TO ANY QUESTION CONCERNING ANY DEFECTS IN THE ARREST, AND NOT WITH REGARD TO THE INADMISSIBILITY OF THE EVIDENCE SEIZED DURING AN ILLEGAL WARRANTLESS ARREST.—** [I]n searches incidental to a lawful arrest, the law requires that there first be a lawful arrest before a search can be made – the process cannot be reversed. At this point, the Court notes that petitioners failed to question the legality of their arrest, and in fact, actively participated in the trial of the case. As such, they are deemed to have waived any objections involving the same. Nonetheless, it must be clarified that the foregoing constitutes a waiver **only** as to any question concerning any defects in their arrest, **and not** with regard to the inadmissibility of the evidence seized during an illegal warrantless arrest.

3. **ID.; ID.; ID.; WARRANTLESS ARREST; WHEN LAWFULLY EFFECTED.—** Section 5, Rule 113 of the Revised Rules on Criminal Procedure provides the general parameters for effecting lawful warrantless arrests x x x. [T]here are three (3) instances when warrantless arrests may be lawfully effected. These are:

(a) an arrest of a suspect *in flagrante delicto; (b)* **an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed;** and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.

4. **ID.; ID.; ID.; "HOT PURSUIT" WARRANTLESS ARREST; TO BE VALIDLY CONDUCTED, THE TWIN REQUIREMENTS OF PERSONAL KNOWLEDGE AND IMMEDIACY MUST BE PRESENT.—** In warrantless arrests made pursuant to **Section 5 (b), Rule 113, it is required that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it.** Verily, under Section 5 (b), Rule 113, it is essential that **the element of personal knowledge must be coupled with the element of immediacy;** otherwise, the arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible in consonance with the exclusionary rule of the 1987 Constitution. x x x [The] circumstances indubitably show that the twin requisites of personal knowledge and immediacy in order to effectuate a valid "hot pursuit" warrantless arrest are present, considering that PO2 Torculas obtained personal knowledge that a crime had just been committed and that he did not waver in his continuous and unbroken pursuit of petitioners until they were arrested. From the foregoing, the Court concludes that the police officers validly conducted a "hot pursuit" warrantless arrest on petitioners.

5. **ID.; ID.; SEARCH AND SEIZURE; SEARCH INCIDENT TO A LAWFUL ARREST; PURPOSE; WARRANTLESS SEARCH CANNOT BE MADE IN A PLACE OTHER THAN THE PLACE OF ARREST.—** Searches and seizure incident to a lawful arrest are governed by Section 13, Rule 126 of the Revised Rules on Criminal Procedure x x x. The purpose of allowing a warrantless search and seizure incident to a lawful arrest is to protect the arresting officer from being harmed by the person arrested, who might be armed with a concealed weapon, and

to prevent the latter from destroying evidence within reach. It is therefore a reasonable exercise of the State's police power to protect: (*a*) law enforcers from the injury that may be inflicted on them by a person they have lawfully arrested; and (*b*) evidence from being destroyed by the arrestee. It seeks to ensure the safety of the arresting officers and the integrity of the evidence under the control and within the reach of the arrestee. [C]ase law requires a strict application of this rule, that is, "to absolutely limit a warrantless search of a person who is lawfully arrested to his or her person at the time of and incident to his or her arrest and to 'dangerous weapons or anything which may be used as proof of the commission of the offense.' ***Such warrantless search obviously cannot be made in a place other than the place of arrest***." x x x [T]he Court concludes that the first search made on petitioners, *i.e.,* the cursory body search which, however, did not yield any drugs but only personal belongings of petitioners, may be considered as a search incidental to a lawful arrest as it was done contemporaneous to their arrest and at the place of apprehension. On the other hand, the same cannot be said of the second search which yielded the drugs subject of this case, considering that a substantial amount of time had already elapsed from the time of the arrest to the time of the second search, not to mention the fact that the second search was conducted at a venue other than the place of actual arrest, *i.e.,* the Panabo Police Station. x x x [T]he subsequent and second search made on petitioners at the Panabo Police Station is unlawful and unreasonable. Resultantly, the illegal drugs allegedly recovered therefrom constitutes inadmissible evidence pursuant to the exclusionary clause enshrined in the 1987 Constitution. Given that said illegal drugs is the very *corpus delicti* of the crime charged, petitioners must necessarily be acquitted and exonerated from criminal liability.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioners Franklin B. Vaporoso (Vaporoso) and Joelren B. Tulilik (Tulilik; collectively, petitioners) assailing the Decision[2] dated November 17, 2017 and the Resolution[3] dated February 26, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 01414-MIN which affirmed the Decision[4] dated December 14, 2015 of the Regional Trial Court of Panabo City, Davao del Norte, Branch 34 (RTC) in Criminal Case Nos. CrC 430-2013 and CrC 431- 2013, finding them guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of Republic Act No. 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) separate Informations[6] filed before the RTC charging petitioners of the crime of Illegal Possession of Dangerous Drugs. The prosecution alleged that

---

[1] *Rollo*, pp. 12-31.

[2] *Id*. at 35-51. Penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring.

[3] *Id*. at 57-60.

[4] *Id*. at 65-76. Penned by Presiding Judge Dax Gonzaga Xenos.

[5] Entitled "*AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES*," approved on June 7, 2002.

[6] The Information dated August 27, 2013 in Criminal Case No. CrC 430-2013 was against Vaporoso and the Information dated August 27, 2013 in Criminal Case No. CrC 431-2013 was against Tulilik, both for violation of Section 11, Article II of RA 9165 (Illegal Possession of Dangerous Drugs); records, pp. 1 and 40.

at around 7:00 in the evening of August 25, 2013, while Police Officer 2 Alexander D. Torculas (PO2 Torculas) was patrolling along National Highway, Barangay Salvacion, Panabo City, he noticed two (2) men — later on identified as petitioners — aboard a motorcycle with the back rider holding a lady bag which appeared to have been taken from a vehicle parked on the side of the road. When PO2 Torculas shouted at petitioners to halt, the latter sped away. At this point, the owner of the vehicle, Narcisa Dombase (Dombase), approached PO2 Torculas and told him that petitioners broke the window of her vehicle and took her belongings. This prompted PO2 Torculas to chase petitioners until the latter entered a dark, secluded area in Bangoy Street, prompting him to call for back-up.[7] Shortly after, Police Officer 1 Ryan B. Malibago (PO1 Malibago), together with some Intel Operatives, arrived and joined PO2 Torculas in waiting for petitioners to come out of the aforesaid area.[8]

About six (6) hours later, or at around 1:00 in the morning of the following day, PO2 Torculas and PO1 Malibago saw petitioners come out and decided to approach them. Petitioners, however, attempted to flee, but PO2 Torculas and PO1 Malibago were able to apprehend them.[9] After successfully recovering Dombase's bags and belongings from petitioners,[10] the police officers conducted an initial cursory body search on the latter, and thereafter, brought them to the Panabo Police Station. Thereat, the police officers conducted another "more thorough" search on petitioners, which yielded (5) plastic sachets containing white crystalline substance from Vaporoso and four (4) plastic sachets with similar white crystalline substance from Tulilik. PO1 Malibago then marked the said items in the presence of petitioners and conducted the requisite photo-taking and inventory in the presence of Department of Justice (DOJ) representative

---

[7] *Rollo*, pp. 42-43.

[8] *Id*.

[9] *Id*. at 43.

[10] *Id*.

Ian Dionalo, Kagawad Elpidio Pugata, and media representative Jun Gumban. At around 10:15 in the morning of August 26, 2013, the seized items were turned over to the Provincial Crime Laboratory of Tagum City, where, upon examination, tested positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.[11] On December 18, 2013, the subject sachets were delivered to the court.[12]

During arraignment, or on October 9, 2013, petitioners pleaded not guilty to the charges.[13] On September 10, 2015, trial was dispensed with as the parties agreed to simply stipulate on the factual matters of the case.[14] On September 16, 2015, they were directed to submit their respective memorandum.[15]

The RTC Ruling

In a Decision[16] dated December 14, 2015, the RTC found petitioners guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs, and accordingly, sentenced each of them to suffer the indeterminate penalty of imprisonment of fourteen (14) years, as minimum, to seventeen (17) years, as maximum, and ordered each of them to pay a fine of ₱300,000.00.[17] Ultimately, it ruled that the subsequent search conducted at the police station was a justifiable search incidental to a lawful arrest, considering that: (a) petitioners were validly arrested and thereafter placed in custody; (b) their administrative processing was not yet completed when they were searched at the police station; and (c) no substantial time had elapsed

---

[11] *Id*. at 42.

[12] *Id*. at 38.

[13] *Id*. at 66.

[14] *Id*.

[15] *Id*. at 66-67.

[16] *Id*. at 65-76.

[17] *Id*. at 75.

between the initial search at the place of the arrest and the subsequent search at the police station.[18]

Aggrieved, petitioners filed an appeal[19] before the CA.

The CA Ruling

In a Decision[20] dated November 17, 2017, the CA affirmed *in toto* the ruling of the RTC that the body search conducted on petitioners at the police station was a valid search incidental to a lawful arrest.[21] It held that under Rule 19 of the Philippine National Police (PNP) Handbook (PNPM-DO-DS-3-2-13), a search is permissible and intended to screen contraband items or deadly weapons from suspects before placing them behind bars.[22] The CA also noted that the police officers substantially complied with the chain of custody requirement, which was categorically admitted by both parties in their stipulation of facts. On the other hand, it ruled that petitioners neither presented any evidence to support their defenses of denial and frame-up nor provided any explanation as to how they were able to possess the said prohibited drugs.[23]

Undaunted, petitioners sought reconsideration,[24] which was denied in a Resolution[25] dated February 26, 2018; hence, this petition.

The Court's Ruling

At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the

---

[18] *Id*. at 74.

[19] See Notice of Appeal dated February 2, 2016; CA *rollo*, p. 8.

[20] *Rollo*, pp. 35-51.

[21] *Id*. at 50.

[22] *Id*. at 46-48.

[23] *Id*. at 49.

[24] *Id*. at 52-55-A.

[25] *Id*. at 57-60.

reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[26]

Guided by this parameter and as will be explained hereunder, the Court is of the view that petitioners' conviction must be set aside.

I.

A judicial perusal of the records reveals that the arresting police officers conducted a total of two (2) searches on petitioners, namely: (a) the body search after the police officers apprehended them; and (b) a "more thorough" search conducted at the Panabo Police Station where the seized drugs were allegedly recovered from them. In this regard, petitioners insist that these were illegal searches, and thus, the items supposedly seized therefrom are inadmissible in evidence. On the other hand, the Office of the Solicitor General (OSG), as representative of the people, maintains that the courts *a quo* correctly ruled that the drugs seized from petitioners were products of a valid search incidental to a lawful warrantless arrest.[27]

In view of the foregoing assertions, it behooves the Court to ascertain whether or not the police officers lawfully arrested petitioners without a warrant, as the resolution thereof is determinative of the validity of the consequent search made on them. This is because in searches incidental to a lawful arrest, the law requires that there first be a lawful arrest before a search can be made — the process cannot be reversed.[28] At

---

[26] See *Sindac v. People*, 794 Phil. 421, 427 (2016).

[27] See Comment, *rollo*, pp. 168-184.

[28] See *Trinidad v. People*, G.R. No. 239957, February 18, 2019, citing *Sindac v. People*, 794 Phil. 421, 428 (2016).

this point, the Court notes that petitioners failed to question the legality of their arrest, and in fact, actively participated in the trial of the case. As such, they are deemed to have waived any objections involving the same.[29] Nonetheless, it must be clarified that the foregoing constitutes a waiver **only** as to any question concerning any defects in their arrest, **and not** with regard to the inadmissibility of the evidence seized during an illegal warrantless arrest. In *Sindac v. People*,[30] the Court held:

> 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.**
>
> Since the *shabu* was seized during an illegal arrest, its inadmissibility as evidence precludes conviction and justifies the acquittal of the petitioner.[31] (Emphasis and underscoring supplied)

In this light, there is a need to determine whether or not the police officers conducted a valid warrantless arrest on petitioners, notwithstanding the latter's waiver to question the same.

II.

Section 5, Rule 113 of the Revised Rules on Criminal Procedure provides the general parameters for effecting lawful warrantless arrests, to wit:

---

[29] See *People v. Bringcula*, G.R. No. 226400, January 24, 2018, 853 SCRA 142, 155, citing *People v. Bongalon*, 425 Phil. 96, 119 (2002).

[30] 794 Phil. 421 (2016).

[31] *Id*. at 435-436, citing *Homar v. People*, 768 Phil. 195, 209 (2015).

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

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

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

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

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

Based on the foregoing provision, there are three (3) instances when warrantless arrests may be lawfully effected. These are: (*a*) an arrest of a suspect i*n flagrante delicto*; (*b*) **an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed**; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another.[32]

In warrantless arrests made pursuant to **Section 5 (b), Rule 113, it is required that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it**.[33] Verily, under Section 5 (b), Rule 113, it is essential that **the element of personal knowledge must be coupled with the element of immediacy**; otherwise, the

---

[32] *Sindac v. People*, supra note 26, citing *Comerciante v. People*, 764 Phil. 627, 634-635 (2015).

[33] See *id*. at 429-430.

arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible in consonance with the exclusionary rule of the 1987 Constitution.[34] In *People v. Manago*,[35] the Court held:

> In other words, **the clincher in the element of "personal knowledge of facts or circumstances" is the required element of immediacy within which these facts or circumstances should be gathered. This required time element acts as a safeguard to ensure that the police officers have gathered the facts or perceived the circumstances within a very limited time frame. This guarantees that the police officers would have no time to base their probable cause finding on facts or circumstances obtained after an exhaustive investigation**.
>
> The reason for the element of the immediacy is this as the time gap from the commission of the crime to the arrest widens, the pieces of information gathered are prone to become contaminated and subjected to external factors, interpretations and hearsay. On the other hand, **with the element of immediacy imposed under Section 5 (b), Rule 113 of the Revised Rules of Criminal Procedure, the police officer's determination of probable cause would necessarily be limited to raw or uncontaminated facts or circumstances, gathered as they were within a very limited period of time**. The same provision adds another safeguard with the requirement of probable cause as the standard for evaluating these facts of circumstances before the police officer could effect a valid warrantless arrest.[36] (Emphases and underscoring supplied)

In this case, a judicious review of the records show that while PO2 Torculas was cruising on his motorcycle, he personally saw petitioners holding a lady bag which appeared to have been taken from a parked vehicle. Suspicious of the incident, PO2 Torculas told petitioners to halt, prompting the latter to speed away aboard their motorcycle. Immediately thereafter, the owner of the vehicle, Dombase, approached PO2 Torculas and sought for his assistance, narrating that petitioners broke

---

[34] See Section 3 (2), Article III of the 1987 Constitution.

[35] 793 Phil. 505 (2016).

[36] *Id.* at 517, citing *Pestilos v. Generoso*, 746 Phil. 301, 331 (2014).

the window of her vehicle and took her belongings. To the Court, petitioners' sudden flight[37] upon being flagged by a police officer, coupled with Dombase's narration of what had just transpired is enough to provide PO2 Torculas with personal knowledge of facts indicating that a crime had just been committed and that petitioners are the perpetrators thereof. Moreover, upon gaining such personal knowledge, not only did PO2 Torculas chase petitioners until they entered a dark, secluded area, he also called for back-up and conducted a "stake-out" right then and there until they were able to arrest petitioners about six (6) hours later. These circumstances indubitably show that the twin requisites of personal knowledge and immediacy in order to effectuate a valid "hot pursuit" warrantless arrest are present, considering that PO2 Torculas obtained personal knowledge that a crime had just been committed and that he. did not waver in his continuous and unbroken pursuit of petitioners until they were arrested.[38] From the foregoing, the Court concludes "that the police officers validly conducted a "hot pursuit" warrantless arrest on petitioners.

III.

Having ascertained that petitioners were validly arrested without a warrant pursuant to the "hot pursuit" doctrine, the Court now examines the two (2) searches made on them, namely: (*a*) the body search after the police officers apprehended them; and (*b*) a "more thorough" search conducted at the Panabo Police Station where the seized drugs were allegedly recovered

---

[37] "Flight is evidence of a guilty conscience. For as the good book says, the wicked fleeth even when no man pursueth, whereas the righteous are as brave as a lion." (*People v. Paoyo*, 549 Phil. 430, 438 [2007], citing *Sevalle v. CA*, 405 Phil. 472, 483 (2001).

[38] See *People v. Tonog, Jr.*, G.R. No. 94533, February 4, 1992, 205 SCRA 772; *People v. Gerente*, G.R. Nos. 95847-48, March 10, 1993, 219 SCRA 756; *People v. Alvario*, 341 Phil. 526 (1997); *People v. Jayson*, 346 Phil. 847 (1997); *People v. Acol*, 302 Phil. 429 (1994); *Cadua v. CA*, G.R. No. 123123, August 19, 1999, 232 SCRA 412; *People v. Doria*, G.R. No. 170672, August 14, 2009, 596 SCRA 220; *Pestilos v. Generoso*, supra note 36.

from them, as to whether these may fall within the purview of a valid search incidental to their lawful arrest.

Searches and seizure incident to a lawful arrest are governed by Section 13, Rule 126 of the Revised Rules on Criminal Procedure, to wit:

> Section 13. *Search incident to a lawful arrest*. – A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

The purpose of allowing a warrantless search and seizure incident to a lawful arrest is to protect the arresting officer from being harmed by the person arrested, who might be armed with a concealed weapon, and to prevent the latter from destroying evidence within reach. It is therefore a reasonable exercise of the State's police power to protect: (*a*) law enforcers from the injury that may be inflicted on them by a person they have lawfully arrested; and (*b*) evidence from being destroyed by the arrestee. It seeks to ensure the safety of the arresting officers and the integrity of the evidence under the control and within the reach of the arrestee.[39] In *People v. Calantiao*,[40] the Court reiterated the rationale of a search incidental to a lawful arrest to wit:

> When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapon that the latter might use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.
>
> Moreover, in lawful arrests, it becomes both the duty and the right of the apprehending officers to conduct a warrantless search not only on the person of the suspect, but also in the permissible area

---

[39] *People v. Calantiao*, 736 Phil. 661, 670 (2014), citing *People v. Valeroso*, 614 Phil. 236, 252 (2009).

[40] *Id.*

within the latter's reach. **Otherwise stated, a valid arrest allows the seizure of evidence or dangerous weapons either *on the person of the one arrested or within the area of his immediate control*. The phrase "within the area of his immediate control" means the area from within which he might gain possession of a weapon or destructible evidence. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested**.[41] (Emphasis and underscoring supplied)

On this note, case law requires a strict application of this rule, that is, "to absolutely limit a warrantless search of a person who is lawfully arrested to his or her person at the time of and incident to his or her arrest and to 'dangerous weapons or anything which may be used as proof of the commission of the offense.' ***Such warrantless search obviously cannot be made in a place other than the place of arrest***."[42]

Applying the foregoing parameters to this case, the Court concludes that the first search made on petitioners, *i.e.*, the cursory body search which, however, did not yield any drugs but only personal belongings of petitioners, may be considered as a search incidental to a lawful arrest as it was done contemporaneous to their arrest and at the place of apprehension. On the other hand, the same cannot be said of the second search which yielded the drugs subject of this case, considering that a substantial amount of time had already elapsed from the time of the arrest to the time of the second search, not to mention the fact that the second search was conducted at a venue other than the place of actual arrest, *i.e.*, the Panabo Police Station.

In sum, the subsequent and second search made on petitioners at the Panabo Police Station is unlawful and unreasonable. Resultantly, the illegal drugs allegedly recovered therefrom constitutes inadmissible evidence pursuant to the exclusionary clause enshrined in the 1987 Constitution. Given that said illegal

---

[41] *Id*. at 671, citing *People v. Valeroso*, 614 Phil. 236, 251 (2009).

[42] *Nolasco v. Paño*, 231 Phil. 458, 463 (1987); citation omitted.

drugs is the very *corpus delicti* of the crime charged, petitioners must necessarily be acquitted and exonerated from criminal liability.[43]

WHEREFORE, the petition is **GRANTED**. The Decision dated November 17, 2017 and the Resolution dated February 26, 2018 of the Court of Appeals in CA-G.R. CR No. 01414-MIN are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioners Franklin B. Vaporoso and Joelren B. Tulilik are **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Reyes, J. Jr.,* and *Lazaro-Javier, JJ.*, concur.

Caguioa, J., on official leave.

THIRD DIVISION

[G.R. No. 239336. June 3, 2019]

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

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS; RAPE IS QUALIFIED WHEN MINORITY AND RELATIONSHIP ARE DULY ESTABLISHED.— Under

---

[43] See *People v. Manago*, supra note 35, at 521, citing *Comerciante v. People*, *supra* note 32, at 641.

paragraph 1(a) of Article 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. However, when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation. In this case, all the elements are present. In addition, the Certificate of Live Birth of AAA proves that she was 10 years old when she was raped by appellant and that the latter is her biological father, thus, qualifying the crime of rape.

2. **ID.; ID.; ID.; MAY BE COMMITTED EVEN IN PLACES WHERE PEOPLE CONGREGATE, IN PARKS, ALONG THE ROADSIDE, WITHIN SCHOOL PREMISES, INSIDE A HOUSE WHERE THERE ARE OTHER OCCUPANTS, AND EVEN IN THE SAME ROOM WHERE OTHER MEMBERS OF THE FAMILY ARE ALSO SLEEPING.—** In questioning the credibility of the victim's testimony, appellant argues that it is impossible for her to have been raped since she was sleeping inside their room with her mother and her sister. x x x It is recognized that lust is no respecter of time and place; rape can thus be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. In *People v. Nuyok,* this Court held that the presence of other people in a cramped space does not restrict the actions of someone who commits the crime of rape x x x.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE ISSUE IS ONE OF CREDIBILITY OF WITNESSES, APPELLATE COURTS WILL GENERALLY NOT DISTURB THE FINDINGS OF THE TRIAL COURT.—** Time and again, the Court has held that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested. While there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempt to move on with their lives.

> This is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. The perpetrator of the rape hopes to build a climate of extreme psychological terror, which would numb his victim into silence and submissiveness. In fact, incestuous rape further magnifies this terror, for the perpetrator in these cases, such as the victim's father, is a person normally expected to give solace and protection to the victim. Moreover, in incest, access to the victim is guaranteed by the blood relationship, magnifying the sense of helplessness and the degree of fear. This Court, therefore, shall uphold the credibility of AAA's testimony. In *People v. Malana,* this Court ruled that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court x x x.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

For consideration of this Court is the appeal of the Decision[1] dated March 27, 2018 of the Court of Appeals *(CA)* in CA-G.R. CR HC No. 01705-MIN dismissing appellant CCC's appeal and affirming with modification the Decision[2] dated April 24, 2017 of the Regional Trial Court *(RTC),* Branch 22, [redacted], Cotabato City in Criminal Case No. 11-127, convicting the same appellant of the crime of Qualified Rape.

The facts follow.

---

[1] Penned by Associate Justice Ruben Reynaldo G. Roxas, with Associate Justices Edgardo T. Lloren and Walter S. Ong concurring; *rollo,* pp. 3-12.

[2] Penned by Presiding Judge Laureano T. Alzate; CA *rollo,* pp. 32-49.

AAA,[3] the victim, is the biological daughter of appellant, who is married to AAA's mother *(BBB)* on December 26, 1998 as shown in AAA's Certificate of Live Birth. AAA was born on September 21, 1999.

Sometime in September 2009, when AAA was 10 years old, she was sleeping inside their house with her sibling and their parents when at past midnight, she was awakened because she felt appellant inserting his erect penis into her vagina and succeeded in doing so, against her will. AAA was not able to shout for help because she was shocked and did not know what to do. She then felt pain in her vagina until appellant pulled his penis out. Thereafter, appellant put AAA's pajama back on. The same deed happened between AAA and the appellant less than ten (10) times on different occasions until AAA's mother, BBB and some church members noticed that AAA's belly was getting bigger. BBB brought AAA to a "hilot" who told them that AAA was pregnant prompting BBB to bring her daughter to a clinic for an ultrasound procedure to determine if she was really pregnant. The result of the ultrasound procedure showed that AAA was, indeed, pregnant. When BBB confronted AAA about her pregnancy, AAA told her mother that appellant

---

[3] This is pursuant to the ruling of this Court in *People of the Philippines v. Cabalquinto* (533 Phil. 703 (2006), wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX." The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act; Sec. 44 of Republic Act No. 9262, otherwise known as Anti-Violence Against Women and Their Children Act of 2004; and Sec. 40 of A.M. No. 04-10-11-SC, known as Rule on Violence Against Women and Their Children effective November 15, 2004.

was the one who had been having sexual intercourse with her. Thus, appellant left their house and stayed in another house. AAA eventually gave birth to a child at a hospital. The custody of AAA's child was then transferred to the Department of Social Welfare and Development.

Subsequently, AAA filed this case against appellant with an Information that reads as follows:

> That sometime in September, 2009, in the Municipality of [redacted], Province of Cotabato, and within the jurisdiction of this Court, the said accused, with lewd design, through force and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with AAA, a minor, who is only 10 years old, and who is his own daughter, against her will.
>
> This crime is attended by an aggravating circumstance of relationship.
>
> CONTRARY TO LAW.[4]

On his arraignment on September 28, 2011, appellant entered a plea of "not guilty." Trial on the merits ensued.

The prosecution presented the testimonies of AAA and her mother, BBB.

Appellant denied the charge against him. During his direct examination, when he was asked about her daughter's motive in naming him as the one who violated her, appellant answered, *"Nagkasala po ako,* your Honor" (I have sinned, your Honor), but was not able to explain what had happened.[5] And when asked whether he is admitting that he had carnal knowledge with his daughter, appellant replied, "Because according to Proverbs 28:13, *ang nagkukubli ng kanyang sala ay hindi mapapabuti ngunit kinakahabagan ng Diyos ay ang nagpaparito at nagsisisi."* (Because according to Proverbs

---

[4] Records, p. 4.

[5] TSN, March 30, 2017, pp. 7-8.

28:13, whoever conceals his sins will not succeed but God is merciful to whoever confesses and repents for them.)[6]

The RTC found appellant guilty beyond reasonable doubt of the crime of Qualified Rape and sentenced him to suffer the penalty of *reclusion perpetua.* The dispositive portion of the Decision reads follows:

> WHEREFORE, finding accused, CCC, GUILTY beyond reasonable doubt of the crime of qualified rape committed against AAA, he is hereby sentenced to suffer the penalty of *reclusion perpetua* with no possibility of parole and further, ordered him to indemnify AAA the amounts of Php75,000.00 as civil indemnity, Php50,000.00 as moral damages and Php25,000.00 as exemplary damages.
>
> SO ORDERED.[7]

The CA affirmed the decision of the RTC with modification that appellant is guilty beyond reasonable doubt of Qualified Rape under Article 266-A, in relation to Article 266-B of the Revised Penal Code *(RPC),* and ordered appellant to pay AAA the amount of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, thus:

> WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 24 April 2017 of the RTC, 12th Judicial Region, Branch 22, Cotabato, [redacted], in Crim. Case No. 11-127, finding appellant guilty beyond reasonable doubt for the crime of Qualified Rape under Article 266-A in relation to Article 266-B of the Revised Penal Code is hereby AFFIRMED with MODIFICATIONS in that the award of civil indemnity, moral damages and exemplary damages are increased to One Hundred Thousand Pesos (₱100,000), respectively each. The civil indemnity and damages shall earn interest at the legal rate of six percent (6%) per annum from date of finality of this Decision until fully paid.
>
> SO ORDERED.[8]

---

[6] *Id.* at 9-10.

[7] Records, p. 114.

[8] *Id.* at 12.

Hence, the present appeal.

According to appellant, the prosecution was not able to prove his guilt beyond reasonable doubt.

The appeal lacks merit.

Under paragraph 1(a) of Article 266-A of the RPC, the elements of rape are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. However, when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[9] In this case, all the elements are present. In addition, the Certificate of Live Birth[10] of AAA proves that she was 10 years old when she was raped by appellant and that the latter is her biological father, thus, qualifying the crime of rape.

In her testimony, AAA was categorical in her narration of the incident that happened, thus:

COURT: (To the witness).

Q – A while ago, you testified that you woke up, what prompted you to woke (sic) up?
A – I felt what was (sic) my father doing ot (sic) me, Your Honor.

x x x x x x x x x

PROS. FAJARDO:
Q – Why? What was he doing at that time when you woke up?
A – He was inserting his pennies (sic) into my vagina, sir.

x x x x x x x x x

---

[9] *People v. Fragante,* 657 Phil. 577, 592 (2011).

[10] Exhibit "B", Folder of Exhibits, p. 3.

Q – And when you woke up, as you said, because of what your father was already doing to you, what did you do?
A – "Nagalisu-liso ako." I was constantly moving, sir.

COURT: (To the witness)
We clarify the matters. Just refresh your memory.

Q – When you woke up passed (sic) 12:00 incident, was your father already attempting to insert his pennis (sic) into your vagina or your father had already inserted his pennies (sic) into your vagina
A – He was still trying to insert his pennis (sic) into my vagina, Your Honor.

Q – And your pajama and your panty were already lowered up to your thigh?
A – Yes, Your Honor.

Q – What was your position at the time when your father was trying to insert his pennis (sic) into your vagina?
A – I was lying on my side, Your Honor.

Q – And your father was [at] your back?
A – Yes, Your Honor.

x x x x x x x x x

PROS. FAJARDO:
Q – So, when you woke up, he was still trying to insert his pennis (sic) into your vagina?
A – Yes, sir.

Q – Was he able to insert his pennis (sic) to your vagina?
A – Yes, sir.

COURT: (To the witness).
Q – What did you feel, when his pennis (sic) entered into your vagina?
A – I felt pain, Your Honor.

Q – When the pennis (sic) of your father was inside your vagina, what did your father do?
A – He removed his pennis (sic) and put on my pajama, Your Honor.

Q – Did you observe if your father did a push and pull movement, when his pennis (sic) was inside your vagina?
A – Yes, Your Honor.

x x x x x x x x x

PROS. FAJARDO:
Q – How long was he doing that?
A – I think within two (2) or three (3) minutes, sir.

Q – And after that, what happened?
A – "Nalabasan siya, sir."

Q – Inside your vagina?
A – Out side (sic) of my vagina, sir.

Q – Madam Witenss (sic), were you talking of that night, when you said, this was the first time? (sic)
A – Yes, sir.

Q – After that Madam Witness, was there any occasion that your father have done again to you? (sic)
A – Yes, sir.

Q – How many times?
A – I was not able to count, sir.

Q – You mean, when you say, you cannot count, another (sic) times, many times?
A – Yes, sir.

COURT: (To witness).
Q – From range one (1) to ten (10), what is the range?
A – Less than ten (10) times, Your Honor.

COURT: Clarificatory to the witness.
Q – How was your father able to insert his pennis (sic) of (sic) your vagina, and according to you, you were lying on your side, and your panty and your pajama were lowered up to your thigh only?
A – I was lying on my right side, while he was lying behind me. He inserted his pennis (sic) through my back, Your Honor.

x x x x x x x x x

Q – Considering that you were lying beside your sister [DDD] and your mother, why did you not shout for help? While your father was doing the pushed (sic) and pull movement as his pennis (sic) was already inserted your vagina? (sic)
A – Because that time, Your Honor, I don't know what to do. I was shocked, as if I was out of my mind, Your Honor.

Q – [W]hen you said, as if you were out of your mind, were you still conscious on that particular moment, while your father was doing

the push and pull movement when his pennis (sic) was inside your vagina?
A – What I mean, what I said, I was out of my mind, I don't know what to do, Your Honor.

Q – Why you did (sic) not push away your father, while his erected pennis (sic) inside your vagina?
A – I was still innocent that time, Your Honor, and I don't know what to do.[11]

In questioning the credibility of the victim's testimony, appellant argues that it is impossible for her to have been raped since she was sleeping inside their room with her mother and her sister. He adds that AAA could have easily resisted any assault on her person and sought help from her mother or sister who were sleeping beside her. Thus, according to appellant, AAA's testimony is incredulous and contrary to human experience.

Appellant's argument is untenable. It is recognized that lust is no respecter of time and place; rape can thus be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping.[12] In *People v. Nuyok,*[13] this Court held that the presence of other people in a cramped space does not restrict the actions of someone who commits the crime of rape, thus:

The presence of others as occupants in the same house where the accused and AAA lived did not necessarily deter him from committing the rapes. The crowded situation in any small house would sometimes be held to minimize the opportunity for committing rape, but it has been shown repeatedly by experience that many instances of rape were committed not in seclusion but in very public circumstances. Cramped spaces of habitation

---

[11] TSN, January 31, 2012, pp. 9-15.

[12] *People v. Traigo,* 734 Phil. 726, 730 (2014).

[13] 759 Phil. 437 (2015).

have not halted the criminal from imposing himself on the weaker victim, for privacy is not a hallmark of the crime of rape. x x x[14]

Time and again, the Court has held that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested.[15] While there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempt to move on with their lives.[16] This is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason.[17] The perpetrator of the rape hopes to build a climate of extreme psychological terror, which would numb his victim into silence and submissiveness.[18] In fact, incestuous rape further magnifies this terror, for the perpetrator in these cases, such as the victim's father, is a person normally expected to give solace and protection to the victim.[19] Moreover, in incest, access to the victim is guaranteed by the blood relationship, magnifying the sense of helplessness and the degree of fear.[20]

This Court, therefore, shall uphold the credibility of AAA's testimony. In *People v. Malana,*[21] this Court ruled that when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, thus:

In reviewing rape cases we are guided by the following well-entrenched principles: (1) an accusation for rape can be made with facility: it is difficult to prove but more difficult for the person accused,

---

[14] *Id.* at 454.

[15] *People v. Noel Navasero, Sr.,* G.R. No. 234240, February 6, 2019.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.,* citing *People v. Descartin, Jr.,* G.R. No. 215195, June 7, 2017, 826 SCRA 650, 663.

[21] 646 Phil. 290 (2010).

though i1mocent, to disprove it; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

The determination of the credibility of the offended party's testimony is a most basic consideration in every prosecution for rape, for the lone testimony of the victim, if credible, is sufficient to sustain the verdict of conviction. As in most rape cases, the ultimate issue in this case is credibility. In this regard, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering that the latter is in a better position to decide the question as it heard the witnesses themselves and observed their deportment and manner of testifying during trial. The exceptions to the rule are when such evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied some facts or circumstance of weight and substance which could affect the result of the case. None of these circumstances are present in the case at bar to warrant its exception from the coverage of this rule.

It is well-established that when a woman says that she has been raped, she says, in effect, all that is necessary to show that she has indeed been raped. A victim of rape would not come out in the open if her motive were anything other than to obtain justice. Her testimony as to who abused her is credible where she has absolutely no motive to incriminate and testify against the accused, as in this case where the accusations were raised by private complainant against her own father.[22]

Anent appellant's defense of denial, bare assertions thereof cannot overcome the categorical testimony of the victim. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[23]

---

[22] *Id.* at 301-303. (Citations omitted).

[23] *People v. Abulon,* 557 Phil. 428, 447 (2007).

As to the penalty imposed, the RTC was correct in imposing the penalty of *reclusion perpetua* in lieu of death because of its suspension under R.A. No. 9346.[24]

As to the award of damages, the modifications made by the CA already conform to the latest jurisprudence on the matter.[25]

WHEREFORE, the appeal of CCC is **DISMISSED** for lack of merit, and the Decision dated March 27, 2018 of the Court of Appeals in CA-G.R. CR HC No. 01705-MIN, dismissing appellant's appeal and affirming with modification, the Decision dated April 24, 2017 of the Regional Trial Court, Branch 22, [redacted], Cotabato City in Criminal Case No. 11-127, convicting appellant of Qualified Rape defined and penalized under Article 266-A (1) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, and imposing the penalty of *Reclusion Perpetua* without eligibility for parole under R.A. No. 9346, is **AFFIRMED.**

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Inting, JJ.,* concur.

---

[24] Art. 266-B, Revised Penal Code. x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

x x x x x x x x x

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

FIRST DIVISION

[G.R. No. 239390. June 3, 2019]

BRIGHT MARITIME CORPORATION AND/OR NORBULK SHIPPING UK LIMITED, *petitioners, vs.* **JERRY J. RACELA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES OF FACTS MAY NOT BE RAISED; EXCEPTIONS; FACTUAL FINDINGS OF THE LABOR ARBITER AND THE COURT OF APPEALS INCONSISTENT WITH THAT OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC). —** Whether or not respondent's illness is compensable is essentially a factual issue. Issues of facts may not be raised under Rule 45 of the Rules of Court because this Court is not a trier of facts. It is not to re-examine and assess the evidence on record, whether testimonial or documentary. Among the recognized exceptions to said rule, as in the present case, is where the factual findings of the Labor Arbiter and the Court of Appeals are inconsistent with that of the NLRC.

2. **LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; THE ENTITLEMENT OF SEAFARERS TO DISABILITY BENEFITS IS GOVERNED NOT ONLY BY MEDICAL FINDINGS BUT ALSO BY LAW AND CONTRACT PREVAILING AT THE TIME OF EMPLOYMENT. —** The entitlement of overseas seafarers to disability benefits is a matter governed, not only by medical findings, but also by law and contract. The pertinent statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. The relevant contracts pertain to the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment (*DOLE*), and the parties' CBA. Since respondent was hired in 2013, it is the 2010 POEA-SEC (Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships) under Philippine Overseas Employment Authority (*POEA*) Memorandum Circular

No. 010-10 which is applicable in this case. Section 20(A) thereof 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, x x x [T]wo (2) elements must concur for an injury or illness to be compensable: *first*, that the injury or illness must be work-related; and *second*, that the work-related injury or illness must have existed during the term of the seafarer's employment contract. To be entitled to compensation and benefits under the governing POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.

3. **ID.; ID.; ID.; THE 2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); WORK RELATED ILLNESS; CARDIOVASCULAR DISEASE LISTED AS OCCUPATIONAL DISEASE; NOT COMPENSABLE AS SEAFARER FAILED TO SATISFY THE CONDITIONS UNDER 32-A(11), THE DISEASE NOT CONSIDERED AS WORK-RELATED. —** The POEA-SEC defines a "work-related illness" as any sickness as a result of an occupational disease listed under Section 32-A with the satisfaction of conditions provided therein. Cardiovascular diseases, such as respondent's aortic valve stenosis, is expressly included among those occupational diseases, which entitles the seafarer to compensation for the resulting disability if *any* of the specified conditions are met. SECTION 32-A. *Occupational Diseases*. – For an occupational disease and the resulting disability or death to be compensable, **all of the following conditions must be satisfied**: x x x 1. The seafarer's work must involve the risks described herein; 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4. There was no notorious negligence on the part of the seafarer. The following diseases are considered as occupational **when contracted under working conditions involving the risks described herein**: x x x Cardiovascular disease is listed in Sec. 32-A as an occupational disease. However, for cardiovascular disease to constitute as an occupational disease for which the seafarer may claim compensation, it is incumbent

upon the seafarer to show that he developed the same under any of the following conditions identified in Section 32-A(11): x x x [Here,] respondent was unable to present substantial evidence to show that his work conditions caused, or at the least increased the risk of contracting his illness. Neither was he able to prove that his illness was pre--existing and that it was aggravated by the nature of his employment. x x x Consequently, although considered as an occupational disease, respondent's heart ailment did not satisfy the conditions under Section 32-A (11) 2010 POEA-SEC to be considered occupational. His aortic valve stenosis not being work-related, the same is held/deemed not compensable.

4. ID.; ID.; ID.; RULE ON THE REQUIREMENT THAT THE COMPANY-DESIGNATED PHYSICIAN MUST ARRIVE AT A DEFINITE ASSESSMENT OF THE SEAFARER'S FITNESS TO WORK OR PERMANENT DISABILITY WITHIN A PERIOD OF 120 OR 240 DAYS; NOT APPLICABLE WHERE ILLNESS IS NOT WORK-RELATED. — In *Fil-Pride Shipping Company, Inc., et al. v. Balasta*, the Court ruled that the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within a period of 120 or 240 days, pursuant to Article 192(c)(1) of the Labor Code and Rule X, Section 2 of the Amended Rules on Employee's Compensation (*AREC*). If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled. Thus, even if it was shown that given the seafarer's delicate post-operative condition, a definitive assessment by the company-designated physician would have been unnecessary as, for all intents and purposes, the seafarer was already unfit for sea duty. Still, with the said doctor's failure to issue a definite assessment of the seafarer's condition on the last day of the statutory 240-day period, the seafarer was deemed totally and permanently disabled pursuant to Article 192(c)(1) of the Labor Code and Rule X, Section 2 of the AREC. However, it must be pointed out that in the aforecited case, respondent sufficiently alleged the causal connection between his work duties/functions and his heart disease, x x x [T]he mere fact that a seafarer's disability exceeded 120 days, by itself, is not a ground to entitle him to full disability benefits. Such should be read in relation to the provisions of the POEA Standard Employment Contract which, among others, provide that an illness should be work--related. Without a finding

that an illness is work-related, any discussion on the period of disability is moot.

5. ID.; IN LABOR CASES, SUBSTANTIAL EVIDENCE IS REQUIRED TO SUPPORT A CONCLUSION; CASE AT BAR. — In labor cases, as in other administrative proceedings, **substantial evidence**, or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion, is required. The oft-repeated rule is that whoever claims entitlement to benefits provided by law should establish his right thereto by substantial evidence. Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent. It has been ruled, time and again, that self-serving and unsubstantiated declarations are insufficient to establish a case before quasi--judicial bodies where the quantum of evidence required to establish a fact is substantial evidence. In *Scanmar Maritime Services, Inc., et al. v. De Leon*, the Court held that seafarers claiming disability benefits are burdened to prove the positive proposition that there is a reasonable causal connection between their ailment and the work for which they have been contracted. Logically, the labor courts must determine their *actual work*, the nature of their ailment, and *other factors* that may lead to the conclusion that they contracted a work-related injury.

APPEARANCES OF COUNSEL

Retoriano & Olalia-retoriano for petitioners.
Bantog & Andaya Law Offices for respondent.

D E C I S I O N

GESMUNDO, *J.*:

Before us is an appeal from the February 15, 2018 Decision[1] and the May 9, 2018 Resolution[2] of the Court of Appeals (*CA*)

---

[1] *Rollo*, pp. 53-67; penned by Associate Justice Jhosep Y. Lopez with Associate Justices Japar B. Dimaampao and Manuel M. Barrios, concurring.

[2] *Id*. at 69-70.

in CA-G.R. SP No. 148879 reversing and setting aside the September 28, 2016 Decision[3] and October 27, 2016 Resolution[4] of the National Labor Relations Commission (*NLRC*) Fifth Division. The CA reinstated the Labor Arbiter's (*LA*) Decision,[5] dated April 19, 2016, which awarded total and permanent disability benefits and attorney's fees to respondent.

Antecedents

On March 21, 2013, Jerry J. Racela (respondent) was hired by petitioner Bright Maritime Corporation, a local manning agency, to work as fitter on board the vessel owned by its foreign principal, Norbulk Shipping UK Limited (petitioner). The employment contract contained the following terms and conditions:

Duration of Contract	:	8 months + 1 month upon mutual agreement of both parties
Basic Monthly Salary	:	US$600.00
Hours of Work	:	44 hours per week
Overtime	:	US$311.00 (OT 85 hours per month) US$4.39 excess of OT Rate
Vacation Leave Pay	:	US$194.00 per month
Point of Hire	:	Manila, Philippines
Supplementary Wage	:	US$595.00 per month[6]

---

[3] CA *rollo*, pp. 37-55; penned by Commissioner Mercedes R. Posada-Lacap with Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Dolores M. Peralta-Beley, concurring.

[4] *Id*. at 57-60.

[5] *Id*. at 266-291; penned by Labor Arbiter Thomas T. Que, Jr.

[6] *Rollo*, pp. 54 and 124.

Respondent was also covered by a Collective Bargaining Agreement (*CBA*) between Norbulk Manning Services Limited and Latvian National Seafarers Trade Union.[7]

Prior to hiring, respondent was subjected to medical examination and was declared "Fit for Sea Duty as Engine Rating."[8]

Respondent left the Philippines on June 8, 2013, and boarded the vessel in Singapore. Sometime in February 2014, respondent complained of chest pains and difficulty in breathing. On March 23, 2014, he was admitted at the Alisha Hospital in Israel for pulmonary edema and was diagnosed with "severe aortic regurgitation and aneurysm of the sinuses of valsava-aortic root." He underwent open-heart surgery (aortic valve replacement) on March 25, 2014 and was discharged and advised to consult his personal cardiologist in the Philippines on April 13, 2014. He was, likewise, prohibited from any physical exertion for six (6) months. On April19, 2014, he was repatriated for medical reasons.[9]

Upon arrival in the Philippines, respondent was immediately confined at the Chinese General Hospital after being referred to the company--designated physician at Alegre Medical Clinic for post-employment medical examination.[10] On April 22, 2014, he was discharged and was advised to continue his medical therapy.[11]

While on follow-up checkup with the company-designated physician, respondent complained of pain over the surgical site on his chest and reported hearing a clicking sound inside it. His condition was diagnosed as "aortic valve stenosis" and was referred to a cardiologist.[12]

---

[7] *Id*. at 125-139.

[8] *Id*. at 149.

[9] *Id*. at 55.

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

[11] *Id*. at 156.

[12] *Id*. at 157.

When examined by a cardiologist on May 2, 2014, respondent was advised to retrieve his angiogram results and to undergo repeat 2D Echocardiography in three to four months. He was also directed to continue with his medications.[13] After subsequent re-evaluations by the company--designated physician,[14] the latter rendered a medical opinion on July 21, 2014, stating that since respondent's aortic valve stenosis was pre-existing or hereditary, no disability grading was given pursuant to the POEA-SEC Contract, and that maximum medical cure had already been reached in this case.[15] Respondent followed up with the cardiology specialist who recommended the conduct of coronary angiography, as the result of his 2D Echo showed dilated left ventricle with severe hypokinesia.[16] In the medical report dated July 23, 2014, the company-designated physician reiterated his assessment that no disability grade was given to respondent because his condition was deemed not work-related.[17]

Respondent continued with his treatment under the company-designated physician until August 27, 2014, when he was discharged from the hospital. He had undergone coronary angiography on August 26, 2014,[18] the cost of which was still shouldered by petitioners.

On September 25, 2014, respondent consulted a private physician, Dr. Efren R. Vicaldo (*Dr. Vicaldo*), who issued a medical certificate stating that respondent was suffering from valvular heart disease, severe aortic regurgitation, aneurysm of sinus valsalva, S/P aortic valve replacement, normal coronary arteries and dilated left ventricle with systolic dysfunction. He

---

[13] *Id*. at 158.

[14] *Id*. at 159-163.

[15] *Id*. at 164.

[16] *Id*. at 165-166.

[17] CA *rollo*, p. 184.

[18] *Id*. at. 68-71.

was then given an impediment grade of VI (50%) and was declared unfit for sea duty.[19]

On June 9, 2015, respondent filed a disability complaint against petitioners.[20] He claimed that he was not informed of any assessment by the company-designated physician as to his fitness for sea duty. He alleged that he had told petitioners of the findings of his own private physician but petitioners rejected or avoided his repeated requests for referral to a third doctor. Respondent sought full disability benefits (US$60,000.00), moral damages (Php1,000,000.00), exemplary damages (₱200,000.00) and attorney's fees (10% of total claims).[21]

Petitioners countered that respondent was informed of the assessment made by the company-designated physician on July 30, 2014, at a meeting with Gilbey Jane A. Endaya and Jennifer M. Magsino, claims officers of Pandiman Philippines, Inc. (*Pandiman*) that were assigned to coordinate with the representative of petitioner Norbulk. The causes and risk factors of his illness (aortic valve stenosis) having been explained to him, respondent seemed to have understood that his ailment was not work-related and that petitioners shall continue to pay for his medical expenses until the I 30th day or up to August 27, 2014, after which his treatment would be discontinued. Respondent did not protest the assessment but only requested petitioners to shoulder the cost of his coronary angiogram, which was granted.[22]

About five (5) months later, petitioners received a letter dated January 5, 2015,[23] from respondent's counsel stating that since respondent was not informed of the medical assessment by the company-designated physician, he obtained a second opinion

---

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

[20] *Rollo*, p. 123.

[21] CA *rollo*, pp. 81-91.

[22] *Rollo*, pp. 168-169.

[23] CA *rollo*, pp. 195-196.

from his chosen doctor, Dr. Vicaldo. Said doctor declared him "unfit to work as seaman in any capacity" with an impediment grade of 6 (50% disability). Respondent thus demanded payment of US$60,000.00 as permanent total disability benefit. After a conciliation-mediation conference before the NLRC-SENA Unit failed to settle the dispute, the proceeding was ordered closed and terminated. On April 13, 2015, petitioners again received a letter from respondent's counsel requesting referral to a third doctor for a final evaluation of respondent's disability.[24]

Petitioners replied[25] to the counsel of respondent, refuting the allegation of respondent that he was not informed of the medical assessment of the company-designated physician, and also manifested their willingness to refer respondent to a third doctor for a final determination of whether his condition was work-related. On June 1, 2015, respondent's counsel sent another letter denying petitioners' assertion that respondent was duly informed of the company-designated physician's medical assessment.[26] As per respondent's account, he was merely told that he still had to undergo an angiogram and his medical treatment would stop after 120 days.[27]

Petitioners further claimed that respondent's counsel even personally conferred with their own counsel on the possible terms and conditions for the appointment of a third doctor, during which the former promised to send an e-mail containing their proposal. However, instead of such e-mail, petitioners received a summons from the NLRC. Such actuations of respondent's counsel indicate his lack of genuine intention to comply with the Third-Physician Rule under the POEA-SEC.[28]

---

[24] *Id*. at 200-202.

[25] *Id*. at 205-206.

[26] Letter dated May 27, 2015, *id*. at 208-210.

[27] *Id*.

[28] *Id*. at 211-212.

Ruling of the Labor Arbiter

In his Decision,[29] dated April 19, 2016, Labor Arbiter Thomas T. Que, Jr. (*LA Que*) said that while respondent failed to seek the opinion of the third doctor, the stipulations in the employment contract and CBA are merely permissive and not mandatory, hence the use of the word "may." Moreover, with his disability still subsisting, respondent acted within his rights in instituting the complaint against petitioners.[30]

On the issue of whether respondent's heart ailment was work-related, LA Que opined that their liability for compensation was impliedly admitted by petitioners when they provided him with medical treatment and paid his sickness allowance. Such continued medical treatment and payment of sickness allowance was indicative of petitioners' assessment that respondent's illness did, in fact, arise in the course of and/or was aggravated by the conditions of his employment.[31]

LA Que further ruled that respondent's cardiovascular disease should be deemed accidental because not all fitters end up with such condition. This entitles respondent to the maximum amount provided in the CBA. The findings of the company-designated physician were not given credence for being ambiguous. Considering that there was no definite assessment of respondent's fitness to work and his medical conditions remained unresolved, LA Que concluded that he was already deemed totally and permanently disabled.[32]

The dispositive portion of the LA's decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding Complainant entitled to his claim for total and permanent disability benefits and attorney's fees in the respective amounts of

---

[29] *Supra* note 5.

[30] *Id*. at 279-285.

[31] *Id*. at 285-286.

[32] *Id*. at 287-290.

US $95,949 and $9,594.90 and, correspondingly, holding Respondents jointly and severally liable to pay the same.

All other claims are dismissed for lack of merit.

SO ORDERED.[33]

Ruling of the NLRC

Petitioners appealed to the NLRC, which reversed the LA's ruling in its September 28, 2016 Decision. The NLRC disagreed with the LA's finding that respondent's illness was work-related considering that he failed to present substantial evidence that would show the causal connection between his work as a fitter and his heart disease. Citing medical references, the NLRC noted that aortic valve stenosis could be caused by genetics, aging, and childhood rheumatic disease and may be aggravated by lifestyle choices. These causes being natural, the illness could not have been accidental. As to Dr. Vicaldo's findings, the NLRC pointed out that said physician did not perform any test on respondent. His recommendation was merely based on the medical examinations conducted by the company-designated physician.[34]

The NLRC also disagreed with the LA's view that respondent's illness did not arise from an accident as provided in the CBA. Aortic Valve Stenosis is caused by natural causes and not accidental. Since respondent failed to prove that his heart disease was work-related, such illness is not compensable under the POEA-SEC and the CBA.[35]

The NLRC thus decreed:

WHEREFORE, the appeal is hereby **GRANTED**. The Decision of the Labor Arbiter Thomas T. Que, Jr. is **REVERSED** and **SET ASIDE**. Accordingly, the complaint is **DISMISSED** for lack of merit.

---

[33] *Id.* at 291.

[34] *Id.* at 48-53.

[35] *Id.* at 53-54.

SO ORDERED.[36]

Respondent filed a motion for reconsideration but the NLRC denied the same.[37] He then elevated the case to the CA in a petition for *certiorari* under Rule 65.

Ruling of the CA

In its decision, the CA reversed the NLRC, finding respondent's illness to be work-related. The pertinent portions of the CA's discussion on respondent's entitlement to disability are herein reproduced:

The records of this case are bereft of any showing as to how petitioner's nature of work caused or contributed to the aggravation of his illness. Nevertheless, We find that (*sic*) his illness to be work-related for two reasons. First, **petitioner did not exhibit any sign that he was sick when private respondents employed him**. Verily, petitioner's blood pressure during his PEME was at 130/80mmHg., which is considered to be higher than what experts consider optimal for most adults. Private respondents' company-designated physician opined in his certification that "stress test and 2DEcho will detect aortic stenosis in the PEME. The ECG may provide signs but not definitive." Nevertheless, petitioner's results for his chest x-ray and ECG all came out normal. As such, petitioner was declared fit for sea duty. Evidently, there were no signs that petitioner was suffering from Aortic Valve Stenosis at the time private respondents employed him. He only showed signs and symptoms of the said cardiac injury while he was performing his work on board with private respondents' vessel. Pursuant to Section 32-A of the POEA-SEC, We can therefore conclude that there is a causal relationship between petitioner's illness and the work he performed.

Second, **the Supreme Court took judicial notice in several cases that seafarers are exposed to harsh conditions of the sea, long hours of work and stress brought about by being away from their families**. Compounded to this, their bodies are further subjected to wear and tear as a consequence of their work or labor. Aside from these, it has been held in several cases that "cardiovascular disease, coronary

---

[36] *Id*. at 54.

[37] *Id*. at 57-60.

artery disease, and other heart ailments are work-related and, thus, compensable."

x x x x x x x x x

Private respondents are further mistaken in their argument that petitioner is not entitled to receive his disability compensation. It is clear from the records of this case that private respondents' company-designated physician neither gave petitioner a disability rating nor a categorical pronouncement that he is fit to work or is permanently disabled, whether total or permanent. Nevertheless, petitioner's independent physician gave him an Impediment Grade of VI and proclaimed him to be 'unfit to resume work as seaman in any capacity.' In the landmark case of *Kestrel Shipping Co., Inc. v. Munar*, it was held that injuries with a disability grading from 2-14 under Section 32 of the POEA-SEC may be deemed to be permanent and total if it incapacitates a seafarer from performing his usual duties for a period of more than 120 or 240 days x x x

x x x x x x x x x

Here, the company-designated physician refused to give petitioner a disability rating on the premise that his illness is not work-related. Still, it was explicitly stated in the company-designated physician's certification that "maximum medical care has already been reached in this case as the patient already underwent Aortic Valve Replacement."

Conspicuously, private respondents' company-designated physician, himself, recommended petitioner to undergo Coronary Angiography because he had dilated left ventricle with severe hypokinesia. After undergoing coronary angiography, the following were found:

x x x x x x x x x

The coronary angiography showed insignificant coronary artery vessels. It also showed an avanabus oitpin of the right coronary artery from the left coronary cell

x x x x x x x x x

Observably, **private respondents' company-designated physician offered no explanation as with regard to petitioner's condition after undergoing coronary angiography**. Moreover, the progress report that was issued by private respondents' company-designated

physician appears to be misleading. The abovequoted progress report stated that petitioner had an "avanabus oitpin of the right coronary artery from the left coronary cell." It appears after delving into medical literature that there is no such thing as "avanabus oitpin of the right coronary artery from the left coronary cell." **To dispel any confusion, private respondents could have presented a copy of the results of the coronary angiography, itself, but did not.** Due to such failure of the private respondents, **there arises a presumption that such evidence, if presented, would be prejudicial to it**.

Assuming that private respondent's company-designated physician made a typographical error. The said progress report could be interpreted to mean that petitioner had an "anomalous origin of the right coronary artery from the left coronary sinus." Studies have shown that anomalies of this kind rarely happens. It was then found that this kind of anomaly may lead to sudden death or myocardial ischemia without exhibiting any symptoms. Nevertheless, this anomaly can be surgically treated. It was not clear, however, from the records of this case if petitioner was treated for such anomaly. Neither was there any showing that petitioner was able to work again as a fitter without putting his life in peril.

Thus, We find that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in deleting the labor arbiter's award of total and permanent disability compensation of US$60,000.00 (US$50,000,00 x 120%), in accordance with Section 32 of the 2010 POEA-SEC.[38] (emphases supplied; citations omitted)

The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated September 20, 2016 and Resolution dated October 27, 2016, both issued by the National Labor Relations Commission in NLRC LAC No. 05-000379-16 are hereby **REVERSED**. The Decision of the Labor Arbiter dated 19 April 2016 is hereby **AFFIRMED** and **REINSTATED**.

SO ORDERED.[39]

---

[38] *Rollo*, pp. 62-65.

[39] *Id*. at 67.

Petitioners' motion for reconsideration was likewise denied by the May 9, 2018 CA Resolution.

ISSUE

The main issue to be resolved in this case is whether or not respondent is entitled to disability compensation under the POEA-SEC and/or the CBA.

Petitioners' Arguments

Petitioners assail the CA's finding that respondent's aortic valve stenosis is work-related.

Considering that respondent failed to establish the causal relationship between his illness and the nature of his work duties, petitioners argue that the CA clearly erred in holding that he was entitled to permanent and total disability compensation. The mere fact that respondent was declared fit for sea duty prior to hiring does not prove that he acquired his disease by reason of his employment. It was thus possible that he was already suffering from a heart ailment but due to the limitations of the Pre-Employment Medical Examination (PEME), the examining doctor failed to detect the same. Petitioners stress that although ECG can provide signs of aortic valve stenosis, the same is not definitive according to the company-designated physician. The tests that can properly diagnose said disease is Stress Test and 2D Echo, none of which were conducted during the PEME. As to respondent's pre-hypertensive blood pressure reading, it could only mean that his heart was not in perfect shape; and yet the PEME result posted no hindrance to respondent's employment at sea or was insufficient indication for the examining doctor to require him to undergo further tests. There is certainly no basis for the CA to infer work-connection simply because respondent passed the PEME.[40]

Petitioners deplore the CA's factual findings based only on presumptions and absent the quantum of evidence required in

---

[40] *Id*. at 20-24.

labor cases — which is an erroneous application of the law on compensation proceedings. In citing previous cases decided by the Court where it was pronounced that cardiovascular disease, coronary artery disease, and other heart ailments are work-related and compensable, the CA failed to consider that the grant of benefits in those cases were based on satisfaction of the conditions set forth in Section 32-A(11) of the POEA-SEC.[41] It is imperative for respondent to show by substantial evidence the nature of his work and the strain appurtenant thereto that may have resulted in his condition. Notably, despite the CA's recognition that the records of this case were bereft of any showing of such work connection or work aggravation, it still held petitioners liable for the payment of disability benefits to respondent. Indeed, the speculations of the CA should not be allowed to prevail over the express declaration of the company-designated physician that respondent's illness is not work- related.[42]

On the non-referral to a third doctor, petitioners maintain that it was the counsel of respondent who breached the rule by the precipitate filing of the complaint while they were still conferring on how to comply with the mandatory procedure. Even assuming that said rule can be set aside in the interest of substantial justice, there is still no valid basis for the award of disability benefits because Dr. Vicaldo's pronouncement of work-relation/aggravation is unsubstantiated. Said doctor issued a medical certificate to respondent after a one-time consultation without conducting diagnostic or confirmatory tests. Petitioners cite previous instances when the Court has warned the labor tribunals to take extreme caution in relying on the assessment of Dr. Vicaldo. The CA should have done what the NLRC did when it refused to give credence to the unfounded medical certificate of Dr. Vicaldo.[43]

---

[41] *Id*. at 26.

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

[43] *Id*. at 32-35.

In their Reply to respondent's Comment, petitioners contend that the principle of work-aggravation cannot be appreciated in respondent's favor because he failed to prove that his work as fitter and/or the working conditions on board the vessel aggravated his ailment. Petitioners cite respondent's record of hours of rest which was attached to their position paper submitted before the Labor Arbiter. Said document showed that the average time respondent worked was only 10 hours a day between 7:00 a.m. and 6:00 p.m., with one-hour break at 12 noon; and that he had sufficient 14 hours of rest each day from July to March 2014.[44]

Respondent's Arguments

In his Comment, respondent asserts that the CA correctly reinstated the LA's award which is in accord with the POEA-SEC, as interpreted by the Court in its recent decisions. Having been cleared as fit to work in his PEME, it is clear that respondent only suffered the illness while on board the vessel, for which he was medically repatriated. The company-designated physician did not categorically state that respondent's illness is work-aggravated; hence, the findings of Dr. Vicaldo that his condition is work-aggravated should prevail.[45]

Respondent argues that since petitioners did not respond to his request for referral to a third doctor, he is then deemed totally and permanently disabled in contemplation of law, as held in several cases. Further, as held in *Eyana v. Philippine Transmarine Carriers, Inc., et al.*,[46] if the injuries with a disability grading from 2 to 14 (partial and permanent) would incapacitate a person for more than 120 or 240 days, depending on the need for further medical treatment, then the patient is deemed totally and permanently disabled.[47] Similarly, in this

---

[44] *Id*. at 538-540; CA *rollo*, pp. 213-221.

[45] *Rollo*, pp. 506-512.

[46] 752 Phil. 232 (2015), citing *Kestrel Shipping Co., Inc., et al. v. Munar*, 702 Phil. 717, 730-731 (2013).

[47] *Id*. at 243-244.

case, respondent is entitled to total and permanent disability benefits, having been given a grade 6 disability rating by Dr. Vicaldo.[48]

In his Rejoinder to Petitioners' Reply, respondent insists that the CA correctly held that his heart disease, though pre-existing or congenital, was work-aggravated. He also points out that the final report of the company--designated physician was issued to Ms. Endaya and not to respondent. As to the meeting conducted by representatives of the manning agency, respondent said that, not being doctors, their statements are hearsay, and such does not sufficiently comply with the employer's obligation to issue a definite assessment of his illness and fitness to work made by the company--designated physician.[49]

THE COURT'S RULING

The petition is meritorious.

Whether or not respondent's illness is compensable is essentially a factual issue.[50] Issues of facts may not be raised under Rule 45 of the Rules of Court because this Court is not a trier of facts. It is not to re-examine and assess the evidence on record, whether testimonial or documentary.[51] Among the recognized exceptions[52] to said rule, as in the present case, is

---

[48] *Rollo*, pp. 518-523.

[49] *Id*. at 552-556.

[50] *De Leon v. Maunlad Trans, Inc., et al.*, 805 Phil. 531, 539 (2017).

[51] *C.F. Sharp Crew Management, Inc., et al. v. Legal Heirs of the Late Godofredo Repiso*, 780 Phil. 645, 665 (2016), citing *Litonjua, Jr. v. Eternit Corporation*, 523 Phil. 588, 605 (2006).

[52] 1) When the conclusion is a finding grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) **when the findings of fact are conflicting**; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial court; (8) when the

where the factual findings of the Labor Arbiter and the Court of Appeals are inconsistent with that of the NLRC.

While the LA and the CA found respondent's cardiovascular disease as work-related and hence compensable, the NLRC declared that such ailment is neither work-related nor a result of an accident.

The entitlement of overseas seafarers to disability benefits is a matter governed, not only by medical findings, but also by law and contract.[53] The pertinent statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. The relevant contracts pertain to the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment (*DOLE*), and the parties' CBA.[54]

Since respondent was hired in 2013, it is the 2010 POEA-SEC (Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships) under Philippine Overseas Employment Authority (*POEA*) Memorandum Circular No. 010-10 which is applicable in this case. Section 20(A) thereof 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, to wit:

---

findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (*Litonjua, Jr. v. Eternit Corporation*, *supra*)

[53] *Austria v. Crystal Shipping, Inc., et al.*, 781 Phil. 674, 681 (2016).

[54] *Id*. at 681-682.

SECTION 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.

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.

5. In case a seafarer is disembarked from the ship for medical reasons, the employer shall bear the full cost of repatriation in the event the seafarer is declared (1) fit for repatriation, or (2) fit to work but the employer is unable to find employment for the seafarer on board his former ship or another ship of the employer.

6. **In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract.** Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, 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.

7. It is understood and agreed that the benefits mentioned above shall be separate and distinct from, and will be in addition to whatever benefits which the seafarer is entitled to under Philippine laws such as from the Social Security System, Overseas Workers Welfare Administration, Employees' Compensation Commission, Philippine Health Insurance Corporation and Home Development Mutual Fund (Pag-IBIG Fund).

x x x x x x x x x

F. When requested, the seafarer shall be furnished a copy of all pertinent medical reports or any records at no cost to the seafarer.

x x x x x x x x x

(emphases supplied)

Pursuant to the foregoing, two (2) elements must concur for an injury or illness to be compensable: *first*, that the injury or illness must be work-related; and *second*, that the work-related injury or illness must have existed during the term of the seafarer's employment contract.[55]

To be entitled to compensation and benefits under the governing POEA-SEC, it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[56]

The POEA-SEC defines a "work-related illness" as any sickness as a result of an occupational disease listed under Section 32-A with the satisfaction of conditions provided therein. Cardiovascular diseases, such as respondent's aortic valve stenosis, is expressly included among those occupational diseases, which entitles the seafarer to compensation for the resulting disability if *any* of the specified conditions are met.

SECTION 32-A. *Occupational Diseases.* —

For an occupational disease and the resulting disability or death to be compensable, **all of the following conditions must be satisfied**:

x x x x x x x x x

1. The seafarer's work must involve the risks described herein;

2. The disease was contracted as a result of the seafarer's exposure to the described risks;

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and

---

[55] *Bautista v. Elburg Shipmanagement Philippines, Inc., et al.*, 767 Phil. 488, 497 (2015), citing *Magsaysay Maritime Services, et al. v. Laurel*, 707 Phil. 210, 221 (2013); *Nisda v. Sea Serve Maritime Agency, et al.*, 611 Phil. 291, 316 (2009).

[56] *Loadstar International Shipping, Inc. v. Yamson, et al.*, G.R. No. 228470, April 23, 2018. citing *Doehle-Philman Manning Agency, Inc., et al. v. Haro*, 784 Phil. 840, 850 (2016); *Austria v. Crystal Shipping, Inc., et al.*, *supra* note 53, at 682 (2016).

4. There was no notorious negligence on the part of the seafarer. The following diseases are considered as occupational **when contracted under working conditions involving the risks described herein**:

x x x x x x x x x
(emphases supplied)

During the term of his contract and while in the performance of his duties on board petitioners' vessel, respondent undeniably suffered from severe aortic regurgitation or valvular insufficiency (leaking of blood back into the left ventricle due to improperly functioning aortic valve leaflets)[57] for which he was hospitalized and underwent open-heart surgery (aortic valve replacement). Upon repatriation, his condition was diagnosed by the company-designated physician as aortic valve stenosis.

"In aortic valve stenosis, the aortic valve between the lower left heart chamber (left ventricle) and the main artery that delivers blood from the heart to the body (aorta) is narrowed (stenosis). When the aortic valve is narrowed, the left ventricle has to work harder to pump a sufficient amount of blood into the aorta and onward to the rest of [the] body. This can cause the left ventricle to thicken and enlarge. Eventually the extra work of the heart can weaken the left ventricle and [the] heart overall, and it can ultimately lead to heart failure and other problems."[58] In adults, three conditions are known to cause aortic stenosis: 1) Progressive wear and tear of a bicuspid valve present since birth (congenital); 2) Wear and tear of the aortic valve in the elderly; and 3) Scarring of the aortic valve due to rheumatic fever as a child or young adult.[59] In most elderly adults, aortic

---

[57] <https://www.healthline/com/health/aortic-stenosis/causes> (visited May 5, 2019).

[58] <https://www.mayoclinic.org/diseases-conditions/aortic-stenosis/symptoms-causes/syc-20353139> (visited May 5, 2019).

[59] *Aortic Valve Stenosis Symptoms, Treatment, Types & Surgery* by Daniel Lee Kulick, MD, FACC, FSCAI (Medical Author) and William C. Shiel, Jr., MD, FACP, FACR (Medical Editor), Medically Reviewed on 11/13/2017, accessed at <https:www.medicinenet.com/aortic_stenosis/article.htm> (visited May 5, 2019).

stenosis is caused by a buildup of calcium (a mineral found in the blood) on the valve leaflets. Over time, this causes the leaflets to become stiff, reducing their ability to fully open and close.[60] Respondent was just 49 years old when he manifested symptoms of the disease after eight months of working on board petitioners' vessel.

Treatment of aortic valve stenosis depends on the severity of the condition, which may require surgery to repair or replace the valve. Left untreated, aortic valve stenosis can lead to serious heart problems.[61] The doctor may recommend to limit the patient's strenuous activity to avoid overworking the heart.[62] Aortic valve stenosis, once it occurs, is irreversible. Medications may be prescribed to manage the symptoms or reduce the burden on the heart.[63] In this case, respondent immediately underwent open-heart surgery for valve replacement, continued medications, and regular checkup within 130 days after his repatriation, with coronary angiogram as the last procedure performed by the company-designated physicians.

Based on the foregoing, it may be concluded that respondent's heart disease has rendered him unfit for sea duty. The company designated--physician, however, refused to issue a disability grading for the reason that such illness is not work-related.

On July 21, 2014, the 93rd day from respondent's signing-off and medical repatriation, the company-designated physician, Dr. Natalio G. Alegre II, issued the following medical assessment:

1. Aortic Valve Stenosis is the narrowing of the valve that conducts blood from the heart to the aorta and to the circulatory system. The

---

[60] <https://newheartvalve.com/uk/understand-your-heart/what-is-aortic-stenosis/ (visited May 5, 2019).

[61] <https://www.mayoclinic.org/diseases-conditions/aortic-stenosis/symptoms-causes/syc-20353139> (visited May 5, 2019).

[62] <https://www.mayoclinic.org/diseases-conditions/aortic-stenosis/symptoms-causes/syc-20353139> (visited May 5, 2019).

[63] <https://www.healthline.com/health/aortic-stenosis> (visited May 5, 2019).

etiologies of aortic valve stenosis are a deformed heart (bicuspid) [which] is hereditary or genetic in origin, and childhood infection of Rheumatic Fever.

2. The risk factors are previous infection of Rheumatic Fever, an inherited deformed heart and age.

3. Stress test and 2DEcho will detect aortic stenosis in the PEME. The ECG may provide signs but not definitive.

4. Maximum medical care has already been reached in this case as the patient already underwent Aortic Valve Replacement.

5. **As the condition is pre-existing or hereditary, based on the POEA Contract, no disability is given.**[64] (emphasis supplied)

In *Fil-Pride Shipping Company, Inc., et al. v. Balasta*,[65] the Court ruled that the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within a period of 120 or 240 days, pursuant to Article 192(c)(1) of the Labor Code and Rule X, Section 2 of the Amended Rules on Employee's Compensation (*AREC*). If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled. Thus, even if it was shown that given the seafarer's delicate post-operative condition, a definitive assessment by the company-designated physician would have been unnecessary as, for all intents and purposes, the seafarer was already unfit for sea duty. Still, with the said doctor's failure to issue a definite assessment of the seafarer's condition on the last day of the statutory 240-day period, the seafarer was deemed totally and permanently disabled pursuant to Article 192(c)(1) of the Labor Code and Rule X, Section 2 of the AREC.

However, it must be pointed out that in the aforecited case, respondent sufficiently alleged the causal connection between his work duties/functions and his heart disease, *viz.*:

---

[64] CA *rollo*, p. 181.

[65] 728 Phil. 297 (2014).

Just the same, in several cases, cardiovascular disease, coronary artery disease, as well as other heart ailments were held to be compensable. Likewise, petitioners failed to refute respondent's allegations in his Position Paper that **in the performance of his duties as Able Seaman, he inhaled, was exposed to, and came into direct contact with various injurious and harmful chemicals**, dust, fumes/ emissions, and other irritant agents; **that he performed strenuous tasks** such as lifting, pulling, pushing and/or moving equipment and materials on board the ship; that **he was constantly exposed to varying temperatures of extreme hot and cold** as the ship crossed ocean boundaries; that he was exposed as well to harsh weather conditions; that in most instances, **he was required to perform overtime work**; and that **the work of an Able Seaman is both physically and mentally stressful**. It does not require much imagination to realize or conclude that these tasks could very well cause the illness that respondent, then already 47 years old, suffered from six months into his employment contract with petitioners. x x x[66] (emphases supplied)

Subsequently, in *Gamboa v. Maunlad Trans, Inc., et al.*,[67] the Court reiterated case law stating that without a valid final and definitive assessment from the company-designated physician within the 120/240-day period, the law already steps in to consider petitioner's disability as total and permanent. Thus, a temporary total disability becomes total and permanent by operation of law.[68] Since the company-designated physician therein failed to arrive at a final and definitive assessment of petitioner seafarer's disability within the prescribed period, the law deems the same to be total and permanent, which is classified as Grade 1 under the POEA-SEC.

Again, it bears stressing that in the aforecited case, the conditions set forth in Section 32-A(21) of the 2010 POEA-SEC for degenerative changes in the spine (osteoarthritis), which is listed as an occupational disease, were satisfied. Thus:

---

[66] *Id*. at 311-312.

[67] G.R. No. 232905, August 20, 2018.

[68] *Id*., citing *Talaroc v. Arpaphil Shipping Corporation*, G.R. No. 223731, August 30, 2017, 838 SCRA 402, 416; *Tamin v. Magsaysay Maritime Corporation, et al.*, 794 Phil. 286, 301 (2016).

Moreover, degenerative changes of the spine, also known as osteoarthritis, is a listed occupational disease under Sub-Item Number 21 of Section 32-A of the 2010 POEA-SEC if the occupation involves **any** of the following:

a. Joint strain from carrying heavy loads, or unduly heavy physical labor, as among laborers and mechanics;

b. Minor or major injuries to the joint;

c. Excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports activities;

d. Extreme temperature changes (humidity, heat and cold exposures) and;

e. Faulty work posture or use of vibratory tools[.]

Here, petitioner, as Bosun of respondents' cargo vessel that transported logs, undeniably performed tasks that clearly involved unduly heavy physical labor and joint strain. Hence, the NLRC cannot be faulted in finding petitioner's back problem to be work-related. (emphases supplied)

Clearly, the mere fact that a seafarer's disability exceeded 120 days, by itself, is not a ground to entitle him to full disability benefits. Such should be read in relation to the provisions of the POEA Standard Employment Contract which, among others, provide that an illness should be work- related. Without a finding that an illness is work-related, any discussion on the period of disability is moot.[69]

Cardiovascular disease is listed m Sec. 32-A as an occupational disease.

However, for cardiovascular disease to constitute as an occupational disease for which the seafarer may claim compensation, it is incumbent upon the seafarer to show that

---

[69] See *C.F. Sharp Crew Management, Inc. v. Rocha, et al.*, 809 Phil. 180, 199 (2017); see also *Monana v. MEC Global Shipmanagement and Manning Corporation, et al.*, 746 Phil. 736, 756 (2014).

he developed the same under any of the following conditions identified in Section 32-A(11)[70]:

a. If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by an unusual strain by reasons of the nature of his work;

b. The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of a cardiac insult to constitute causal relationship;

c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship;

d. If a person is a known hypertensive or diabetic, he should show compliance with prescribed maintenance medications and doctor-recommended lifestyle changes. The employer shall provide a workplace conducive for such compliance in accordance with Section 1(A) paragraph;

e. In a patient not known to have hypertension or diabetes, as indicated in his last PEME.[71]

Respondent's aortic valve stenosis cannot be considered to have developed under any of the first three instances precisely because of his failure to show that the nature of his work as fitter involved "unusual strain" as to bring about an acute attack or acute exacerbation of his heart disease that he supposedly contracted in the course of employment. Even the CA conceded at the outset that there is absolutely no showing in the records "as to how [respondent's] nature of work caused or contributed to the aggravation of his illness."

---

[70] See *Bautista v. Elburg Shipmanagement Philippines, Inc., et al.*, *supra* note 55, at 498; see also *Dizon v. Naess Shipping Philippines, Inc.*, 786 Phil. 90, 102-103 (2016).

[71] Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.

As to the last two instances, there is no evidence that respondent has hypertension or diabetes; neither is there any allegation or proof that he was taking prescribed maintenance medicines or observing doctor-recommended lifestyle changes. While his blood pressure reading of 130/80mmHG is considered pre-hypertensive, there is no indication in his PEME that he was suffering from high blood pressure.[72] The medical reports issued by the company-designated physicians also failed to disclose that respondent suffered from either of these conditions.

Neither can respondent rely on the fact that he passed the PEME prior to his engagement. Thus, we underscored in *Loadstar International Shipping, Inc. v. Yamson, et al.*[73]:

> x x x The "fit to work" declaration in the PEME cannot be a conclusive proof to show that he was free from any ailment prior to his deployment. In this regard, it is also true that the pre-existence of an illness does not irrevocably bar compensability because disability laws still grant the same provided the seafarer's working conditions bear causal connection with his illness. These rules, however, cannot be asserted perfunctorily by the claimant as it is incumbent upon him to prove, by substantial evidence, as to how and why the nature of his work and working conditions contributed to and/or aggravated his illness.[74] x x x

Indeed, respondent was unable to present substantial evidence to show that his work conditions caused, or at the least increased the risk of contracting his illness. Neither was he able to prove that his illness was pre-existing and that it was aggravated by the nature of his employment.[75]

Despite the dearth of evidence of work-relation or work-aggravation, the CA proceeded to take judicial notice that in several cases seafarers are exposed to harsh conditions of the

---

[72] *Rollo*, p. 149.

[73] *Supra* note 56.

[74] *Id.*

[75] *Id.*

sea, long hours of work and stress brought about by being away from their families, compounded by the wear and tear caused to their bodies by their work or labor. Additionally, the CA faulted petitioners for not presenting a copy of the results of respondent's coronary angiography, which it said gave rise to the presumption that such evidence if presented would be prejudicial to petitioners. On the assumption that the company-designated physician made a typographical error in the medical report, dated August 28, 2014,[76] stating that the result of the coronary angiography showed an "avanabus oitpin of the right coronary artery from the left coronary cell," the CA interpreted this to mean an anomalous origin of "the right coronary artery from the left coronary sinus." Since such anomaly rarely happens, though it can be surgically treated, the CA again faulted petitioners for not treating the same and for failing to show that respondent was able to work again as a fitter without endangering his life. Incidentally, respondent was able to obtain a copy of the report on coronary angiography which was attached to the petition for certiorari filed before the CA. The cardiologist's conclusion stated: "Insignificant coronary artery disease" with the recommendation to "continue medical therapy" and "aggressive secondary prevention."

The CA's reasoning based on generalized statements and presumptions does not suffice to prove entitlement to disability compensation. As we held in the aforecited case of *Loadstar International Shipping, Inc. v. Yamson, et al.*[77]:

> While it is true that probability and not ultimate degree of certainty is the test of proof in compensation proceedings, it cannot be gain said, however, that **award of compensation and disability benefits cannot rest on speculations, presumptions and conjectures**. In addition, the Court agrees with the finding of the NLRC that **[c]omplainant** [Ernesto] **failed to demonstrate that he was subjected to any unusual and extraordinary physical or mental strain or event**

---

[76] CA *rollo*, p. 190.

[77] *Supra* note 56.

that may have triggered his stroke.[78] (emphases supplied/citation omitted)

In labor cases, as in other administrative proceedings, **substantial evidence**, or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion, is required. The oft-repeated rule is that whoever claims entitlement to benefits provided by law should establish his right thereto by substantial evidence.[79] Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent.[80] It has been ruled, time and again, that self-serving and unsubstantiated declarations are insufficient to establish a case before quasi--judicial bodies where the quantum of evidence required to establish a fact is substantial evidence.[81]

In *Scanmar Maritime Services, Inc., et al. v. De Leon*,[82] the Court held that seafarers claiming disability benefits are burdened to prove the positive proposition that there is a reasonable causal connection between their ailment and the work for which they have been contracted. Logically, the labor courts must determine their *actual work*, the nature of their ailment, and *other factors* that may lead to the conclusion that they contracted a work-related injury.[83] Thus:

x x x this Court observes that all the tribunals below relied on the mere fact of the 22-year employment of De Leon as the causative

---

[78] *Id*.

[79] *Esposo v. Epsilon Maritime Services. Inc.*, G.R. No. 218167, November 7, 2018, citing *Jebsens Maritime, Inc. and/or Alliance Marine Services, Ltd. v. Undag*, 678 Phil. 938, 946-947 (2011).

[80] *Id*., citing *Panganiban v. Tara Trading Shipmanagement, Inc.*, 647 Phil. 675, 688 (2010).

[81] *Interorient Maritime Enterprises, Inc v. Creer III*, 743 Phil. 164, 184 (2014), citing *Coastal Safeway Marine Services, Inc. v. Esguerra*, 671 Phil. 56, 67 (2011).

[82] 804 Phil. 279 (2017).

[83] *Id*. at 288; see also *Teekay Shipping Phils., Inc. v. Jarin*, 737 Phil. 564, 573 (2014).

factor that triggered his radiculopathy. **They did not even specify his duties as a seafarer throughout his employment.**

At most, respondent merely alleged that in his last stint as a Third Mate, he was a watchstander. His job entailed that he was responsible to the captain for keeping the ship, its crew, and its cargo safe for eight hours a day. Still, **he did not particularize the laborious conditions of his work that would cause his injury**.

The CA mentioned that De Leon was consistently engaged in stressful physical labor throughout his 22 years of employment. **But it did not define these purported stressful physical activities, nor did it point to any piece of evidence detailing his work.**

x x x x x x x x x

In effect, De Leon failed to show before the labor tribunals his functions as a seafarer, as well as the nature of his ailment. Absent these premises, none of the courts can rightfully deduce any reasonable causal connection between his ailment and the work for which he was contracted.[84] (emphases supplied)

Consequently, although considered as an occupational disease, respondent's heart ailment did not satisfy the conditions under Section 32-A (11) 2010 POEA-SEC to be considered occupational.[85] His aortic valve stenosis not being work-related, the same is held/deemed not compensable.

As we reiterated in the recent case of *Esposo v. Epsilo Maritime Services, Inc.*:[86]

Hence, although cardiovascular diseases are listed as occupational diseases, still, to be compensable under the POEA-SEC, all of the four (4) general conditions for occupational diseases under Section 32, **plus any one (1) of the conditions listed under Section 32-A for cardiovascular diseases**, must nonetheless be proven to have obtained and/or be obtaining. Moreover, the same must be work-

---

[84] *Id*. at 289-290.

[85] See *C.F. Sharp Crew Management, Inc., et al. v. Alivio*, 789 Phil. 564, 573 (2016).

[86] *Supra* note 79.

related and must have existed during the term of the seafarer's employment.

In the present case, Esposo failed to substantially prove his claim that his illness was work-related or that it was existing during the time of his employment with Epsilon. He failed to show that his illness was known to have been present during his employment or that the nature of his work brought an acute exacerbation thereof as required under Section 32-A (11)(a).[87] (boldface in the original)

As a final note, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA-SEC, it cannot allow claims for compensation based on surmises. Liberal construction is not a license to disregard the evidence on record or to misapply our laws.[88]

WHEREFORE, the petition is **GRANTED**. The February 15, 2018 Decision and May 9, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 148879 are **REVERSED and SET ASIDE**. The September 20, 2016 Decision and October 27, 2016 Resolution of the National Labor Relations Commission (Fifth Division) are hereby **REINSTATED**.

SO ORDERED.

Bersamin, C.J., del Castillo, and *Jardeleza, JJ.*, concur.

Carandang, J., on wellness leave.

---

[87] *Id.*

[88] *Philman Marine Agency, Inc., et al. v. Cabanban*, 715 Phil. 454, 483 (2013); citations omitted.

SECOND DIVISION

[G.R. No. 240843. June 3, 2019]

JAIME CHUA CHING, *petitioner, vs.* **FERNANDO CHING,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL LAW; PROBATION LAW; FACTORS TO CONSIDER IN DETERMINING WHETHER AN OFFENDER MAY BE PLACED ON PROBATION. —** Probation is a special privilege granted by the state to penitent qualified offenders who immediately admit their liability and thus renounce their right to appeal. In view of the acceptance of their fate and willingness to be reformed, the state affords them a chance to avoid the stigma of an incarceration record by making them undergo rehabilitation outside of prison. Some of the major purposes of the law are to help offenders develop themselves into law-abiding and self-respecting individuals, as well as assist them in their reintegration with the community. In *Villareal v. People*, the Court reiterated that probation is not a right enjoyed by the accused, but rather, an act of grace or clemency conferred by the State, x x x Section 8 of the Probation Law states that "[i]n determining whether an offender may be placed on probation, the court [where the application is filed] shall consider all information relative to the character, antecedents, environment, mental and physical condition of the offender, and available institutional and community resources. [Hence,] [p]robation shall be denied if [said] court finds that: (*a*) the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution; (*b*) there is an undue risk that during the period of probation the offender will commit another crime; or (*c*) probation will depreciate the seriousness of the crime committed." Moreover, probation shall be denied outright to offenders who are deemed disqualified by the Probation Law.

2. **ID.; ID.; ID.; GRANT OF PROBATION IS DISCRETIONARY UPON THE COURT; MAKING ITS OWN FINDINGS AS TO THE MERITS OF THE APPLICATION. —** It is settled that the grant of probation is ***discretionary upon the court***, and in

exercising such discretion, it must consider the potentiality of the offender to reform, together with the demands of justice and public interest, along with other relevant circumstances. ***It should not limit the basis of its decision to the report or recommendation of the probation officer, which is at best only persuasive***. Otherwise stated, in determining whether or not to grant the application for probation, the court must not merely rely on the PSIR – as what the MeTC did in this case - but rather, it must make its own findings as to the merits of the application, considering that the Probation Law vests upon it the power to make a final decision on the matter. x x x [T]he Court stresses that the primary objective in granting probation is the reformation of the probationer. For this purpose, courts must be meticulous enough to ensure that the ends of justice and the best interest of the public, as well as the accused, be served by the grant of probation. Finally, it must be emphasized that the underlying philosophy of probation is one of liberality towards the accused. Such philosophy is not served by a harsh and stringent interpretation of the statutory provisions. Verily, the Probation Law should be applied in favor of the accused not because it is a criminal law, but to achieve its beneficent purpose.

APPEARANCES OF COUNSEL

Rico B. Bolongaita for petitioner.
Renato G. Dela Cruz 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 November 28, 2017 and the Resolution[3] dated

May 15, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 150342 which reversed and set aside the Decision[4] dated February 15, 2017 of the Regional Trial Court of the City of Manila, Branch 30 (RTC) in Special Civil Action No. 16-136012, and consequently, reinstated the Orders dated January 15, 2016[5] and March 7, 2016[6] of the Metropolitan Trial Court of the City of Manila, Branch 9 (MeTC) denying petitioner Jaime Chua Ching's (petitioner) application for probation.

The Facts

This case stemmed from an Information[7] dated July 2, 2010 filed before the MeTC charging petitioner with Falsification of

---

[1] *Rollo*, pp. 9-35-A.

[2] *Id*. at 36-43. Penned by Acting Presiding Justice Remedios A. Salazar-Fernando with Associate Justices Mario V. Lopez and Jhosep Y. Lopez, concurring.

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

[4] *Id*. at 152-162. Penned by Judge Lucia P. Purugganan.

[5] *Id*. at 83. Penned by Presiding Judge Yolanda M. Leonardo.

[6] *Id*. at 121.

[7] *Id*. at 46. The accusatory portion of which reads:

> That on or about June 22, 1997, in the City of Manila, Philippines, the said accused, being then a private[] individual, did then and there willfully, unlawfully and feloniously commit acts of falsification upon a public document in the following manner, to wit: the said accused having somehow obtained possession of a blank form of Voter Registration Record No. 42370697 issued by the Commission on Election (COMELEC), which is a requirement in registering with the COMELEC, and therefore a public document, forge and falsify an[d]/or caused to be forged and falsified the said document, by filling up and writing, or causing to be filled up and written the handwritten word "Filipino" appearing on the spaces "Citizenship," thus making untruthful statement (sic) in a narration of facts, by making it appear, as it did appear that the said accused is a Filipino citizen, when in truth and in fact as the said accused well knew, such was not the case as he was a Chinese citizen, to the damage and prejudice of the public interest.
>
> Contrary to law.

a Public Document Committed by a Private Individual, defined and penalized under Article 172 in relation to Article 171 of the Revised Penal Code (RPC). After due proceedings, the MeTC promulgated a Decision[8] dated August 14, 2015 finding petitioner guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of two (2) years, four (4) months, and one (1) day of *prision correccional* in its medium period, as minimum, to six (6) years of *prision correccional* in its maximum period, as maximum, and to pay a fine in the amount of ₱5,000.00. It found petitioner to have falsified his voter's registration with the Commission on Elections (COMELEC) by making it appear that he is a citizen of the Philippines, when in truth, he is a Chinese citizen who has yet to acquire Filipino citizenship.[9]

Instead of filing an appeal, petitioner filed an Application for Probation[10] dated September 1, 2015, manifesting that he is not among those disqualified offenders under Presidential Decree No. (P.D.) 968,[11] otherwise known as the Probation Law of 1976, as amended (Probation Law), and that he undertakes to comply with the terms of probation, should the same be granted.[12] However, in its Post-Sentence Investigation Report[13] (PSIR), the Parole and Probation Office of Manila (PPO-Manila) ascertained that petitioner poses a great risk to the members of his community in particular and the society in general, as shown by his several derogatory records, and thus, recommended

---

[8] *Id*. at 59-62.

[9] See *id*. at 60.

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

[11] Entitled "*ESTABLISHING A PROBATION SYSTEM, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES*" (July 24, 1976).

[12] See *rollo*, p. 63.

[13] Dated December 14, 2015. *Id*. at 65-71. Prepared and submitted by Probation and Parole Officer II Imelda N. Liongco and reviewed and approved by Chief Probation and Parole Officer Amelita S. Basibas.

that his application for probation be denied. It found petitioner to be in need of correctional treatment that can be provided most effectively by his commitment to an institution, and that there is undue risk for him to commit another crime during the period of probation.[14]

The MeTC Ruling

In an Order[15] dated January 15, 2016, the MeTC ordered the issuance of a warrant of arrest against petitioner for the enforcement of the judgment of conviction, "[c]onsidering the denial of the Application for Probation of Jaime Ching y Chua per Post Sentence Investigation Report of the Probation Officer x x x."[16]

Aggrieved, petitioner filed a motion for reconsideration[17] wherein he refuted one by one the findings of the PPO-Manila in its PSIR, and even attached statements/certifications from his neighbors, acquaintances, and relatives attesting to his good moral character.[18] The motion was, however, denied in an Order[19] dated March 7, 2016. Hence, petitioner filed a petition for *certiorari*[20] before the RTC.

The RTC Ruling

In a Decision[21] dated February 15, 2017, the RTC reversed and set aside the MeTC ruling, and accordingly, granted petitioner's application for probation.[22] It held that the MeTC

---

[14] See *id*. at 70-71.

[15] *Id*. at 83.

[16] *Id*.

[17] Dated February 26, 2016. *Id*. at 84-91.

[18] See the aforesaid statements/certifications; *id*. at 101-120-A.

[19] *Id*. at 121.

[20] Dated June 17, 2016. *Id*. at 122-135.

[21] *Id*. at 152-162.

[22] *Id*. at 161.

gravely abused its discretion in relying solely on the recommendation of the PPO-Manila in denying petitioner's application for probation, ratiocinating that a careful analysis of the PSIR shows that: *first*, petitioner has neither been charged and convicted of any crime against national security nor convicted of any other crime that would disqualify him to avail of the benefits of probation, as in fact, all the cases filed against him had already been dismissed, or that he was already acquitted therein; and *second*, other than his existing derogatory records and the barangay blotters filed against him, there is no showing that petitioner is physically or medically unfit to be reformed outside of a correctional institution, and that his confinement in jail is not the only way for him to be remorseful of what he had done in the past.[23] Finally, the RTC opined that any apprehension that petitioner is incapable of reform and will only be a menace to society may be . easily obviated by the imposition of various conditions to his probation, violations of which would cause the revocation thereof.[24]

Dissatisfied, petitioner's father,[25] respondent Fernando Ching, appealed to the CA.[26]

The CA Ruling

In a Decision[27] dated November 28, 2017, the CA reversed and set aside the RTC ruling, and accordingly, reinstated the MeTC's denial of petitioner's application for probation[28] on the ground that his act of falsifying his voter's registration is an election offense under Section 261 of Batas Pambansa Blg. 881,[29] otherwise known as the Omnibus Election Code of

---

[23] See *id*. at 158-160.

[24] See *id*. at 161.

[25] See *id*. at 13.

[26] See Notice of Appeal dated March 1, 2017. *Id*. at 163-164.

[27] *Id*. at 36-43.

[28] *Id*. at 42.

[29] (December 3, 1985).

the Philippines (OEC). In relation thereto, Section 264 of the OEC states that those found guilty of election offenses shall not be subject to probation.[30] Additionally, the CA opined that the MeTC correctly denied petitioner's application for probation in view of his acts which are not that of a penitent offender, as well as his derogatory records which manifest his dangerous character that may be considered a threat to the community where he resides.[31]

Undaunted, petitioner moved for reconsideration[32] but the same was denied in a Resolution[33] dated May 15, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly reinstated the denial of petitioner's application for probation.

The Court's Ruling

The petition is meritorious.

Probation is a special privilege granted by the state to penitent qualified offenders who immediately admit their liability and thus renounce their right to appeal. In view of the acceptance of their fate and willingness to be reformed, the state affords them a chance to avoid the stigma of an incarceration record by making them undergo rehabilitation outside of prison. Some of the major purposes of the law are to help offenders develop themselves into law-abiding and self-respecting individuals, as well as assist them in their reintegration with the community.[34] In *Villareal v. People*,[35] the Court reiterated that probation is

---

[30] See *rollo*, pp. 39-42.

[31] See *id.* at 42.

[32] Dated December 28, 2017. *Id.* at 187-199.

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

[34] See *Villareal v. People*, 749 Phil. 16, 49 (2014); citation omitted.

[35] *Id.*

not a right enjoyed by the accused, but rather, an act of grace or clemency conferred by the State, *viz.*:

> It is a special prerogative granted by law to a person or group of persons not enjoyed by others or by all. Accordingly, the grant of probation rests solely upon the discretion of the court which is to be exercised primarily for the benefit of organized society, and only incidentally for the benefit of the accused. The Probation Law should not therefore be permitted to divest the state or its government of any of the latter's prerogatives, rights or remedies, unless the intention of the legislature to this end is clearly expressed, and no person should benefit from the terms of the law who is not clearly within them.[36]

Section 8 of the Probation Law states that "[i]n determining whether an offender may be placed on probation, the court [where the application is filed] shall consider all information relative to the character, antecedents, environment, mental and physical condition of the offender, and available institutional and community resources. [Hence,] [p]robation shall be denied if [said] court finds that: (*a*) the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution; (*b*) there is an undue risk that during the period of probation the offender will commit another crime; or (*c*) probation will depreciate the seriousness of the crime committed."[37] Moreover, probation shall be denied outright to offenders who are deemed disqualified by the Probation Law.[38]

---

[36] *Id.*; citing *Francisco v. CA*, 313 Phil. 241, 254-255 (1995).

[37] See Section 8 of P.D. 968, as amended.

[38] See Section 9 of P.D. 968, as amended, which reads:

> Section 9. *Disqualified Offenders.* – The benefits of this Decree shall not be extended to those:
>
> (a) sentenced to serve a maximum term of imprisonment of more than six (6) years;
> (b) convicted of any crime against the national security;
> (c) who have previously been convicted by final judgment of an offense punished by imprisonment of more than six (6) months and one (1) day and/or a fine of more than one thousand pesos (₱1,000.00);

In this case, the Court noted that the RTC granted petitioner's application for probation mainly on the ground that petitioner has no disqualifications under the Probation Law. In contrast, the CA and the MeTC ruled otherwise, albeit their reasons for denial are different. In denying petitioner's application for probation, the CA opined, *inter alia*, that since petitioner committed an election offense under Section 261 of the OEC, then he shall not be subject to probation, as provided by Section 264 of the OEC.[39] On the other hand, the MeTC denied petitioner's application for probation in view of the PPO-Manila's "denial" of the same.

After a judicious perusal of the records, the Court disagrees with the reasons proferred by the CA and the MeTC in denying petitioner's application for probation, as will be explained hereunder.

Anent the reason proferred by the CA, the Court finds that while petitioner's act of falsifying his voter's registration with the COMELEC by making it appear that he is a citizen of the Philippines, when in truth, he is a Chinese citizen who has yet to acquire Filipino citizenship, may be considered as an election

---

(d) who have been once on probation under the provisions of this Decree; and

(e) who are already serving sentence at the time the substantive provisions of this Decree became applicable pursuant to Section 33 hereof.

[39] Section 264 of the OEC reads:

Section 264. *Penalties*. – **Any person found guilty of any election offense under this Code** shall be punished with imprisonment of not less than one year but not more than six years and **shall not be subject to probation**. In addition, the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage. If he is a foreigner, he shall be sentenced to deportation which shall be enforced after the prison term has been served. Any political party found guilty shall be sentenced to pay a fine of not less than ten thousand pesos, which shall be imposed upon such party after criminal action has been instituted in which their corresponding officials have been found guilty. x x x (Emphases and underscorings supplied)

offense under Section 261 (y) (2)[40] of the OEC, petitioner's conviction in this case does not involve this election offense. Rather, a plain reading of the Information,[41] as well as the MeTC Decision[42] dated August 14, 2015, would readily show that he was tried and subsequently found guilty beyond reasonable doubt of the crime of Falsification of a Public Document Committed by a Private Individual, defined and penalized under Article 1 72 in relation to Article 171 of the RPC. Hence, the CA erred in applying the disqualification for probation found under Section 264 of the OEC as he was not adjudged guilty of an election offense in this case.

As to the MeTC's Decision, the Court agrees with the RTC's finding that the MeTC gravely abused its discretion when it denied petitioner's application for probation and issued a warrant for his arrest based solely on the recommendation of the PPO-Manila as indicated in the PSIR without conducting its own investigation on the matter. It is settled that the grant of probation is ***discretionary upon the court***, and in exercising such discretion, it must consider the potentiality of the offender to reform, together with the demands of justice and public interest, along with other relevant circumstances. ***It should not limit the basis of its decision to the report or recommendation of the probation officer, which Is at best only persuasive***.[43] Otherwise stated,

---

[40] Section 261 (y) (2) of the OEC reads:

Section 261. Prohibited Acts.– The following shall be guilty of an election offense:

x x x x x x x x x

(y) On Registration of Voters:

x x x x x x x x x

(2) Any person who knowingly makes any false or untruthful statement relative to any of the date or information required in the application for registration.

[41] *Rollo*, p. 46.

[42] *Id*. at 59-62.

[43] See *Santos v. CA*, 377 Phil. 642, 652 (1999), citing *Bernardo v. Balagot*, 290 Phil. 1, 8 (1992). Emphasis, italics, and underscoring suppiied.

in determining whether or not to grant the application for probation, the court must not merely rely on the PSIR – as what the MeTC did in this case – but rather, it must make its own findings as to the merits of the application, considering that the Probation Law vests upon it the power to make a final decision on the matter. Had the MeTC thoroughly evaluated the merits of the application, it would have determined that petitioner is not a disqualified offender under the Probation Law and that there is a possibility that he can be reformed outside of a correctional institution.

In view of the foregoing, the Court agrees with the RTC that petitioner's application for probation should be granted. In so ruling, the Court stresses that the primary objective in granting probation is the reformation of the probationer. For this purpose, courts must be meticulous enough to ensure that the ends of justice and the best interest of the public, as well as the accused, be served by the grant of probation.[44] Finally, it must be emphasized that the underlying philosophy of probation is one of liberality towards the accused. Such philosophy is not served by a harsh and stringent interpretation of the statutory provisions. Verily, the Probation Law should be applied in favor of the accused not because it is a criminal law, but to achieve its beneficent purpose.[45]

WHEREFORE, the petition is **GRANTED**. The Decision dated November 28,2017 and the Resolution dated May 15, 2018 of the Court of Appeals in CA-G.R. SP No. 150342 are **REVERSED** and **SET ASIDE**. The Decision dated February 15, 2017 of the Regional Trial Court of the City of Manila, Branch 30 in Special Civil Action No. 16-136012 is hereby **REINSTATED**.

SO ORDERED.

---

[44] See S*antos v. CA*, *id*., citing *Salgado v. CA*, 267 Phil. 352, 361 (1990).

[45] See *Colinares v. People*, 678 Phil. 482, 499-500 (2011); citations omitted.

Carpio, Senior Associate Justice (*Chairperson*), *Reyes, J. Jr.,* and *Lazaro-Javier, JJ.*, concur.

Caguioa, J., on official leave.

SECOND DIVISION

[G.R. No. 240947. June 3, 2019]

DARIUS F. JOSUE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES AND THE SPECIAL PROSECUTOR, OFFICE OF THE OMBUDSMAN,** *respondents.*

[G.R. NO. 240975. June 3, 2019]

ANGELITO C. ENRIQUEZ, DARIUS F. JOSUE, EDEN M. VILLAROSA, LEONARDO V. ALCANTARA JR., AND LINO G. AALA,[*] *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); CORRUPT PRACTICES OF PUBLIC OFFICERS UNDER SECTION 3(E); ELEMENTS. — [T]he elements of violation of Section 3 (e) of RA 3019 are as follows: (*a*) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private

---

[*] Darius F. Josue, Eden M. Villarosa, Leonardo V. Alcantara, Jr., and Lino G. Aala were included as co- petitioners of Angelito C. Enriquez in his petition posted before this Court on September 17, 2018 (see *rollo* [G.R. No. 240975], pp. 15-16). On even date, Eden M. Villarosa, Leonardo V. Alcantara, Jr., and Lino G. Aala also filed their petition (see *id*. at 136). Both petitions were docketed as G.R. No. 240975.

individual acting in conspiracy with such public officers); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES ARE INDEPENDENT FROM CRIMINALS ACTIONS FOR THE SAME ACTS OR OMISSIONS. –– [T]he Sandiganbayan correctly opined that the ruling in the counterpart administrative case holds no water in the instant criminal case, as it is hornbook doctrine in administrative law that administrative cases are independent from criminal actions for the same acts or omissions. Given the differences in the quantum of evidence required, the procedures actually observed, the sanctions imposed, as well as the objective of the two (2) proceedings, the findings and conclusions in one should not necessarily be binding on the other. Hence, the exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or vice versa.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; REQUIRES ONLY A STATEMENT OF THE ULTIMATE FACTS CONSTITUTING THE OFFENSE AND NOT THE FINER DETAILS OF WHY AND HOW THE CRIME WAS COMMITTED. –– [T]he SB did not err in declaring that there was no violation of petitioners' constitutional right to be informed of the nature and cause of the accusation against them by the use of the term "capital outlay" in its Decision without mentioning the same in the Information, as such right merely requires that an Information only state the ultimate facts constituting the offense and not the finer details of why and how the crime was committed.

APPEARANCES OF COUNSEL

Rhett Emmanuel C. Serfino for petitioner *Darius F. Josue.*

Jimenez Law Office for petitioner *Angelito C. Enriquez.*

The Law Firm Baccay Hussin And Vizconde for petitioners *Villarosa, Aala* and *Alcantara.*

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in these consolidated petitions for review on *certiorari*[1] are the Decision[2] dated May 25, 2018 and the Resolution[3] dated July 30, 2018 of the *Sandiganbayan* (SB) in Criminal Case No. SB-11-CRM-0373, which found petitioners Darius F. Josue (Josue), Eden M. Villarosa (Villarosa), Angelito C. Enriquez (Enriquez), Leonardo V. Alcantara, Jr. (Alcantara), and Lino G. Aala (Aala; collectively, petitioners) guilty beyond reasonable doubt of violation of Section 3 (e) of Republic Act No. (RA) 3019,[4] entitled the "Anti-Graft and Corrupt Practices Act."

The Facts

The instant cases stemmed from an Information[5] dated August 20, 2009, charging petitioners, as well as one Eduardo M. Varona (Varona),[6] with violation of Section 3 (e) of RA 3019, the accusatory portion of which states:

> That on 07 November 2005 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, all public officers, the first two are high ranking officers occupying SG 28, being Director IV and Agency Head and Chief of the Special Production Division, respectively, and Officer-in-charge, Finance and Administrative

---

[1] *Rollo* (G.R. No. 240947), pp. 11-47; and *rollo* (G.R. No. 240975), pp. 15-44 and 136-155.

[2] *Rollo* (G.R. No. 240947), pp. 48-87; and *rollo* (G.R. No. 240975), pp. 45-84. Penned by Associate Justice Zaldy V. Trespeses with Associate Justice and Chairperson Ma. Theresa Dolores C. Gomez- Estoesta and Associate Justice Bayani H. Jacinto, concurring.

[3] *Rollo* (G.R. No. 240947), pp. 88-106; and *rollo* (G.R. No. 240975), pp. 85-103.

[4] (August 17, 1960).

[5] *Rollo* (G.R. No. 240975), pp. 254-256.

Division; [Officer-in- charge] Accounting Section; Publications and Productions Chief, Special Productions Division; and Administrative Officer V, respectively, all of the Bureau of Communications Services, Government Mass Media Group, an agency under the Office of the President, conspiring and confederating with one another, while in the performance of their duties as Chairman, Vice-Chairman and Members of the Bids and Award[s] Committee, and committing the offense in relation to duty, did then and there, through manifest partiality[,] evident bad faith, or through gross inexcusable negligence, give unwarranted benefits, advantage or preference to Ernest Printing Corporation, by awarding to said corporation the contract for the lease purchase of one (1) unit Heidelberg single color offset press in the amount of Php882,075.47, without public bidding and Approved Budget for the Contract and paying the said corporation the amount of Php850,000.00 upon signing of the lease-purchase contract instead of the monthly amortization of Php73,506.29 to the damage and prejudice of the government and the public interest.

CONTRARY TO LAW.[7]

The prosecution alleged that at the time relevant to the criminal case, petitioners were public officers of the Bureau of Communications Services (BCS), under the Office of the President, respectively holding the positions of Finance and Administrative Division officer-in-charge (OIC), Accounting Section OIC, Publications and Productions Chief, Special Productions Division Chief, and Administrative Officer V. As such, they were respectively designated as Chairperson, Vice-Chairperson, and members of the BCS-Bids and Awards Committee (BCS-BAC) to facilitate BCS's procurement needs.[8] Meanwhile, Varona was the Director IV of the BCS.[9]

---

[6] "Eduardo Varona, Jr." passed away on June 14, 2006 while the case was pending before the Ombudsman; see *rollo* (G.R. No. 240947), pp. 49-50 and 156.

[7] See *rollo* (G.R. No. 240975), pp. 254-255.

[8] See *rollo* (G.R. No. 240947), pp. 48 and 50.

[9] *Id*. at 48.

On November 7, 2005, Alcantara allegedly submitted a Purchase Request[10] to Varona for the procurement of a Heidelberg single color offset printing machine (printing machine).[11] On even date, Josue and Villarosa issued BCS Disposition Form No. FAD-2005-39[12] informing Varona that the BCS had no approved capital outlay to support the purchase, and suggested a lease-to-own arrangement to obtain the equipment, chargeable against its Maintenance and Other Operating Expenses (MOOE) for fiscal year 2005. However, they also cautioned that this kind of transaction may be deemed irregular by the Commission on Audit.[13] Despite knowing that its procurement was not supported by a corresponding appropriation, Varona approved the request.[14] To finance the acquisition, he explained that they had flexibility in their budget pursuant to Section 1, paragraph (f) of Administrative Order No. (AO) 103,[15] allowing them to use savings to fund the bureau's

---

[10] See Purchase Request No. 05-11-0412; *id*. at 107.

[11] See also Justification on the Lease-Purchase of a Heidelberg Offset Press dated November 7, 2005; *id*. at 108-109.

[12] See BCS Disposition Form with Office Control No. FAD-2005-39; *id*. at 110.

[13] See *id*.

[14] See *id*. at 107.

[15] Entitled "*DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT*," approved on August 31, 2004. It provides, *inter alia*, that:

> Section 1. All national government agencies (NGAs), including state universities and colleges (SUCs), government-owned and controlled corporations (GOCCs), government financial institutions (GFIs), and other government corporate entities (OGCEs), and their subsidiaries, and other instrumentalities under the Executive Department, whether or not they receive funding support through the General Appropriations Act, are hereby ordered to adopt the following austerity measures;
>
> x x x x x x x x x
>
> (f) Strict prioritization of capital expenditures, and realignment of use of savings to fund capital programs of the agencies, especially those in pursuit of the 10-point Legacy Agenda.

capital expenditures.[16] In turn, Josue, Villarosa, Enriquez, and Aala issued BCS-BAC Resolution No. 2005-01,[17] recommending the adoption of "limited source bidding" in accordance with Section 49 of the Implementing Rules and Regulations (IRR) of RA 9184.[18] Josue then issued Direct Invitations to Apply for Eligibility and to Bid (Limited Source Bidding)[19] to three (3) companies, *i.e.*, Heidelberg Philippines, Union Services, and Ernest Printing Corporation (Ernest Printing), which correspondingly submitted their respective bids.[20] Ernest Printing emerged as the winning bidder[21] leading to the execution of a Contract of Lease- Purchase with Guaranty Deposit[22] dated November 1 0, 2Q05 between it and the BCS, as represented by Varona.[23]

Aside from their roles in authorizing the procurement, petitioners also allegedly failed to comply with the proper rules

---

[16] See *rollo* (G.R. No. 240947), p. 52.

[17] Entitled "*RECOMMENDING THE ADOPTION OF AN ALTERNATIVE Mom: IN THE PROCUREMENT COVERED BY PURCHASE REQUEST NO. 05-11-0412 AND FOR OTHER PURPOSES*," issued on November 7, 2005. *Id*. at 111-112.

[18] Entitled "*AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES*," otherwise known as the "GOVERNMENT PROCUREMENT REFORM ACT," approved on January 10, 2003. See also "IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT No. 9184, OTHERWISE KNOWN AS THE 'GOVERNMENT PROCUREMENT REFORM ACT' (As AMENDED)," approved on August 3, 2009.

[19] See *rollo* (G.R. No. 240947), pp. 113-119.

[20] See *id*. at 120-125.

[21] See BCS-BAC Resolution No. 2005-02, entitled "RECOMMENDING THE AWARD OF THE LEASE-PURCHASE CONTRACT UNDER THE APPROVED PURCHASE REQUEST NO 05-11-0412 TO ERNEST PRINTING CORPORATION AND FOR OTHER PURPOSES," issued on November 9, 2005; *id*. at 126-127.

[22] *Id*. at 133-135.

[23] *Id*. at 135.

and procedures laid down under RA 9184 and its IRR, as the procurement was apparently riddled with various irregularities. *First*, the direct invitations to bid were prematurely issued on November 7, 2005, a day before Varona's required approval for resort to limited source bidding was obtained on November 8, 2005. *Second*, the bidding was not published. *Third*, while Ernest Printing gave the lowest bid, it merely offered a 20-year-old, second-hand unit in the amount of ₱850,000.00, whereas Heidelberg Philippines and Union Services both offered brand new units in the amounts of ₱7,955,275.95 and ₱900,000.00, respectively. Notably, Union Services's offer for a brand new machine was just higher by P50,000.00 than Ernest Printing's offer for a 20-year-old, second-hand unit. Fourth, petitioners dispensed with the post-qualification requirements mandated under Section 34.1 to 34.3, Rule X of the IRR of RA 9184. *Lastly*, the contract was denominated as one for "lease-purchase," yet its provisions show that it was actually a contract of sale, as the full purchase price was immediately paid to Ernest Printing.[24]

For their part, petitioners collectively insisted that they discharged their official duties in good faith and in accordance with their individual functions as required by law and existing rules. Explaining that their respective roles in the procurement process were merely recommendatory, they cast blame on Varona as the person responsible for the irregularities in the procurement of the printing machine, being the bureau's head and the final authority to accept or reject their recommendation if he deems it improper or unlawful. They also manifested that their utilization of the bureau's MOOE account to finance the transaction was justified in view of AO 103.[25] Additionally, Josue and Villarosa further argued that they had no malicious intent in recommending such transaction, as they honestly raised the fact of its irregularities through the issuance of BCS Disposition Form No. FAD-2005-39.[26] To them, this constitutes sufficient notice

---

[24] See *id*. at 65-68.

[25] See *id*. at 89-92.

[26] See *id*. at 74-75.

in writing to absolve them from liability under Section 106[27] of Presidential Decree No. (PD) 1445.[28]

During the pendency of the case, the SB dismissed the criminal case as against Varona on account of his supervening death.[29]

The SB Ruling

In a Decision[30] dated May 25, 2018, the SB found petitioners guilty beyond reasonable doubt of violation of Section 3 (e) of RA 3019, and accordingly, sentenced each of them to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, with perpetual disqualification to hold public office and forfeiture of all retirement or gratuity benefits under any law.[31]

---

[27] See *id*. See also Section 106 of PD 1445, entitled "ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES" otherwise known as the "GOVERNMENT AUDITING CODE OF THE PHILIPPINES," approved on June 11, 1978, which reads:

> Section 106. *Liability for Acts Done by Direction of Superior Officer.* – No accountable officer shall be relieved from liability by reason of his having acted under the direction of a superior officer in paying out, applying, or disposing of the funds or property with which he is chargeable, unless prior to that act, he notified the superior officer in writing of the illegality of the payment, application, or disposition. The officer directing any illegal payment or disposition of the funds or property shall be primarily liable for the loss, while the accountable officer who fails to serve the required notice shall be secondarily liable.

[28] Entitled "*ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES*," otherwise known as the "*GOVERNMENT AUDITING CODE OF THE PHILIPPINES*," approved on June 11, 1978. See also *rollo* (G.R. No. 240947), pp. 74-75.

[29] See *id*. at 49-50.

[30] *Rollo* (G.R., No. 240947), pp. 48-87; and *rollo* (G.R. No. 240975), pp. 45-84.

[31] *Rollo* (G.R. No. 240947), p. 86.

The SB held that the prosecution had sufficiently established the presence of all the elements of the crime charged. It found that petitioners, through manifest partiality, evident bad faith, or through gross inexcusable negligence, gave unwarranted advantage, benefit, or preference to Ernest Printing in the lease-purchase of the printing machine in the amount of ₱882,075.47, despite the absence of capital outlay and competitive bidding, doing so by improperly utilizing the account for MOOE to finance the acquisition, resulting in damage and prejudice to the government and the public interest.[32] Moreover, the SB ruled that conspiracy existed among the petitioners as a community of criminal design may be inferred from their actions as members of the BCS and BCS-BAC.[33]

Aggrieved, petitioners moved for reconsideration,[34] which was denied in a Resolution[35] dated July 30, 2018. Hence, these consolidated petitions.[36]

The Issue Before the Court

The issue for the Court's resolution is whether or not the SB correctly convicted petitioners of the crime of violation of Section 3 (e) of RA 3019.

The Court's Ruling

The petition is without merit.

---

[32] See *id*. at 80-82.

[33] See *id*. at 82-84.

[34] Dated June 8, 2018 (see *id*. at 12); the motion for reconsideration was not attached to the *rollos*.

[35] *Rollo* (G.R. No. 240947), pp. 88-106; and *rollo* (G.R. No. 240975), pp. 85-103.

[36] *Rollo* (G.R. No. 240947), pp. 11-47; *rollo* (G.R. No. 240975), pp. 15-44 and 136-155.

Section 3 (e) 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:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Verily, the elements of violation of Section 3 (e) of RA 3019 are as follows: (*a*) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[37]

In this case, the SB correctly found that the prosecution was able to establish beyond reasonable doubt the existence of the foregoing elements, as it was shown that: ***first***, petitioners are all public officers occupying key positions in the BCS, namely Finance and Administrative Division OIC, Accounting Section OIC, Publications and Productions Chief, Special Productions Division Chief, and Administrative Officer V, and they were designated as Chairperson, Vice-Chairperson, and members of the BCS- BAC; ***second***, they, in conspiracy[38] with one another,

---

[37] See *Cambe v. Ombudsman*, 802 Phil. 190, 216-217 (2016), citing *Presidential Commission on Good Government v. Navarra-Gutierrez*, 772 Phil. 91, 102 (2015).

[38] "It is settled that direct proof is not essential to establish conspiracy as it may be inferred from the collective acts of the accused before, during

acted with manifest partiality, evident bad faith, or gross inexcusable negligence in the procurement of the printing machine because they knowingly proceeded with the transaction despite the absence of capital outlay and competitive bidding, doing so by improperly utilizing the bureau's MOOE account, in clear violation of the basic and well-known principle that no money shall be paid out of any public treasury, except in pursuance of an appropriation made by law;[39] and ***third*****,** petitioners gave Ernest Printing unwarranted advantage and preference by failing to conduct a public bidding, thereby precluding other suppliers from submitting bids which might be more beneficial fur the government, accepting an offer of a 20-year-old, second- hand printing machine over an offer of a brand new one for a measly difference of ₱50,000.00, recommending the execution of a lease-purchase contract which requires the government to immediately pay in full an equipment it was supposed to be renting, and dispensing with the post- qualification requirements under the law, thus resulting in undue injury to the government.

In an attempt to absolve themselves from criminal liability, petitioners insist that: (*a*) their resort to limited source bidding cannot result in prejudice to the government as it was a permitted practice under Section 49[40] of RA 9184, and even assuming

---

and after the commission of the crime. It can be presumed from and proven by acts of the accused themselves when the said acts point to a joint purpose, design, concerted action, and community of interests." (*People v. Lamsen*, 704 Phil. 500, 510 [2013], citing *People v. Buntag*, 471 Phil. 82, 93 [2004])

[39] See Section 4 of PD 1445. See also *Miralles v. Commission on Audit*, G.R. No. 210571, September 19, 2017, 840 SCRA 1 08, 1 18-1 19.

[40] Section 49 of RA 9184 reads:

> Section 49. *Limited Source Bidding*.– Limited Source Bidding may be resorted to only in any of the following conditions:
>
> (a) Procurement of highly specialized types of Goods and Consulting Services which are known to be obtainable only from a limited number of sources; or
>
> (b) Procurement of major plant components where it is deemed advantageous to limit the bidding to known eligible bidders in order to maintain an optimum and uniform level of quality and performance of the plant as a whole.

arguendo that the resort to such mode of procurement was improper, the absence of a public bidding *per se* does not make them criminally liable absent a clear showing that they indeed acted with manifest partiality, evident bad faith, or inexcusable negligence; (*b*) their use of the bureau's MOOE account was in accordance with AO 103, which allows them to use savings to fund capital programs, reliance on which is an indication of good faith; (*c*) by accepting Ernest Printing's second-hand printing machine in the amount of ₱850,000.00 over Union Service's offer in the amount of ₱900,000.00, they did not give the former undue preference because the former was still indisputably lower than the latter, and that there was no competent proof to establish that the unit offered by Union Service was indeed brand new; (*d*) their acquittal in this criminal case is justified, considering that in the counterpart administrative case for Dishonesty and Grave Misconduct, the Office of the Ombudsman downgraded their administrative liability to only Simple Neglect of Duty, finding that their failure to observe proper procurement rules and procedure was not tainted with malice and/or bad faith;[41] (*e*) their right to be informed of the nature and cause of the accusation against them was violated when the SB discussed the concept of "capital outlay," a term which does not appear in the Information; and (*f*) the SB erred in appreciating the existence of conspiracy, absent proof of the same.[42]

Petitioners' arguments are untenable.

As the SB accurately ratiocinated, the crime charged in the Information is not one for violation of budgetary, auditing or accounting rules, *per se*, but rather, one for violation of Section 3 (e) of RA 3019, the elements of which have already been established in this case, as afore-discussed. Further, the SB also correctly pointed out that petitioners' reliance on AO

---

[41] See Order dated July 18, 2012 of the Office of the Ombudsman in *Field Investigation Office (FIO) v. Varona, et al.,* docketed as OMB-C-A-08-0324-G; *rollo*, (G.R. No. 240947), pp. 175-187.

[42] *Rollo* (G.R. No. 240947), pp. 18-44 and 89-92; *rollo* (G.R. No. 240975). pp. 25-33 and 141-153.

103 is misplaced as it must be read in conjunction with existing laws pertaining to government spending and auditing. As an executive issuance, Section 1 (f) of AO 103 merely authorizes the realignment of savings to fund capital programs of the government. It does not authorize the use of government funds for capital acquisitions without corresponding appropriations, in violation of the fundamental constitutional precept that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law."[43] Here, as the SB observed, petitioners knew very well from the start that the acquisition of the printing machine had no approved capital outlay; nonetheless, they still persisted in proceeding with the illegal transaction.[44]

Moreover, the SB correctly opined that the ruling in the counterpart administrative case holds no water in the instant criminal case, as it is hornbook doctrine in administrative law that administrative cases are independent from criminal actions for the same acts or omissions. Given the differences in the quantum of evidence required, the procedures actually observed, the sanctions imposed, as well as the objective of the two (2) proceedings, the findings and conclusions in one should not necessarily be binding on the other. Hence, the exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or vice versa.[45]

Finally, the SB did not err in declaring that there was no violation of petitioners' constitutional right to be informed of the nature and cause of the accusation against them by the use of the term "capital outlay" in its Decision without mentioning the same in the Information, as such right merely requires that an Information only state the ultimate facts constituting the offense and not the finer details of why and how the crime

---

[43] Paragraph 1, Section 29, Article VI of the Constitution.

[44] See *rollo* (G.R. No. 240947), pp. 102-105.

[45] See *Flores v. People*, G.R. No. 222861, April 23, 2018.

was committed.[46] Similarly, the Court observes that the SB likewise did not err in concluding that Section 106 of PD 1445 cannot be applied in favor of Josue and Villarosa as the notice required under the law should be given "prior to that act." Here, petitioners had belatedly sent the notice of irregularity in the transaction, *i.e.*, ·after the bidding process had already begun.[47]

In sum, the Court finds no cogent reason to overturn petitioners' conviction, as there was no showing that the SB overlooked, misunderstood, or misapplied the surrounding facts and circumstances of these consolidated cases, especially considering that the SB was in the best position to assess and determine the credibility of the witnesses presented by both parties.[48]

WHEREFORE, the consolidated petitions are **DENIED**. The Decision dated May 25, 2018 and the Resolution dated July 30, 2018 of the *Sandiganbayan* in Criminal Case No. SB-11-CRM-0373 are hereby **AFFIRMED**. Petitioners Darius F. Josue, Eden M. Villarosa, Angelito C. Enriquez, Leonardo V. Alcantara, Jr., and Lino G. Aala are found **GUILTY** beyond reasonable doubt of the crime of violation of Section 3 (e) of Republic Act No. 3019, and accordingly, each of them is sentenced to suffer the indeterminate penalty of imprisonment for a period of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, with perpetual disqualification from public office and forfeiture of all retirement or gratuity benefits under any law.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Reyes, J. Jr.,* and *Lazaro-Javier, JJ.,* concur.

Caguioa, J., on official leave.

---

[46] *People v. Sandiganbayan*, 769 Phil. 378, 391 (2015).

[47] *Rollo* (G.R. No. 240947), pp. 99-100.

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

THIRD DIVISION

[G.R. No. 241088. June 3, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILLIAM SABALBERINO *y* ABULENCIA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; PARRICIDE; ELEMENTS. —** Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused.

2. **REMEDIAL LAW; EVIDENCE; PARRICIDE; IN PARRICIDE INVOLVING SPOUSES, THE RELATIONSHIP MAY BE ESTABLISHED BY MARRIAGE CERTIFICATE AND ALSO ORAL EVIDENCE IF NOT CONTESTED. —** Among the three elements, the relationship between the offender and the victim is the most crucial. This relationship is what actually distinguishes the crime of parricide from homicide. In parricide involving spouses, the best proof of the relationship between the offender and victim is their marriage certificate. Oral evidence may also be considered in proving the relationship between the two as long as such proof is not contested.

3. **CRIMINAL LAW; REVISED PENAL CODE; DEATH INFLICTED UNDER EXCEPTIONAL CIRCUMSTANCES; WHEN A LEGALLY MARRIED PERSON SURPRISED HIS SPOUSE IN THE ACT OF COMMITTING SEXUAL INTERCOURSE WITH ANOTHER, KILLING ANY OR BOTH OF THEM IN THE ACT OR IMMEDIATELY THEREAFTER; ELEMENTS THEREOF MUST BE SUFFICIENTLY ESTABLISHED. —** In his defense, accused-appellant cites Article 247 of the RPC as an absolutory and exempting cause, the first paragraph of which states that: Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury,

shall suffer the penalty of *destierro*. For Article 247 to apply, the defense must prove the concurrence of the following elements: (1) that a legally married person surprises his spouse in the act of committing sexual intercourse with another person; (2) that he kills any of them or both of them in the act or immediately thereafter; and (3) that he has not promoted or facilitated the prostitution of his wife (or daughter) or that he or she has not consented to the infidelity of the other spouse. Among the three elements, the most vital is that the accused-appellant must prove to the court that he killed his wife and her paramour in the act of sexual intercourse or immediately thereafter. Accused must prove these elements by clear and convincing evidence; otherwise his defense would be untenable.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS; GENERALLY BINDING AND CONCLUSIVE. –– Time and again, the Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. The factual findings of the trial court, especially when affirmed by the CA, are generally binding and conclusive on this Court, except under specific instances which this Court finds to be absent in the instant case.

5. CRIMINAL LAW; REVISED PENAL CODE; MITIGATING CIRCUMSTANCES; PASSION AND OBFUSCATION; DOES NOT INCLUDE QUARREL BETWEEN ACCUSED AND THE VICTIM BEFORE COMMISSION OF THE CRIME. –– It has been held that there is passional obfuscation when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus so powerful as to overcome reason. The obfuscation must originate from lawful feelings. The turmoil and unreason which naturally result from a quarrel or fight should not be confused with the sentiment or excitement in the mind of a person injured or offended to such a degree as to deprive him of his sanity and self-control. The excitement which is inherent

in all persons who quarrel and come to blows does not constitute obfuscation. In the present case, the prosecution was able to establish that the crime was precipitated by a quarrel between accused-appellant and the victim. However, such kind of argument, no matter how heated or serious it was, is not the kind that would cause the passion or obfuscation contemplated under the law.

6. **ID.; ID.; ID.; VOLUNTARY SURRENDER; REQUISITES; THE VOLUNTARINESS OF SURRENDER SHOULD DENOTE A POSITIVE ACT AND NOT MERE SUBMISSIVE BEHAVIOR TO AUTHORITIES. ––** As to the mitigating circumstance of voluntary surrender, the same can be appreciated if the accused satisfactorily complies with three requisites, to wit: (1) he has not been actually arrested; (2) he surrendered himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. There must be a showing of spontaneity and an intent to surrender unconditionally to the authorities, either because the accused acknowledges his guilt or he wishes to spare them the trouble and expense concomitant to his capture. In the instant case, there was no showing of spontaneity on the part of accused-appellant as it was not he who asked for the police to go to their house. Neither was there proof that he acknowledged his guilt when apprehended by the police authorities. While it appears that he did not resist when the police officers brought him to the police station for questioning, such lack of resistance does not necessarily equate to his voluntary surrender. The voluntariness of one's surrender should denote a positive act and not a mere compliant or submissive behavior in the presence of authorities.

7. **ID.; ID.; ID.; LACK OF INTENTION TO COMMIT SO GRAVE A WRONG; BELLED BY THE LOCATION AND NATURE OF THE VICTIM'S STAB WOUNDS. ––** Anent the mitigating circumstance of lack of intention to commit so grave a wrong as that committed, this circumstance addresses itself to the intention of the offender at the particular moment when such offender executes or commits the criminal act. In the instant case, the undeniable fact is that when accused-appellant attacked the victim, the former used a deadly weapon and inflicted a mortal wound on the latter. While intent to kill is purely a mental process, it may be inferred from the weapon used, the extent of the injuries sustained by the offended party and the

circumstances of the aggression, as well as the fact that the accused performed all the acts that should have resulted in the death of the victim. Indeed the location and nature of Delia's stab wound belie accused-appellant's claim of lack of intention to commit so grave a wrong against the victim.

8. ID.; ID.; PARRICIDE; PENALTY AND DAMAGES. —As to the penalty, this Court agrees with the CA and the RTC in imposing the penalty of *reclusion perpetua* in accordance with the provisions of Article 246 of the RPC, in relation to Article 63 of the same Code. As to the award of damages, this Court, likewise, agrees with the CA in awarding separate amounts of ₱75,000.00 each for civil indemnity, moral damages and exemplary damages, and ₱50,000.00 as temperate damages, all of which are subject to interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid, in accordance with prevailing jurisprudence.

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.*:

Before the Court is an ordinary appeal filed by accused-appellant, William Sabalberino, assailing the Decision[1] and Resolution[2] of the Court of Appeals *(CA),* dated May 31, 2017 and January 29, 2018, respectively, in CA-G.R. CR-HC No. 02230. The CA Decision affirmed, with modification, the February 24, 2016 Decision[3] of the Regional Trial Court *(RTC)*

---

[1] Penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo L. Delos Santos and Geraldine C. Fiel-Macaraig concurring; *rollo*, pp. 4-12.

[2] CA *rollo*, pp. 135-137.

[3] Penned by Judge Alphinor C. Serrano; *id.* at 56-62.

of Tacloban City, Branch 6, in Criminal Case No. 2005-08-446, finding herein accused-appellant guilty of the crime of parricide and imposing upon him the penalty of *reclusion perpetua* and ordering him to pay damages. The CA Resolution denied accused-appellant's Motion for Reconsideration.

The antecedents are as follows:

On August 19, 2005, the City Prosecutor of Tacloban filed an Information with the RTC of Tacloban City, charging accused-appellant with the crime of Parricide. The accusatory portion of the Information reads as follows:

> That on or about the 17th day of August, 2005, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously stab his wife DELIA FERNANDEZ-SABALBERINO with a knife, hitting her on the chest and heart thereby inflicting upon the person of Delia Fernandez-Sabalberino a mortal wound which was the direct and immediate cause of her death
>
> CONTRARY TO LAW.[4]

Upon arraignment on March 21, 2006, accused-appellant entered a plea of not guilty.[5] Subsequently, trial on the merits ensued.

The evidence for the prosecution established that herein accused-appellant, William Sabalberino *(William)* and the victim, Delia Fernandez-Sabalberino *(Delia)* were husband and wife who used to live together at Barangay 59, Picas, Sagkahan, Tacloban City. William was employed as a painter, while Delia worked as a laundrywoman. They have five (5) children, namely, Wendel, Wedylyn, William, Angela and Jessica. Around one o'clock in the morning of August 17, 2005, Angela and Jessica were roused from their sleep when they heard their parents shouting at each other. They were prompted to get out of bed

---

[4] Records, pp. 1-2.

[5] See Certificate of Arraignment and RTC Order, dated March 21, 2006; *id.* at 17-18.

and, thereafter, stood by the door of their room while witnessing their parents argue with each other. While in the middle of their quarrel, William punched Delia hitting her face. Angela and Jessica then rushed to their mother and embraced her. Thereafter, William went to the kitchen to get a knife and proceeded to stab Delia hitting her chest below the armpit while the latter was holding Angela and Jessica. Delia, on the other hand, managed to stand and walk towards the door of their house. However, before reaching the door, she decided to walk back towards the bed but before she could make it to the bed she collapsed. William then went to her aid, embraced her and cried. He asked his children to call for help, but Delia died soon thereafter.

William, on his part, did not deny having stabbed Delia. However, he claimed that the stabbing was accidental. William alleged that in the afternoon of August 16, 2005, he arrived home tired and took a nap while waiting for his daughters to prepare their meal. He woke up around 6:30 in the evening and took dinner with his children. When he inquired about his wife, their children told him that she was still washing clothes. After eating, he went to sleep inside the master's bedroom. Around midnight, he woke up to urinate. Upon turning on the lights and stepping out of their bedroom, he saw his wife half naked with a completely naked man on top of her. Angry at what he saw, he went to the kitchen to get a knife and approached the two. His wife and the man then stood up, and the latter tried to gain possession of the knife. They grappled. When William was able to take control of the knife, he tried to stab the man but, unfortunately, he accidentally hit his wife who at that time stood between him and the man. The man then picked up his clothes and hurriedly jumped out of their window. William tried to run after him, but he came to the aid of his wife when he saw her fall down. He then asked his children to call for help, but his wife died before help arrived.

After trial, the RTC rendered judgment convicting accused-appellant as charged. The dispositive portion of the RTC Decision reads as follows:

WHEREFORE, in view of the foregoing considerations, this Court finds accused **WILLIAM SABALBERINO y ABULENCIA** guilty beyond reasonable doubt of the crime of Parricide, and sentences him to suffer the penalty of imprisonment of **RECLUSION PERPETUA**; and, to pay the heirs of the victim, Delia Fernandez Sabalberino, ₱75,000.00 as civil indemnity, and ₱50,000.00 for moral damages. To pay the Costs.

SO ORDERED.[6]

The RTC ruled that after accused-appellant admitted that it was he who stabbed his wife, the trial court, nonetheless, was not convinced that the stabbing was accidental because the evidence was contrary to accused-appellant's claim that his intention was to stab the man whom he caught as having sexual intercourse with his wife. The RTC gave credence to the separate testimonies of the daughters of accused-appellant and the victim that they did not see any man having sexual intercourse with their mother immediately prior to the stabbing incident and that their parents were, in fact, in the middle of an argument and quarrel when their father stabbed their mother.

Aggrieved by the ruling of the RTC, accused-appellant appealed to the CA praying for his acquittal and the reversal of the assailed RTC Decision. In his Appellant's Brief, accused-appellant reiterated his defense that the stabbing of his wife was accidental. Reiterating the provisions of Article 247 of the Revised Penal Code *(RPC),* accused-appellant stood by his claim that he caught his wife having carnal knowledge with another man; that his intention was to kill that man with a knife but since his wife stood between him and the man, it was his wife who was accidentally stabbed. Accused-appellant also contends that, even granting that he failed to prove his innocence under Article 247 of the RPC, the trial court, nonetheless, erred in imposing the penalty of *reclusion perpetua* as it failed to appreciate the mitigating circumstances of: (1) having acted upon an impulse so powerful as naturally to have produced

---

[6] CA *rollo,* p. 62. (Emphasis in the original)

passion or obfuscation; (2) voluntary surrender; and (3) lack of intention to commit so grave a wrong as that committed.

In its assailed Decision, the CA affirmed the conviction of accused-appellant, but modified the judgment of the RTC by ordering accused-appellant to pay the heirs of Delia temperate and exemplary damages, an increased amount of moral damages and interest on the monetary awards. The CA disposed, thus:

> WHEREFORE, in view of the foregoing, the appeal is DENIED. The Decision dated February 24, 2016 of the Regional Trial Court, Branch 6, Tacloban City, in Criminal Case No. 2005-08-446, finding appellant William Sabalberino y Abulencia, guilty beyond reasonable doubt [of] the crime of Parricide is AFFIRMED with the following MODIFICATIONS:
>
> 1) The award of moral damages is increased to ₱75,000.00;
> 2) Appellant is ordered to indemnify the victim's heirs temperate damages in the amount of ₱50,000.00 and exemplary damages in the amount of ₱75,000.00; and
> 3) Interest at the rate of 6% per annum should be imposed on all damages awarded from the date of finality of this decision until fully paid.
>
> The rest of the decision not inconsistent with these pronouncements STANDS.
>
> SO ORDERED.[7]

The CA held that the prosecution was able to prove the presence of all the elements of parricide and that accused-appellant failed to convince the appellate court of the merits of his defenses.

Accused-appellant filed a Motion for Reconsideration,[8] reiterating his defenses, but the CA denied it in its Resolution[9] dated January 29, 2018.

---

[7] *Id.* at 112.

[8] *Id.* at 114-118.

[9] *Id.* at 133-137.

Thus, on March 16, 2018, accused-appellant, through counsel, filed a Notice of Appea[10] manifesting his intention to appeal the CA Decision to this Court.

In its Resolution[11] dated June 22, 2018, the CA noted and gave due course to accused-appellant's Notice of Appeal and directed its Judicial Records Division to transmit the entire records of the case to this Court.

Hence, this appeal was instituted.

In a Resolution[12] dated November 5, 2018, this Court, among others, notified the parties that they may file their respective supplemental briefs, if they so desire.

In its Manifestation and Motion,[13] filed on January 22, 2019, the Office of the Solicitor General (OSG) manifested that, in lieu of a Supplemental Brief, it adopts its Appellee's Brief filed before the CA as it "already sufficiently affirms accused-appellant's guilt of the crime of Parricide." The OSG prayed that: (1) it be excused from filing a Supplemental Brief;. (2) the assailed CA Decision be affirmed *in toto;* and (3) accused-appellant's appeal be dismissed for lack of merit.

In the same manner, accused-appellant filed a Manifestation[14] submitting that he is adopting the Brief for the Accused-Appellant, which he filed with the CA, as his Supplemental Brief since the Brief filed with the CA had "adequately presented and discussed all the issues" respecting his innocence.

The basic issue for the Court's resolution in the present appeal is whether or not the CA correctly upheld the conviction of herein accused-appellant, William Sabalberino, for parricide.

---

[10] *Id.* at 143-145.

[11] *Id.* at 148-149.

[12] *Rollo,* pp. 20-21.

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

[14] *Id.* at 28-31.

The Court rules in the affirmative.

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused.[15]

In the present case, there was no dispute that the victim, Delia Sabalberino, was killed as shown by her Certificate of Death stating that the cause of death was "shock and hemorrhage intrathoracic due to stab wound of the left side of the chest, hitting the heart."[16] The said Certificate was admitted by the RTC and the defense did not object to its admissibility.

Also, the prosecution was able to satisfactorily establish that it was herein appellant who stabbed and killed Delia based on the eyewitnesses' account. Appellant and the victim's thirteen-year-old daughter, Angela, narrated the details of the stabbing incident as follows:

PROS. DOLINA:

Q Now, you stated earlier that the accused William Sabalberino is your father. Am I correct?
A Yes, Sir.

Q If your father is inside the court room, could you point [to] him?
A Yes, Sir.

Q Will you please point to him?
A (Witness pointing to a person [who] when asked of his name answered William Sabalberino).

Q Now, what is the name of your mother?
A Delia Fernandez Sabalberino.

Q Where is she now?
A She was killed.

---

[15] *People v. Macal,* 778 Phil. 379, 388 (2016).

[16] Exhibit "B", records, p. 6.

Q Can you still recall when was she killed?
A Yes, Sir.

Q Will you please tell us the date when was she killed?
A August 17, 2005.

Q Where was she killed?
A Inside our house.

Q Now, at that time your mother was killed, where were you?
A I was in our house.

Q What were you doing at the time that your mother was killed?
A I was sleeping.

Q [S]ince you were sleeping at that time, how did you know that your mother was killed?
A Because when I awoke they were already fighting.
Q Who were fighting?
A My Ma and Pa.

x x x x x x x x x

Q And why did you say they were fighting?
A They were shouting [at] each other. They were arguing in a loud voice.

Q While they were arguing in a loud voice, what happened?
A My mother was boxed by my father.

Q Where was your mother hit?
A On her face.

Q Now, after she was hit on her face, what did your mother do?
A They continue[d] on fighting.

Q How about your father, what did your father do after he boxed your mother?
A They continue[d] on arguing [with] each other.

Q Now, you said that your mother was killed. Did you see who killed your mother?
A Yes, Sir.

Q Who killed your mother?
A Papa.

Q Are you referring to the accused in this case William Sabalberino?
A Yes, Sir.

Q How did your father kill your mother?
A By stabbing her.

Q What did your father use in stabbing your mother?
A A knife.

Q Where did your father get the knife, if you know?
A From our kitchen.

Q [W]hat part of the body of your mother was stabbed by your father?
A Here, below the armpit (witness pointing the portion of her body just below her armpit).

Q As you saw your father [stab] your mother, what did you do?
A I became shocked and I cried.

Q By the way, do you know Jessica Sabalberino?
A Yes, Sir.

Q Are you related?
A Yes, Sir.

Q What is your relationship?
A We are sisters.

Q At the time your father stabbed your mother, where was Jessica Sabalberino then?
A She was in our house.

Q How far were you to Jessica Sabalberino when your father stabbed your mother?
A Jessica and I were being held by our Mama.

Q Now, when your father stabbed your mother, do you mean to say that Jessica and you were still being held by your mother?
A Yes, Sir.

Q Now, after your father stabbed your mother, what did your father do?
A He cried.

Q How about your mother, what happened to your mother?
A She went towards the door and opened the door.

Q [Was] she able to open the door?
A No, Sir.

Q Why? What happened to her?
A She went back towards the bed and when I glanced at her she fell down.[17]

Jessica, who was twelve years old at the time of her examination in court, corroborated the testimony of her sister, Angela, on material points, to wit:

PROS. DOLINA: DIRECT EXAMINATION
Q Miss [Sabalberino], what is your relationship with the accused, William Sabalberino?
A He is my father.

x x x x x x x x x

Q Now, Ms. Sabalberino, do you remember where you were on August 17, 2006, at around 1:00 in the early morning?
A I was in our house.

Q Now, while you were in your house on August 17, 2006, at about 1:00 o'clock in the early morning, can you tell if there was any incident that happened?
A Yes, Sir.

Q What was the incident all about?
A My mother was stabbed.

Q Can you tell us who stabbed your mother?
A Yes, Sir.

Q Who stabbed your mother?
A My father.

Q Did you actually see your father stab your mother?
A Yes, Sir.

x x x x x x x x x

[17] TSN, January 9, 2008, pp. 3-7.

Q What did he use?
A A knife.

Q Where is your mother now?
A She is already dead.

Q Did she die because of stabbing wound?
A Yes, Sir.

x x x x x x x x x

CROSS EXAMINATION

x x x x x x x x x

Q Now, so you were able to wake up that night?
A Yes, Maam.

Q What made you wake up?
A Because my mother was boxed by my father.

Q So, when (sic) you were able to wake up because of the commotion or noise, am I correct?
A Yes, Maam.

Q And when you woke up, that was the time that you saw your father boxed your mother?
A Yes, Maam.

Q Prior to that time that your mother was boxed by your father, you have not observed anything except when you woke up, that was the first time that you saw your father, am I correct?
A Yes, Maam.

Q And your sisters and your brothers, where were they when you woke up?
A They were asleep.

Q When you woke up, you did not see if there was [anybody] inside your house aside from your sisters and brothers?
A No Maam, I did not see anybody.

Q And you did not know what was (sic) they fought that night, am I correct?
A No, Maam.

Q You did not know because even before you sleep (sic), you did not hear any argument, am I correct?
A Yes, Maam.

x x x x x x x x x

REDIRECT EXAMINATION

x x x x x x x x x

Q After your father boxed your mother, what did your father do?

x x x x x x x x x

A They argued with each other.

Q After they argued, what happened next?
A She was stabbed.

Q She was stabbed by your father?
A Yes, Sir.[18]

Moreover, accused-appellant himself acknowledged the stabbing incident during his direct examination, to wit:

x x x x x x x x x

Q You said you slept in your room, can you please tell the Honorable Court until when have you been sleeping?
A In my estimate it was already 12:00 midnight when I woke up because of the call of nature so when I stepped out of the bedroom I turned on the light.

x x x x x x x x x

Q While you were about to go to the comfort room, what happened if there was any?
A When I stepped out of the bedroom I saw my wife who was wearing a nightie already half naked and a man was on top of her.

Q In what particular place did you see your wife?
A In the sala.

x x x x x x x x x

Q Upon seeing your wife in that situation what did you do?
A That was it. I asked that man what are you doing here and took a knife and when that man saw me with a knife, he grappled

---

[18] TSN, September 9, 2008, pp. 3-10.

for the position (sic) of it and my wife told us to stop what we were doing.

x x x x x x x x x

Q What was then the appearance of that man when you saw him on top of your wife?
A Completely naked.

Q When that man saw you, what did that person do upon seeing you?
A When he saw me with a knife, he faced me and when my wife stood up she told me to stop and middle (sic).

Q While your wife was meddling with you, what happened?
A When I was able to hold possession of the knife I stabbed the man but instead it was my wife who was hit.[19]

Thus, the outright admission of accused-appellant in open court, that he delivered the fatal stabbing blow that ended Delia's life, established the second element of the crime.

Among the three elements enumerated above, the relationship between the offender and the victim is the most crucial.[20] This relationship is what actually distinguishes the crime of parricide from homicide.[21] In parricide involving spouses, the best proof of the relationship between the offender and victim is their marriage certificate.[22] Oral evidence may also be considered in proving the relationship between the two as long as such proof is not contested.[23]

In the present case, the spousal relationship between Delia and the accused-appellant is beyond dispute. The defense has admitted, during the preliminary conference, that Delia was the legitimate wife of the accused-appellant.[24] Such admission

---

[19] TSN, January 13, 2012, pp. 9-12.

[20] *People v. Macal, supra* note 15.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] See Preliminary Conference Order dated June 13, 2006, records, p. 32.

was reiterated by the accused-appellant in the course of the trial of the case.[25] The prosecution, on its part, produced a copy of the couple's Certificate of Marriage,[26] which the defense did not oppose.[27] Hence, the key element that qualifies the killing to parricide was satisfactorily proven in this case.

Clearly, thus, all the elements of the crime of parricide, as defined in Article 246 of the Revised Penal Code, are present in this case.

In his defense, accused-appellant cites Article 247 of the RPC as an absolutory and exempting cause, the first paragraph of which states that:

> Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of *destierro.*

For Article 247 to apply, the defense must prove the concurrence of the following elements: (1) that a legally married person surprises his spouse in the act of committing sexual intercourse with another person; (2) that he kills any of them or both of them in the act or immediately thereafter; and (3) that he has not promoted or facilitated the prostitution of his wife (or daughter) or that he or she has not consented to the infidelity of the other spouse.[28] Among the three elements, the most vital is that the accused-appellant must prove to the court that he killed his wife and her paramour in the act of sexual intercourse or immediately thereafter.[29] Accused must prove these elements by clear and convincing evidence, otherwise his defense would be untenable.[30]

---

[25] See TSN, January 13, 2012, p. 6.

[26] Exhibit "A", records, p. 6-B.

[27] See RTC Order dated September 30, 2008, *id.* at 120.

[28] *People v. Macal, supra* note 15, at 392-393.

[29] *Id.* at 393.

[30] *People v. Oyanib,* 406 Phil. 650, 661 (2001).

In the present case, this Court finds no cogent reason to depart from the ruling of the RTC and the CA that accused-appellant failed to prove his allegation to the satisfaction of both courts that he indeed chanced upon his wife in the vilest act of infidelity and that he was blinded by impulse and acted out of rage when he stabbed the victim. Both courts held that accused-appellant's uncorroborated claim pales in comparison to the consistent testimonies of their daughters, Angela and Jessica, that at the time of the stabbing incident, and immediately prior thereto, no person, other than the family members, was inside their house and that the killing of the victim was immediately preceded by an argument between her and accused-appellant. This Court, likewise, agrees with both the RTC and the CA that the defense failed to prove that the accused-appellant's and the victim's daughters were motivated by malice or ill-will in testifying against their father. As such, the testimonies of Angela and Jessica, having been found credible by the RTC and the CA, are sufficient to establish the guilt of accused-appellant.

Time and again, the Court has held that when the issues involve matters of credibility of witnesses, the findings of the trial court, its calibration of the testimonies, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect.[31] This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.[32] The factual findings of the trial court, especially when affirmed by the CA, are generally binding and conclusive on this Court, except under specific instances[33] which this Court finds to be absent in the instant case.

---

[31] *People v. Sota, et al.,* G.R. No. 203121, November 29, 2017, 847 SCRA 113, 127.

[32] *Id.*

[33] 1. When the conclusion is a finding grounded entirely on speculation, surmises, and conjectures;

Accused-appellant also invokes the mitigating circumstances of passion and obfuscation, lack of intention to commit so grave a wrong as that committed and voluntary surrender, which the court finds to be unavailing.

It has been held that there is passional obfuscation when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus so powerful as to overcome reason.[34] The obfuscation must originate from lawful feelings.[35] The turmoil and unreason which naturally result from a quarrel or fight should not be confused with the sentiment or excitement in the mind of a person injured or offended to such a degree as to deprive him of his sanity and self-control.[36] The excitement which is inherent in all persons who quarrel and come to blows does not constitute obfuscation.[37] In the present case, the prosecution was able to establish that the crime was precipitated by a quarrel between accused-appellant and the victim. However, such kind of

---

2. When the inference made is manifestly mistaken, absurd or impossible;

3. Where there is grave abuse of discretion;

4. When the judgment is based on misapprehension of facts;

5. When the findings of fact are conflicting;

6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

7. When the findings are contrary to those of the trial court;

8. When the findings of fact are conclusions without citation of specific evidence on which they are based;

9. When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on wooed. *(Id.)*

[34] *People v. Oloverio,* 756 Phil. 435, 451 (2015).

[35] *Id.*

[36] *Id.* at 453.

[37] *Id.*

argument, no matter how heated or serious it was, is not the kind that would cause the passion or obfuscation contemplated under the law.

As to the mitigating circumstance of voluntary surrender, the same can be appreciated if the accused satisfactorily complies with three requisites, to wit: (1) he has not been actually arrested; (2) he surrendered himself to a person in authority or the latter's agent; and (3) the surrender is voluntary.[38] There must be a showing of spontaneity and an intent to surrender unconditionally to the authorities, either because the accused acknowledges his guilt or he wishes to spare them the trouble and expense concomitant to his capture.[39] In the instant case, there was no showing of spontaneity on the part of accused-appellant as it was not he who asked for the police to go to their house.[40] Neither was there proof that he acknowledged his guilt when apprehended by the police authorities. While it appears that he did not resist when the police officers brought him to the police station for questioning, such lack of resistance does not necessarily equate to his voluntary surrender. The voluntariness of one's surrender should denote a positive act and not a mere compliant or submissive behavior in the presence of authorities.

Anent the mitigating circumstance of lack of intention to commit so grave a wrong as that committed, this circumstance addresses itself to the intention of the offender at the particular moment when such offender executes or commits the criminal act.[41] In the instant case, the undeniable fact is that when accused-appellant attacked the victim, the former used a deadly weapon and inflicted a mortal wound on the latter. While intent to kill is purely a mental process, it may be inferred from the weapon used, the extent of the injuries sustained by the offended party and the circumstances of the aggression, as well as the

---

[38] *Roca v. Court of Appeals,* 403 Phil. 326, 337-338 (2001).

[39] *Id.* at 338.

[40] See TSN, January 13, 2012, p. 15.

[41] *People v. Badriago,* 605 Phil. 894, 911 (2009).

fact that the accused performed all the acts that should have resulted in the death of the victim.[42] Indeed the location and nature of Delia's stab wound belie accused-appellant's claim of lack of intention to commit so grave a wrong against the victim.

As to the penalty, this Court agrees with the CA and the RTC in imposing the penalty of *reclusion perpetua* in accordance with the provisions of Article 246 of the RPC, in relation to Article 63 of the same Code. As to the award of damages, this Court, likewise, agrees with the CA in awarding separate amounts of ₱75,000.00 each for civil indemnity, moral damages and exemplary damages, and ₱50,000.00 as temperate damages, all of which are subject to interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid, in accordance with prevailing jurisprudence.[43]

WHEREFORE, the appeal is **DISMISSED.** The Decision dated May 31, 2017, of the Court of Appeals in CA-G.R. CR-HC No. 02230, convicting accused-appellant William Sabalberino *y* Abulencia of Parricide, is **AFFIRMED.**

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Inting, JJ.,* concur.

---

[42] *People v. Boyles and Montes,* 120 Phil. 92, 101 (1964).

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

SECOND DIVISION

[G.R. No. 241369. June 3, 2019]

SASHA M. CABRERA, *petitioner, vs.* **THE PHILIPPINE STATISTICS AUTHORITY (FORMERLY NATIONAL STATISTICS OFFICE), OFFICE OF THE CONSUL GENERAL, PHILIPPINE EMBASSY, KUALA LUMPUR, AND THE OFFICE OF THE SOLICITOR GENERAL,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; VENUE IS PROCEDURAL AND IS DEEMED WAIVED WHEN NOT OBJECTED TO. — Venue is procedural, not jurisdictional, and hence, may be waived. Venue is the place of trial or geographical location in which an action or proceeding should be brought. In civil cases, venue is a matter of procedural law. A party's objections to venue must be brought at the earliest opportunity either in a motion to dismiss or in the answer; otherwise, the objection shall be deemed waived. When the venue of a civil action is improperly laid, the court cannot *motu proprio* dismiss the case. Furthermore, the rules on venue are intended to provide convenience to the parties, rather than restrict their access to the courts. It simply arranges for the convenient and effective transaction of business in the courts and do not relate to their power, authority, or jurisdiction over the subject matter of the action.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondents.
Remie Calatrava for petitioner.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Orders dated September 15, 2017[2] and June 7, 2018[3] of the Regional Trial Court (RTC) of Davao City, Branch 14 (RTC-Br. 14) which dismissed there-filed petition of petitioner Sasha M. Cabrera (petitioner) in Special Proceeding No. R-DVO-17-03018-SP to: (*a*) correct her year of birth from 1980 to 1989 in her *first* Report of Birth;[4] and (*b*) cancel her *second* Report of Birth.[5]

The Facts

Petitioner alleged that she was born on **July 20, 1989** at Zuba Estate, Lahad Datu Sabah, Malaysia. However, due to the distance between their house and the Philippine Embassy in Kuala Lumpur, it was only on August 27, 2008 that her mother reported her birth. The National Statistics Office in Manila, now the Philippine Statistics Authority (PSA), received her *first* Report of Birth on January 29, 2009 and recorded it under Registry Number 2009-4580024.[6]

Subsequently, petitioner discovered that her date of birth was wrongfully entered as **July 20, 1980**. However, instead of correcting the said error with the Philippine Embassy, petitioner's mother registered her birth for the second time. Thus, petitioner had a *second* Report of Birth recorded in March 2010 under Registry Number 2010-4580208.[7]

---

[1] *Rollo*, pp. 16 25.

[2] *Id*. at 8-13. Penned by Presiding Judge Jill Rose S. Jaugan-Lo.

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

[4] Recorded as Registry Number 2009-4580024; *id*. at 31.

[5] Recorded as Registry Number 2010-4580208; *id*. at 32.

[6] See *id*. at 19 and 47.

[7] See *id*. at 19-20 and 47.

Because she had two (2) Reports of Birth, petitioner encountered difficulties in securing official documents, prompting her to file a petition for cancellation of her ***first*** Report of Birth before the RTC of Davao City, Branch 17 (RTC-Br. 17) docketed as SP. Proc. No. 11,850-12. After due proceedings where the publication and jurisdictional requirements were shown to have been complied with, and with the appearance of the Office of the Solicitor General (OSG), as well as a representative from the PSA, the RTC-Br. 17 granted the petition in a Decision[8] dated November 19, 2012.[9] Accordingly, it ordered the cancellation of petitioner's *first* Report of Birth.[10]

The OSG filed a motion for reconsideration,[11] which the RTC denied in an Order[12] dated February 27, 2013. Thus, the OSG appealed[13] to the Court of Appeals (CA) which, in a Decision[14] dated February 11, 2016, granted the same upon a finding that since petitioner's birth was already validly registered, it can no longer be the subject of a second registration. As petitioner seeks the correction of her year of birth, which is a substantial change, the CA held that the proper recourse would have been to file a petition for correction of entry to correct her *first* Report of Birth under Rule 108 of the Rules of Court.[15]

Instead of filing a motion for reconsideration therefrom, petitioner re-filed the present petition to: (*a*) correct her year of birth from July 20, 1980 to July 20, 1989 in her *first* Report of Birth; and (*b*) cancel her *second* Report of Birth under

---

[8] Not attached to the *rollo*. See id. at 20 and 48-49.

[9] See *id*. at 48-49.

[10] See *id*. at 20 and 47-49.

[11] Dated December 7, 2012. *Id*. at 34-39.

[12] Not attached to the *rollo*. See *id*. at 21, 43, and 65.

[13] See Notice of Appeal dated March 22, 2013; *id*. at 43-44.

[14] *Id*. at 46-53. Penned by Associate Justice Ronaldo B. Martin with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring.

[15] See *id*. at 50-52.

Rule 108 of the Rules of Court, which was raffled to RTC-Br. 14.[16]

The RTC-Br. 14's Ruling

In an Order[17] dated September 15, 2017, the RTC-Br. 14 *motu proprio* dismissed the petition. Citing the provisions of Rule 108 of the Rules of Court, particularly Section 1[18] thereof, it held that since it was the Office of the Consul General of the Philippine Embassy in Kuala Lumpur that acted as the civil registry in petitioner's case, the petition should have been filed with the RTC where petitioner's *first* Record of Birth was registered, *i.e.*, the RTC of the place where the PSA is located, which is Quezon City, and not the RTC of petitioner's residence in Davao City.[19]

Petitioner's motion for reconsideration[20] was denied m an Order[21] dated June 7, 2018; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the RTC- Br. 14 erred in dismissing the re-filed petition on the ground of improper venue.

---

[16] See *id*. at 8 and 21.

[17] *Id*. at 8-13.

[18] RULE 108
CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

Section 1. *Who may file petition* – Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Court of First Instance of the province where the corresponding civil registry is located. (Underscoring supplied)

[19] See *rollo*, pp. 11-12.

[20] Not attached to the *rollo*.

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

Petitioner argues that venue is procedural and not substantive; it only becomes jurisdictional in criminal cases. She likewise maintains that improper venue is not equivalent to lack of jurisdiction, as the parties may waive venue. Further, she insists that until respondents in the present petition object to venue being improperly laid in a motion to dismiss, it was error for the RTC-Br. 14 to *motu proprio* dismiss the case on the ground of lack of jurisdiction, which can only be done in cases covered by the rules on summary procedure.[22]

On the other hand, the OSG, in its Comment,[23] concurs that venue is merely procedural and may be fixed by the Rules of Court, while jurisdiction is conferred only by law. It submits that venue is fixed for the convenience of the parties and their witnesses. As such, for cases involving birth certificates recorded through the Office of the Consul General, as in this case, Section 1, Rule 108 of the Rules of Court does not limit the venue of the action to Quezon City only, where the PSA's head office is located. Finally, even assuming that venue had been improperly laid in this case, the OSG pointed out that courts may not *motu proprio* dismiss the same.[24]

The Court's Ruling

The petition is meritorious.

Venue is procedural, not jurisdictional, and hence, may be waived.[25]

Venue is the place of trial or geographical location in which an action or proceeding should be brought. In civil cases, venue is a matter of procedural law. A patty's objections to venue must be brought at the earliest opportunity either in a motion to dismiss or in the answer; otherwise, the objection shall be

---

[22] See *id*. at 22-23.

[23] Dated January 21, 2019. Id. at 64-79.

[24] See *id*. at 75-76.

[25] See *Anama v. Citibank, N.A.*, G.R. No. 192048, December 13, 2017.

deemed waived. When the venue of a civil action is improperly laid, the court cannot *motu proprio* dismiss the case.[26]

Furthermore, the rules on venue are intended to provide convenience to the parties, rather than restrict their access to the courts. It simply arranges for the convenient and effective transaction of business in the courts and do not relate to their power, authority, or jurisdiction over the subject matter of the action.[27]

At the outset, the Court notes that when petitioner filed her first petition before the RTC-Br. 17 docketed as SP. Proc. No. 11,850-12, she had already pleaded exemption from complying with the rule on venue by filing her petition in her place of domicile, *i.e.*, Davao City, she being a mere student who had no means to engage a lawyer to file it on her behalf.[28] Likewise, records show that the OSG registered no objection to such venue; hence, the RTC-Br. 17 proceeded to hear the petition and rendered a decision on the merits,[29] which was subsequently reversed by the CA.[30] During the entire course of the proceedings thereat, from which the present petition stemmed, venue was never raised as an issue.

Clearly, therefore, it was erroneous for the RTC-Br. 14 to *motu proprio* dismiss the re-filed petition before it on the ground of improper venue. Since convenience is the *raison d'etre* of the rules on venue,[31] and as it was established that Davao City is the residence of petitioner, and as further pointed out by the

---

[26] See *Radiowealth Finance Company, Inc. v. Pineda, Jr.*, G.R. No. 227147, July 30, 2018, citing *Pilipinas Shell Petroleum Corporation v. Royal Perry Services, Inc.*, 805 Phil. 13, 30-31 (2017), further citing *City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 523 (2014).

[27] *Philippine Banking Corporation v. Tensuan*, G.R. No. 104649, February 28, 1994, 230 SCRA 413, 417.

[28] See *rollo*, p. 47.

[29] See *id*. at 20 and 48-49.

[30] See *id*. at 52.

[31] *San Miguel Corporation v. Monasterio*, 499 Phil. 702, 709 (2005).

OSG, PSA has a field office located at Ango Building, Cabaguio Avenue, Davao City, then Davao City is the most convenient venue for the parties.[32] Thus, the RTC-Br. 14 should have taken cognizance of and heard petitioner's re-filed petition in order to promote, not defeat, the ends of justice.

Moreover, it was error for the RTC-Br. 14 to dismiss the re-filed petition *motu proprio*. It is well-settled that courts may not *motu proprio* dismiss the case on the ground of improper venue. Without any objection at the earliest opportunity, as in a motion to dismiss or in the answer, it is deemed waived. In *Radiowealth Finance Company, Inc. v. Nolasco*,[33] the Court explained:

> Dismissing the complaint on the ground of improper venue is certainly not the appropriate course of action at this stage of the proceeding, particularly as venue, in inferior courts as well as in the Courts of First Instance (now RTC), may be waived expressly or impliedly. **Where defendant fails to challenge timely the venue in a motion to dismiss as provided by Section 4 of Rule 4 of the Rules of Court, and allows the trial to be held and a decision to be rendered, he cannot on appeal or in a special action be permitted to challenge belatedly the wrong venue, which is deemed waived.**
>
> **Thus, unless and until the defendant objects to the venue in a motion to dismiss, the venue cannot be truly said to have been improperly laid, as for all practical intents and purposes, the venue, though technically wrong, may be acceptable to the parties for whose convenience the rules on venue had been devised.** The trial court cannot pre-empt the defendant's prerogative to object to the improper laying of the venue by *motu proprio* dismissing the case.[34]

In sum, the RTC-Br. 14 erred in *motu proprio* dismissing petitioner's re-fi1ed petition on the ground of improper venue. Accordingly, the same must be reinstated, and thereafter, remanded to the RTC-Br. 14 for further proceedings.

---

[32] See *rollo*, pp. 75-76.

[33] 799 Phil. 598 (2016).

[34] *Id*. at 605-606; emphases and underscoring supplied.

WHEREFORE, the petition is **GRANTED**. The Orders dated September 15, 2017 and June 7, 2018 of the Regional Trial Court of Davao City, Branch 14 (RTC-Br. 14) in Special Proceeding No. R-DV0-17-03018- SP are **REVERSED** and **SET ASIDE**. Accordingly, the case is **REINSTATED** and **REMANDED** to the RTC-Br. 14 for further proceedings.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Reyes, J. Jr.*, and *Lazaro-Javier, JJ.*, concur.

Caguioa, J., on official leave.

EN BANC

[A.M. No. P-18-3859. June 4, 2019]
(Formerly A.M. No. 15-12-135 MCTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **LOU D. LARANJO, CLERK OF COURT II, MUNICIPAL CIRCUIT TRIAL COURT, LUGAIT-MANTICAO-NAAWAN, MISAMIS ORIENTAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; CLERKS OF COURT; FUNCTION AS DESIGNATED CUSTODIAN OF THE COURT'S MONIES AND PROPERTIES; VIOLATION IN CASE AT BAR. — Time and again, the Court has emphasized that clerks of court perform a delicate function as designated custodians of the court's funds and revenues, records, properties, and premises. It is the clerks

of court's obligation to faithfully perform their duties and responsibilities as such to the end that there is full compliance with their function of being the custodian. Their failure to do so makes them liable for any loss, shortage, destruction or impairment of such funds and property. Thus, "[t]he nature of the work and of the office mandates that the [c]lerk of [c]ourt be an individual of competence, honesty and integrity." In this case, the Court finds that Laranjo miserably failed to live up to these stringent standards, as it has been established that Laranjo surreptitiously took the computer set assigned to Malinao and returned the same to its alleged donor although the same was still serviceable, and worse, without the authority of his superior, Presiding Judge Arroyo. As the OCA correctly observed, "[w]hile it is correct that he is the custodian of the court's properties and supplies, he must be reminded that he is still under the direct supervision of the Presiding Judge. [Thus] [it] is beyond cavil that his act of returning the court's property to its donor was unauthorized and even contrary to the express instructions of [Presiding] Judge Arroyo." Notably, aside from the lack of authorization, the records are bereft of any credible justification on Laranjo's part as to why he pursued such course of action. In addition, the surrounding circumstances relative to such taking render suspect Laranjo's acts.

2. **ID.; ID.; MISCONDUCT AND GRAVE MISCONDUCT. —**Based on case law, "[m]isconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. Any transgression or deviation from the established norm of conduct, work-related or not, amounts to misconduct. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules," as in this case.

3. **ID.; ID.; DISHONESTY; FINDING OF SERIOUS DISHONESTY; IN AN ATTEMPT TO EXCULPATE SELF FOR INAPPROPRIATE CONDUCT; UPHELD. —** In a long line of cases, dishonesty has been defined as a disposition to lie, cheat, deceive, or defraud; unworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive, or betray.

As pointed out by the OCA, in Laranjo's comment, he swore under oath that he consulted with Executive Judge Estabaya regarding the return of the computer set. However, the latter strongly refuted Laranjo's claim, explaining that there was never an instance that he conferred with her regarding the return of the computer set because he never appeared before her nor attended any court-sanctioned meetings and important activities. Considering the circumstances surrounding the taking of the computer set, and given the lack of motive on the part of Executive Judge Estabaya to be untruthful on her disavowal, the Court is inclined to believe the latter's account and hence, upholds the finding that Laranjo indeed committed Serious Dishonesty in an attempt to exculpate himself for his inappropriate conduct.

4. ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL; GRAVE MISCONDUCT AND SERIOUS DISHONESTY ARE OF SIMILAR GRAVITY PUNISHABLE BY DISMISSAL FROM SERVICE WITH THE ACCESSORY PENALTIES. — In *Boston Finance and Investment Corporation v. Gonzalez*, the Court held that "[t]he administrative liability of court personnel (who are not judges or justices of the lower courts) [- as in this case -] shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules. [Accordingly,] [i]f the respondent court personnel is found guilty of multiple administrative offenses, the Court shall impose the penalty corresponding to the most serious charge, and the rest shall be considered as aggravating circumstances." Considering that both Grave Misconduct and Serious Dishonesty are of similar gravity and that both are punishable by dismissal from service under the pertinent civil service laws and rules applicable to Laranjo, he is thus punished with the said ultimate penalty, together with the attending administrative disabilities. In similar cases, where respondents therein were found guilty of Grave Misconduct or Serious Dishonesty, the Court imposed the penalty of dismissal from service, with the accessory penalties of cancellation of civil service eligibility, forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for reemployment in the government service. Accordingly, Laranjo should likewise be made to suffer the same.

D E C I S I O N

***PER CURIAM*:**

Before the Court is an administrative matter against Clerk of Court II Lou D. Laranjo (Laranjo) of the Municipal Circuit Trial Court of Lugait-Manticao-Naawan, Misamis Oriental (MCTC), which stemmed from a Resolution[1] dated April 11, 2018 of the Court, referring the Report[2] February 9, 2018 of Executive Judge Marissa P. Estabaya (Executive Judge Estabaya) of the Regional Trial Court of Initao, Misamis Oriental, Branch 44 (RTC) to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation.

The Facts

In a Letter[3] dated September 29, 2015, MCTC Presiding Judge Renato T. Arroyo (Presiding Judge Arroyo) informed the OCA that Laranjo surreptitiously took away[4] the computer set used by MCTC Court Stenographer I Neza L. Malinao (Malinao) and returned it to the Municipality of Naawan, Misamis Oriental, which earlier donated it to the court.[5] The computer files of Malinao allegedly contained sensitive information, such as the identities and testimonies of confidential agents and informants in search warrant applications in illegal drug cases. It was averred that Laranjo's act was arbitrary and unauthorized as the computer set was taken during nighttime and on a weekend.[6]

---

[1] See Notice of Resolution signed by Deputy Division Clerk of Court Teresita Aquino Tuazon; *id*. at 93.

[2] *Id*. at 42-47.

[3] *Id*. at 1.

[4] To note, the computer set was allegedly taken sometime during the weekend of September 19 and 20, 2015. *Id* at 2.

[5] See letter dated September 21, 2015 of Malinao; *id*.

[6] See *id*. at 1 and 100-101.

In his comment[7] dated March 1, 2016, Laranjo denied the accusations and claimed that the computer set was under his sole responsibility as the MCTC Clerk of Court.[8] He added that before returning it to its donor, he instructed Malinao to transfer all her files to another computer unit inside Presiding Judge Arroyo's chambers, and that he returned the computer set after consultation with Executive Judge Estabaya.[9]

In a Resolution[10] dated July 12, 2017, the Court, upon recommendation of the OCA, referred the administrative matter to Executive Judge Estabaya for investigation, report, and recommendation.[11]

Accordingly, in a Report[12] dated February 9, 2018, Executive Judge Estabaya recommended that Laranjo be dismissed from service,[13] observing that Laranjo's act of taking the computer set without any authority and in blatant disregard of the instructions of his superior, Presiding Judge Arroyo, constituted Grave Misconduct.[14] In this regard, she pointed out that while the clerk of court functions as the custodian of the properties of the court, Laranjo is still under the direct supervision of the Presiding Judge. Also, she noted Laranjo's suspicious taking out of the computer set on a weekend, when no one was in the office. Further, Executive Judge Estabaya remarked that Laranjo's reputation remains questionable, considering that he as id his wife were charged with violation of Illegal Possession of Dangerous Drugs, and that he, in fact, had been detained

---

[7] *Id*. at 8-11.

[8] See *id*. at 9.

[9] See *id*. at 9-10 and 101.

[10] See Notice of Resolution signed by Division Clerk of Court Edgar O. Aricheta; *id*. at 38-39.

[11] See *id*. at 39.

[12] *Id*. at 42-47.

[13] See *id*. at 47.

[14] See *id*. at 46.

at the Bureau of Jail Management and Penology, Initao District Jail since September 26, 2017.[15]

Moreover, Executive Judge Estabaya disclaimed Laranjo's assertion that he consulted with her regarding the return of the computer set. According to Executive Judge Estabaya, Laranjo never conferred with her nor attended any court-sanctioned meetings and important activities;[16] hence, he committed dishonesty by lying in his comment[17] which was made under oath.

The OCA's Report and Recommendation

In a Memorandum[18] dated June 28, 2018, the OCA recommended that: (*a*) this case be re-docketed as a regular administrative matter; and (*b*) Laranjo be found guilty of Grave Misconduct and Serious Dishonesty, and accordingly, be dismissed from service with cancellation of eligibility perpetual disqualification from holding public office, and forfeiture of retirement benefits, except accrued leave credits.[19]

The OCA found substantial evidence to hold Laranjo guilty of Grave Misconduct for returning the court's property to its donor without the authority of his superior in violation of his avowed duty to always act with propriety and proper decorum.[20] He was also found guilty of Serious Dishonesty in view of his untruthful statements in his sworn comment that he consulted with Executive Judge Estabaya before taking out the computer

---

[15] See *id*. at 44 and 47. Per records, Laranjo was considered on automatic leave of absence during the period of his detention until he is released from jail (see *id*. at 95).

[16] See *id*. at 45-47.

[17] See *id*. at 45-46.

[18] *Id*. at 100-106. Signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino.

[19] *Id*. at 105-106.

[20] See *id*. at 104.

set from the court.[21] Notably, the OCA observed that the circumstanced cast doubt on Laranjo's real intention in taking out the computer set, considering his arrest for involvement in illegal drug activities, and that the computer set taken contained sensitive and confidential information related to search warrant applications in drug cases.[22]

The Issue Before the Court

The issue for the Court's resolution is whether or not Laranjo should be held administratively liable for Grave Misconduct and Serious Dishonesty.

The Court's Ruling

The Court concurs with the OCA's findings and recommendation.

Time and again, the Court has emphasized that clerks of court perform a delicate function as designated custodians of the court's funds and revenues, records, properties, and premises.[23] It is the clerks of court's obligation to faithfully perform their duties and responsibilities as such to the end that there is full compliance with their function of being the custodian. Their failure to do so makes them liable for any loss, shortage, destruction or impairment of such funds and property.[24] Thus, "[t]he nature of the work and of the office mandates that the [c]lerk of [c]ourt be an individual of competence, honesty and integrity."[25]

---

[21] See *id*. at 104-105.

[22] See *id*.

[23] See *Commission on Audit v. Asetre*, 692 Phil. 164, 177-178 (2012); Section 7, Rule 136 of the Rules of Court; and Section B, Chapter 1 of the 2002 *REVISED MANUAL FOR CLERKS OF COURTS*, approved on May 28, 2002.

[24] See *Commission on Audit v. Asetre*, *id*. at 178.

[25] See Section B, Chapter 1 of the 2002 REVISED MANUAL FOR CLERKS OF COURTS, A.M. No. 02-5-07- SC, May 28, 2002.

In this case, the Court finds that Laranjo miserably failed to live up to these stringent standards, as it has been established that Laranjo surreptitiously took the computer set assigned to Malinao and returned the same to its alleged donor although the same was still serviceable,[26] and worse, without the authority of his superior, Presiding Judge Arroyo. As the OCA correctly observed, "[w]hile it is correct that he is the custodian of the court's properties and supplies, he must be reminded that he is still under the direct supervision of the Presiding Judge.[27] [Thus] [it] is beyond cavil that his act of returning the court's property to its donor was unauthorized and even contrary to the express instructions of [Presiding] Judge Arroyo."[28]

Notably, aside from the lack of authorization, the records are bereft of any credible justification on Laranjo's part as to why he pursued such course of action. In addition, the surrounding circumstances relative to such taking render suspect Laranjo's acts. As pointed out by the OCA:

> Apart from the fact that the act of [Laranjo] was arbitrary and unauthorized, **it is noteworthy that the taking of the subject computer set was done under suspicious circumstances, *i.e.*, it was effected during nighttime and on a weekend**. As manifested by Judge Arroyo in his letter dated 29 September 2015, the computer contained sensitive and confidential information, particularly those relating to search warrant applications in drug cases, which they "*do not wish to be accessed by the Clerk of Court for reasons (they) can [divulge] only in camera or during a formal investigation*.'" Remarkably, [Laranjo] has been embroiled in illegal drug activities, for which he was eventually arrested in a buy-bust operation for illegal possession of 36.7629 grams of suspected*methamphetamine hydrochloride* on 21 September 2017. **These circumstances created doubt on the real intention of [Laranjo] in taking the subject IT equipment out of the court. One cannot help but entertain the idea that he took the**

---

[26] See *rollo*, p. 101.

[27] D. General Functions and Duties of Clerks of Court and Other Court Personnel, paragraphs 1.2.1. and 1.2.2. of the 2002 REVISED MANUAL FOR CLERKS OF COURT.

[28] *Rollo*, p. 104.

computer [set] to gain access to the confidential matters contained therein.

Such circumstances evince [Laranjo's] proclivity to abuse his authority or, worse, to betray the public function entrusted to him as a court employee for his personal advantage and aggrandizement. His actions did not only violate his avowed duty to always act with propriety and proper decorum, but also absolutely demonstrated grave misconduct.[29] (Emphases and underscoring supplied)

In light of the foregoing, the Court sustains the OCA's finding that Laranjo is administratively liable for Grave Misconduct. Based on case law, "[m]isconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. Any transgression or deviation from the established norm of conduct, work-related or not, amounts to misconduct. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules,"[30] as in this case.

The Court also sustains the OCA's finding that Laranjo is administratively liable for Serious Dishonesty. In a long line of cases, dishonesty has been defined as a disposition to lie, cheat, deceive, or defraud; unworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive, or betray.[31]

As pointed out by the OCA, in Laranjo's comment, he swore under oath that he consulted with Executive Judge Estabaya regarding the return of the computer set.[32] However, the latter strongly refuted Laranjo's claim, explaining that there was never an instance that he conferred with her regarding the return of

---

[29] *Id.*

[30] *Barcena v. Abadilla*, A.M. No. P-16-3564, January 24, 2017, 815 SCRA 259, 276.

[31] *OCA v. Viesca*, 758 Phil. 16, 27 (2015).

[32] See *rollo*, pp. 9-10.

the computer set because he never appeared before her nor attended any court-sanctioned meetings and important activities.[33] Considering the circumstances surrounding the taking of the computer set, and given the lack of motive on the part of Executive Judge Estabaya to be untruthful on her disavowal, the Court is inclined to believe the latter's account and hence, upholds the finding that Laranjo indeed committed Serious Dishonesty in an attempt to exculpate himself for his inappropriate conduct.

In *Boston Finance and Investment Corporation v. Gonzalez*,[34] the Court held that "[t]he administrative liability of court personnel (who are not judges or justices of the lower courts) [- as in this case -] shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules. [Accordingly,] [i]f the respondent court personnel is found guilty of multiple administrative offenses, the Court shall impose the penalty corresponding to the most serious charge, and the rest shall be considered as aggravating circumstances." Considering that both Grave Misconduct and Serious Dishonesty are of similar gravity and that both are punishable by dismissal from service under the pertinent civil service laws and rules applicable to Laranjo,[35] he is thus punished with the said ultimate penalty, together with the attending administrative disabilities.[36]

In similar cases,[37] where respondents therein were found guilty of Grave Misconduct or Serious Dishonesty, the Court imposed the penalty of dismissal from service, with the accessory

---

[33] See *id*. at 45.

[34] See A.M. No. RTJ-18-2520, October 9, 2018.

[35] See Section 46 (A) (1) and (2) of the *REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE* (RRACCS), CSC Resolution No. 1101502, promulgated on November 8, 2011.

[36] See Section 52 (a), RRACCS.

[37] See *OCA v. Umblas*, A.M. No. P-09-2649, August 1, 2017, 833 SCRA 502; *OCA v. Dequito*, 799 Phil. 607 (2016); and *Committee on Security and Safety v. Dianco*, 760 Phil. 169 (2015).

penalties of cancellation of civil service eligibility, forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for reemployment in the government service. Accordingly, Laranjo should likewise be made to suffer the same.

"As a final note, 'it must be emphasized that those in the Judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. The Institution demands the best possible individuals in the service and it had 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. As such, the Court will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus tainting its image in the eyes of the public.'"[38]

WHEREFORE, respondent Lou D. Laranjo, Clerk of Court II, Municipal Circuit Trial Court, Lugait-Manticao-Naawan, Misamis Oriental is found **GUILTY** of Grave Misconduct and Serious Dishonesty. Accordingly, he is **DISMISSED** from service with cancellation of civil service eligibility, perpetual disqualification from holding public office, and forfeiture of retirement benefits, except accrued leave credits.

SO ORDERED.

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

Caguioa and *Carandang, JJ.*, on official leave.

---

[38] *Judaya v. Balbona*, A.M. No. P-06-2279, June 6, 2017, 826 SCRA 81, 90.

EN BANC

[G.R. No. 211293. June 4, 2019]

ADELAIDO ORIONDO, TEODORO M. HERNANDEZ, RENATO L. BASCO, CARMEN MERINO, AND REYNALDO SALVADOR, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULES 45 AND 64, DISTINGUISHED; THE REMEDY AGAINST AN ADVERSE DECISION, ORDER OR RULING OF THE COMMISSION ON AUDIT IS A PETITION FOR CERTIORARI BASED ON ARTICLE IX-A, SECTION 7 OF THE CONSTITUTION. — A petition for review on *certiorari* is the remedy provided in Rule 45, Section 1 of the Rules of Court against an adverse judgment, final order, or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law: x x x On the other hand, Rule 64 of the Rules of Court pertains to "Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit." Section 1 of Rule 64 defines the scope of the Rule, while Section 2 refers to "Mode of Review" and provides that the judgments, final orders, and resolutions of the Commission on Audit are to be brought on certiorari to this Court under Rule 65. x x x The foregoing provisions readily reveal that a Petition for Review on Certiorari under Rule 45 is an appeal and a true review that involves "digging into the merits and unearthing errors of judgment." However, despite the repeated use of the word "review" in Rule 64, the remedy is principally one for certiorari that "deals exclusively with grave abuse of discretion, which may not exist even when the decision is otherwise erroneous." That the remedy against an adverse decision, order, or ruling of the Commission on Audit is a petition for *certiorari*, not review or appeal, is based on Article IX-A, Section 7 of the Constitution, x x x This is affirmed in *Reyna v. Commission on Audit*, where the Court maintained its certiorari jurisdiction over judgments, final orders or resolutions of the Commission on Audit: x x x We agree with respondent

Commission that petitioners erroneously denominated their Petition as a "Petition for Review on Certiorari." Except for the designation, however, we find that the Petition was filed under Rule 64 of the Rules of Court given that the Petition refers to Rule 64 and was filed within 30 days from notice of the Resolution dated December 6, 2013 denying petitioners' Motion for Reconsideration before the Commission on Audit. Therefore, we shall resolve the Petition in the exercise of our *certiorari* jurisdiction under Article IX-A, Section 7 of the Constitution.

2. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT; JURISDICTION; COMPETENCE TO DETERMINE THE STATUS OF AN ENTITY AS A GOVERNMENT-OWNED OR CONTROLLED CORPORATION, UPHELD. — The Constitution, the Administrative Code of 1987, and the Government Auditing Code of the Philippines define the powers of the Commission on Audit. x x x [T]he Commission on Audit generally has audit jurisdiction over public entities. In the Administrative Code's Introductory Provisions, the Commission on Audit is even allowed to categorize government-owned or controlled corporations for purposes of the exercise and discharge of its powers, functions, and responsibilities with respect to such corporations. The extent of the Commission on Audit's audit authority even extends to non-governmental entities that receive subsidy or equity from or through the government. Therefore, it is absurd for petitioners to challenge the competency of the Commission on Audit to determine whether or not an entity is a government-owned or controlled corporation. Jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong," and the determination of whether or not an entity is the proper subject of its audit jurisdiction is a necessary part of the Commission's constitutional mandate to examine and audit the government as well as non-government entities that receive subsidies from it. To insist on petitioners' argument would be to impede the Commission on Audit's exercise of its powers and functions.

3. ID.; ID.; ID.; ID.; ID.; INCLUDES THOSE ALTHOUGH NOT CONSIDERED GOVERNMENT-OWNED OR CONTROLLED CORPORATION, BUT RECEIVES FUND FROM THE GOVERNMENT. — The term "government-owned or controlled corporation" is defined in several laws: Presidential Decree No.

2029 (in Section 2), issued by then President Ferdinand E. Marcos x x x The Administrative Code, in Section 2(13) of its Introductory Provisions, x x x In Republic Act No. 10149, otherwise known as the GOCC Governance Act of 2011, (Section 3(o): x x x [Thus,] an entity is considered a government-owned or controlled corporation if all three (3) attributes are present: (1) the entity is organized as a stock or non-stock corporation; (2) its functions are public in character; and (3) it is owned or, at the very least, controlled by the government. x x x [However,] this Court held in *Funa v. Manila Economic and Cultural Office* that respondent corporation [although] not a government-owned or controlled corporation [because of the absence of the third attribute, i.e., government ownership or control,] it was declared a "sui generis entity" whose accounts were nevertheless subject to the audit jurisdiction of the Commission on Audit because it receives funds on behalf of the government. As for the Executive Committee of the Metro Manila Film Festival, the Court declared that is not a government-owned or controlled corporation in *Fernando v. Commission on Audit* because it was not organized either as a stock or a non-stock corporation. Despite the absence of the first element, the Court held that it is subject to the audit jurisdiction of the Commission on Audit because it receives its funds from the government.

4. **ID.; ID.; ID.; ID.; THE CORREGIDOR FOUNDATION, INC. IS A GOVERNMENT-OWNED OR CONTROLLED CORPORATION UNDER THE AUDIT JURISDICTION OF THE COMMISSION ON AUDIT. ––** [T]he Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit jurisdiction of the Commission on Audit. Corregidor Foundation, Inc. was organized as a non-stock corporation under the Corporation Code. It was issued a certificate of registration by the Securities and Exchange Commission on October 28, 1987 and, according to its Articles of Incorporation, Corregidor Foundation, Inc. was organized and to be operated in the public interest: x x x Corregidor Foundation, Inc. was organized primarily to maintain and preserve the war relics in Corregidor and develop the area's potential as an international and local tourist destination. Its Articles of Incorporation provides purposes x x x [that] are related to the promotion and development of tourism in the country, a declared state policy and, therefore,

a function public in character. When Corregidor Foundation, Inc. was organized, all of its incorporators were government officials, x x x Corregidor Foundation, Inc.'s Articles of Incorporation also require that the members of its Board of Trustees be all government officials and shall so hold their position as members of the Board by reason of their office: x x x There is no showing that these requirements were ever amended. As the foregoing established, the government has substantial participation in the selection of Corregidor Foundation, Inc.'s governing board. The government controls Corregidor Foundation, Inc. making it a government-owned or controlled corporation.

5. ID.; ID.; ID.; ID.; THE CORREGIDOR FOUNDATION, INC. AS GOVERNMENT-OWNED OR CONTROLLED CORPORATION, UNDER THE AUDIT JURISDICTION OF THE COMMISSION ON AUDIT. ESTABLISHED FURTHER. —– Petitioners contend that Corregidor Foundation, Inc. x x x was not organized as a stock corporation and was incorporated under a general law, not a special law or an original charter. x x x A government-owned or controlled corporation [may be] "stock or non-stock corporation. . ." Furthermore, there is nothing in the law which provides that government-owned or controlled corporations are always created under an original charter or special law. x x x Just because the employees of Corregidor Foundation, Inc. are not under the jurisdiction of the Civil Service Commission does not mean that Corregidor Foundation, Inc. is not government-owned or controlled. Article IX-B, Section 2(1) of the Constitution is clear that the jurisdiction of the Civil Service Commission is over government-owned or controlled corporations with original charters, not over those without original charters like Corregidor Foundation, Inc. x x x Also, there is no proof that Corregidor Foundation, Inc.'s funding primarily comes from grants and donations of international organizations or foreign entities as petitioners contend. On the contrary, for the period audited by the Commission on Audit or in 2003, 99.66% of Corregidor Foundation, Inc.'s budget x x x came from the government, specifically, from the Department of Tourism, Duty Free Philippines, and the Philippine Tourism Authority. This was never controverted by petitioners. x x x At any rate, even if it were true that Corregidor Foundation, Inc. is funded by international organizations and foreign entities, these foreign

grants already became public funds the moment they were donated to Corregidor Foundation, Inc. Thus, these funds may be audited by the Commission on Audit. x x x Lastly, while it is true that just like any other corporation organized under the Corporation Code, Corregidor Foundation, Inc. may determine voluntarily and solely the successors of its members in accordance with its own by-laws, this does not change the public character of its functions and the control the government has over it. As discussed, the promotion and development of tourism is a public function and, as provided in its Articles of Incorporation, the members of Corregidor Foundation, Inc. must be government officials who shall hold their membership by reason of their office.

6. ID.; ID.; ID.; NOTICE OF DISALLOWANCE; UPHELD AS PETITIONERS WERE NOT ENTITLED TO THE ADDITIONAL HONORARIA RECEIVED. — There are cases where this Court, despite the disallowance by the Commission on Audit, nevertheless enjoined the refund of the disallowed amounts. In these instances, this Court found that the parties received the disallowed amounts in good faith, defined as "that state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry." It also means "an honest intention to abstain from taking any unconscientious disadvantage of another, even though technicalities of law, together with the absence of all information, notice, or benefit or belief of facts which render transactions unconscientious." Here, we cannot ascribe good faith to petitioners in receiving the disallowed amounts. x x x [P]etitioners knew fully well that they [are not entitled to the honoraria]. It is also undisputed that petitioners, as officers and personnel of the Philippine Tourism Authority, already received honoraria and cash gifts. x x x [R]eceiving another set of honoraria and cash gift for rendering services to the Corregidor Foundation, Inc. would be tantamount to payment of additional compensation proscribed in Article IX-B, Section 8 of the Constitution. These circumstances negate any claim of good faith.

APPEARANCES OF COUNSEL

Teodoro M. Hernandez for petitioners.
The Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

A corporation, whether with or without an original charter, is under the audit jurisdiction of the Commission on Audit so long as the government owns or has controlling interest in it.

This resolves the Petition[1] under Rule 64 of the Rules of Court filed by Adelaido Oriondo, Teodoro M. Hernandez, Renato L. Basco, Carmen, Merino, and Reynaldo Salvador, former officers of the Philippine Tourism Authority who had received honoraria and cash gifts for concurrently rendering services to Corregidor Foundation, Inc. They assail the Commission on Audit's Decision[2] No. 2010-095 dated October 21, 2010 and Resolution[3] dated December 6, 2013, disallowing the payment of the honoraria and cash gifts to them for being contrary to Department of Budget and Management Budget Circular No. 2003-5 on the payment of honoraria and Article IX-B, Section 8[4] of the Constitution prohibiting the payment of additional or double compensation.

The submissions of the parties present the following facts.

---

[1] *Rollo*, pp. 3-24.

[2] *Id*. at 25-29. The Commission on Audit Commission Proper was composed of Chair Reynaldo A. Villar and Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura.

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

[4] CONST., Art. IX-B, Sec. 8 provides:

SECTION 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government. Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Executive Order No. 58, series of 1954,[5] made certain battlefield areas in Corregidor open to the public and accessible as tourist attractions. Executive Order No. 123, series of 1968, further amended Executive Order No. 58, thereby authorizing the Ministry of National Defense to enter into contracts for the conversion of areas within the Corregidor as tourist spots.[6]

Pursuant to Executive Order No. 123, the Ministry of National Defense and the Philippine Tourism Authority executed a Memorandum of Agreement[7] dated July 10, 1986 for the development of Corregidor and its neighboring islands into major tourist attractions. Specifically, the Ministry of National Defense, with prior approval of the President, leased the entire island of Corregidor to the Philippine Tourism Authority for one peso (₱1.00). As for the Philippine Tourism Authority, it undertook to maintain and preserve the war relics on the island and to fully develop Corregidor's potential as an international and local tourist destination. The Philippine Tourism Authority was thus authorized to "[p]ackage and source the necessary funds to develop and restore the Corregidor Island group."[8]

On February 6, 1987, the Philippine Tourism Authority Board of Directors adopted Resolution No. B-7-87,[9] approving the creation of a foundation for the development of Corregidor. On October 28, 1987, the Corregidor Foundation, Inc. was incorporated under Securities and Exchange Commission Registration No. 145674.[10]

---

[5] Available at <https://www.officialgazette.gov.ph/1954/08/16/executive-order-no-58-s-1954/> (last accessed April 12, 2019).

[6] *Rollo*, p. 32, Annex "C" of the Petition. *See also* <https://www.officialgazette.gov.ph/1968/03/15/executive-order-no-123-s-1968/> (last accessed April 12, 2019).

[7] *Id*. at 34-35.

[8] *Id*. at 35.

[9] *Id*. at 36.

[10] *Id*. at 38. Annex G of the Petition.

On August 3, 1993, the Philippine Tourism Authority executed a Memorandum of Agreement[11] with Corregidor Foundation, Inc. to centralize the island's planning and development. The Philippine Tourism Authority agreed to release to the Corregidor Foundation, Inc. its operating funds based on a budget for its approval. For its part, the Corregidor Foundation, Inc. agreed to submit a quarterly report on the receipts and disbursements of Philippine Tourism Authority funds. It additionally agreed to deposit all collections of revenues in a distinct and separate account in the name of the island of Corregidor, with the disposition of the funds at the sole discretion of the Philippine Tourism Authority.

Another Memorandum of Agreement[12] was subsequently entered into by the Philippine Tourism Authority and the Corregidor Foundation, Inc. on September 3, 1996. The subsequent Agreement reiterated the provisions of the August 3, 1993 Agreement but added some stipulations. In particular, the second paragraph of item 4 was included, providing that the disbursements of the Philippine Tourism Authority's funds by Corregidor Foundation, Inc. shall be subject to the audit of the Internal Auditor of the Philippine Tourism Authority and the Commission on Audit.

On February 14, 2005, the Commission on Audit, through Audit Team Leader Divina M. Telan, issued Audit Observation Memorandum No. 2004-002[13] for comments of then Corregidor Foundation, Inc. Executive Director Artemio G. Matibag. There, the Audit Team noted that the following personnel of the Philippine Tourism Authority who were concurrently rendering services in Corregidor Foundation, Inc. received honoraria and cash gifts in 2003, to wit:

---

[11] *Id*. at 46-47. Annex J of the Petition.

[12] *Id*. at 53-55, Annex L of the Petition.

[13] *Id*. at 62-64, Annex R of the Petition.

Name	Position	Bonus	Cash Gift	Total
Adelaido Oriondo	Treasurer/Deputy General Manager of the Philippine Tourism Authority	42,000	1,500	43,500
Teodoro Hernandez	Corporate Secretary	42,000	1,500	43,500
Renato L. Basco	Technical Assistant	16,000	1,500	17,500
Carmen Merino	Executive Secretary A	9,600	1,500	11,100
Reynaldo Salvador	Utility Worker A	14,400	1,500	15,900
Total		124,000	7,500	131,500

The Audit Team was of the opinion that the grant of honoraria to Oriondo, Hernandez, Basco, Merino, and Salvador were contrary to Department of Budget and Management Circular No. 2003-5.[14] This budget circular, applicable to all national government agencies, government-owned and/or controlled corporations, and government financial institutions, enumerated in item 4 those exclusively entitled to honoraria:

4. General Guidelines

Heads of entities are authorized to use their respective appropriation for the payment of honoraria only to the following:

4.1. teaching personnel of the Department of Education, Commission on Higher Education, Technical Education and Skills Development Authority, State Universities and Colleges and other educational institutions engaged in actual classroom teaching whose teaching load is outside of the regular office hours and/or in excess of the regular load;

4.2 those who act as lecturers, resource persons, coordinators and facilitators in seminars, training programs and other similar activities in training institutions, including those conducted by entities for their officials and employees; and

---

[14] *Id*. at 73-75, Annex U of the Petition.

> 4.3. chairs and members of Commissions/Board Councils and other similar entities which are hereinafter referred to as a collegial body including the personnel thereof, who are neither paid salaries nor per diems but compensated in the form of honoraria as provided by law, rules and regulations.[15]

Further, according to the Audit Team, the cash gifts given to Oriondo, Hernandez, Basco, Merino, and Salvador, as officers of the Corregidor Foundation, Inc., constituted double compensation prohibited in Article IX-B, Section 8[16] of the Constitution because they had already received honoraria and cash gifts as employees of the Philippine Tourism Authority.[17]

The Audit Team thus recommended that Corregidor Foundation, Inc. comply with Budget Circular No. 2003-5; otherwise, it would be constrained to recommend the disallowance of the amounts paid as honoraria and cash gift.[18]

On June 15, 2006, the Legal and Adjudication Office-Corporate of the Commission on Audit issued Notice of Disallowance No. CFI-2006-001,[19] disallowing in audit the honoraria and cash gift paid to Oriondo, Hernandez, Basco, Merino, and Salvador. Aside from the payees, the persons made liable for the amount were Corregidor Foundation, Inc.'s Chief Accountant Noria Jane Perez, Finance Office Lauro Legazpi, and Executive Director Artemio G. Matibag.[20]

---

[15] *Id*. at 74.

[16] CONST., Art. IX-B, Sec. 8 provides:

> SECTION 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.
>
> Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

[17] *Rollo*, p. 63.

[18] *Id*.

[19] *Id*. at 66-69, Annex S of the Petition.

[20] *Id*. at 66-67.

Oriondo, Hernandez, Basco, Merino, and Salvador filed a Motion for Reconsideration of the Notice of Disallowance, arguing that Corregidor Foundation, Inc. is a private corporation created under the Corporation Code and, therefore, cannot be audited by the Commission on Audit.[21] This was denied by the Legal Adjudication Office-Corporate in its Decision No. 2007-037,[22] where it held that Corregidor Foundation, Inc. is a government-owned or controlled corporation.

The appeal filed was likewise denied by the Adjudication and Settlement Board of the Commission on Audit in Decision No. 2009-002.[23] Citing the definition of a government owned or controlled corporation in the Administrative Code of 1987, the Adjudication and Settlement Board held that Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit powers of the Commission on Audit. Corregidor Foundation, Inc., according to the Adjudication and Settlement Board, is a non-stock corporation which receives funds from the government, through the Philippine Tourism Authority. The Adjudication and Settlement Board highlighted that Memorandum of Agreement dated September 3, 1996 provided that the funds received and disbursed by the Corregidor Foundation, Inc. is subject to the audit of the Internal Auditor of the Philippine Tourism Authority and the Commission on Audit. Finally, Corregidor Foundation, Inc. was deemed created for a public purpose, which is the maintenance and preservation of Corregidor.

Considering that Corregidor Foundation, Inc. is a government-owned or controlled corporation, the Adjudication and Settlement

---

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

[22] *Id*. at 76-79, Annex V of the Petition. The Decision was penned by Ms. Janet D. Nation, Director IV.

[23] *Id*. at 80-85, Annex W of the Petition. The Adjudication and Settlement Board was composed of Chairperson Elizabeth S. Zosa, Assistant Commissioner-Legal Services; and Members Emma M. Espina, Assistant Commissioner-National; Carmela S. Perez, Assistant Commissioner-Government Accountancy; Jaime P. Naranjo, Assistant Commissioner-Corporate; and Gloria S. Cornejo, Assistant Commissioner-Local.

Board held the foundation is subject to Budget Circular No. 2003-5 and 2003-02, limiting the grant of honoraria to specific government personnel, and Article IX-B, Section 8 of the Constitution prohibiting double compensation.[24]

The dispositive portion of the Adjudication and Settlement Board's Decision No. 2009-002 read:

> WHEREFORE, the foregoing premises considered, this Board hereby **DENIES** the instant appeal for want of merit. Accordingly, LAO-Corporate Decision No. 2007-037 dated June 07, 2007 sustaining ND No. CFI-2006-001 dated June 15, 2006 is **AFFIRMED**.[25] (Emphasis in the original)

Oriondo, Hernandez, Basco, Merino, and Salvador appealed[26] Decision No. 2009-002, but the appeal was denied by the Commission on Audit in its October 21, 2010 Decision No. 2010-095.[27]

The Commission on Audit Commission Proper maintained that the Corregidor Foundation, Inc. is a government-owned or controlled corporation given the following circumstances: (1) the incorporators of the Corregidor Foundation, Inc. are all government officials; (2) the Corregidor Foundation, Inc. is substantially subsidized by the government, with 99.66% of its budget coming from the Department of Tourism, Duty Free Philippines, and the Philippine Tourism Authority; (3) the budget of Corregidor Foundation, Inc. needs prior approval of the Philippine Tourism Authority; (4) Corregidor Foundation, Inc. is required to submit a quarterly report of its receipts and disbursement of Philippine Tourism Authority funds; (5) all

---

[24] *Id*. at 84.

[25] *Id*.

[26] *Id*. at 86-89, Annex X of the Petition. The pleading filed was a Motion for Reconsideration, but was treated as an appeal.

[27] *Id*. at 25-29, Annex A of the Petition. The Commission on Audit Commission Proper was composed of Chair Reynaldo A. Villar and Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura.

collections of revenues are to be deposited and taken up in the books of Corregidor Foundation, Inc. as accountability to the Philippine Tourism Authority, and the disposition of the funds are at the sole discretion of the Philippine Tourism Authority; and (6) Corregidor Foundation, Inc. has no authority to dispose of the properties subject of the Memorandum of Agreement.[28]

While it is true that Corregidor Foundation, Inc. was organized under the Corporation Code, the Commission Proper, citing *Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*,[29] held that it is the "totality test"—the totality of the relation of a corporation to the State-that determines a corporation's status as a government-owned or controlled corporation. Given that Corregidor Foundation, Inc. was created by the State as its own instrumentality to carry out a governmental function, the Commission Proper concluded that Corregidor Foundation, Inc. should be considered a public corporation.

The Commission proper added that coverage under the Social Security System "is but a consequence of [Corregidor Foundation, Inc.'s] insistence that it is a private corporation, not *a priori* reason that it is."[30]

Given the foregoing premises, the Commission Proper held that Corregidor Foundation, Inc. is a government-owned or controlled corporation subject to Budget Circular No. 2003-5 and Article IX-B, Section 8 of the Constitution. Corregidor Foundation, Inc. had no authority to grant honoraria to its personnel and give cash gifts to its employees who were concurrently holding a position in the Philippine Tourism Authority.

The dispositive portion of the Commission on Audit's Decision No. 2010-095 read:

---

[28] *Id*. at 27-28.

[29] 560 Phil. 385 (2007) [Per *J*. Austria-Martinez, *En Banc*].

[30] *Rollo*, p. 28.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, ASB Decision No. 2009-002 dated January 26, 2009 is **AFFIRMED**.[31] (Emphasis in the original)

Oriondo, Hernandez, Basco, Merino, and Salvador filed a Motion for Reconsideration, which the Commission on Audit *En Banc* denied in a its December 5, 2013 Resolution[32] thus:

> The [Commission on Audit Proper] denied the Motion for Reconsideration for lack of merit and affirmed with finality COA Decision No. 2010-095 dated October 21, 2010 affirming the disallowance on the grant of honoraria and cash gift to the Philippine Tourism Authority employees who are rendering services to Corregidor Foundation[,] Inc. in the amount of ₱131,500.00. The movant failed to present new and material evidence that would warrant a reversal or modification of the assailed decision.[33]

On March 14, 2014, Oriondo, Hernandez, Basco, Merino, and Salvador filed before this Court a Petition[34] designated as a "Petition for Review on Certiorari"[35] under Rule 64 of the Rules of Court. The Commission on Audit, through the Office of the Solicitor General, filed its Comment[36] on June 25, 2014, to which Oriondo, Hernandez, Basco, Merino, and Salvador replied[37] on October 7, 2014. Upon the directive of this Court,[38] the parties filed their respective Memoranda.[39]

---

[31] *Id*. at 29.

[32] *Id*. at 30-31, Annex B of the Petition.

[33] *Id*. at 30.

[34] *Id*. at 3-24.

[35] *Id*. at 3.

[36] *Id*. at 105-117.

[37] *Id*. at 125-137.

[38] *Id*. at 138-139, Resolution dated October 14, 2014.

[39] *Id*. at 147-165, Memorandum for Petitioners; and 166-183, Memorandum for the Respondent.

According to petitioners, a cursory reading of Article IX-D, Section 2[40] of the Constitution reveals that the Commission on Audit has no power to determine whether an entity is a government-owned or controlled corporation. Petitioners maintain that the Commission on Audit had no jurisdiction to conduct a post-audit of Corregidor Foundation, Inc.'s disbursements on the basis of its own determination of Corregidor Foundation's status as a government-owned or controlled corporation. Consequently, the Commission's rulings on the grant of honoraria and cash gifts are allegedly null and void.[41]

On the threshold issue, petitioners insist that Corregidor Foundation, Inc. is *not* a government-owned or controlled corporation due to the following reasons: (1) Corregidor Foundation, Inc. is neither organized as a stock corporation nor is it created by a special law or is governed by a charter created by a special law;[42] (2) Corregidor Foundation, Inc. was organized as a private corporation under the general corporation law, and its assets are allegedly its exclusive property, not

---

[40] CONST., Art. IX-D, Sec. 2(1) provides:

SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

[41] *Rollo*, pp. 159-160.

[42] *Id*. at 152-155.

government-owned;[43] (3) the personnel of Corregidor Foundation, Inc. are under the coverage of the Social Security System, further showing that Corregidor Foundation, Inc. is a private corporation;[44] (4) its funds come primarily from grants and donations of international organizations and foreign entities, not from the National Government considering that its funding was never provided in the General Appropriations Act;[45] and (5) the quarterly reports submitted by Corregidor Foundation, Inc. is only based on its Memorandum of Agreement with the Philippine Tourism Authority, not because it is a government-owned or controlled corporation.[46]

Countering petitioners, respondent Commission on Audit first highlighted that the Petition was erroneously denominated as a "Petition for Review on Certiorari" under Rule 64 of the Rules of Court. "[T]here is no such thing as a Petition for Review under Rule 64,"[47] argued respondent Commission. The error notwithstanding, respondent Commission contends that the Petition should be treated as one for certiorari, specifically, to determine whether or not there was grave abuse of discretion on the part of the Commission on Audit in disallowing the grant of honoraria and cash gifts to petitioners.[48]

On whether or not it has the jurisdiction to determine whether an entity is a government-owned or controlled corporation, respondent Commission argues that it has the competence to make such determination. Pursuant to its constitutional duty to examine, audit, and settle all accounts pertaining to the revenue and expenditures of the government, including government-owned or controlled corporations, respondent Commission maintains

---

[43] *Id*. at 155-157.

[44] *Id*. at 157-158.

[45] *Id*. at 158.

[46] *Id*. at 158-159.

[47] *Id*. at 168.

[48] *Id*. at 168-169.

that the determination of the status of an entity as a government-owned or controlled corporation is but a "necessary incident to [the] performance of its duties and the discharge of its functions."[49] Respondent Commission asserts its competency to determine the status of Corregidor Foundation, Inc. as a government-owned or controlled corporation, arguing that it only applied the law on the matter.[50]

On the principal issue of whether or not Corregidor Foundation, Inc. is a government-owned or controlled corporation, respondent Commission answers in the affirmative. It cites *Philippine National Oil Company (PNOC) — Energy Development Corporation v. National Labor Relations Commission*[51] *and Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*[52] where this Court enunciated the criteria for determining the status of a corporation as government-owned or controlled. Respondent Commission thereafter noted the circumstances demonstrating that all these criteria are present in this case. First, Corregidor Foundation, Inc. is under the Department of Tourism, created to develop the tourism in the island of Corregidor. Second, the incorporators of Corregidor Foundation, Inc. are all government officials and all of its trustees are public officials sitting in an *ex officio* capacity.[53]

Respondent Commission maintains that Corregidor Foundation, Inc. was created by the State to carry out a governmental function as shown by the following: (1) Corregidor Foundation, Inc. is substantially subsidized by the government, with 99.66% of its budget, as audited, coming from the Department of Tourism, Duty Free Philippines, and the Philippine Tourism Authority; (2) Corregidor Foundation, Inc.'s budget is subject to the prior approval of the Philippine Tourism Authority; (3) Corregidor

---

[49] *Id.* at 175.

[50] *Id.* at 176.

[51] 294 Phil. 856 (1993) [Per *C J.* Narvasa, Second Division].

[52] 560 Phil. 385 (2007) [Per *J.* Austria-Martinez, *En Banc*].

[53] *Rollo*, p. 177.

Foundation, Inc. is required to submit a quarterly report on its receipts and disbursement of Philippine Tourism Authority funds; (4) all collections of revenues are deposited and taken up in the books of Corregidor Foundation, Inc. as accountability to the Philippine Tourism Authority; and (5) Corregidor Foundation, Inc. cannot encumber, mortgage, or alienate the premises subject of its Memorandum of Agreement with the Philippine Tourism Authority.[54] These allegedly show that the disallowed amounts were public funds, which are definitely within the audit jurisdiction of respondent Commission; thus, there was no grave abuse of discretion on the part of the Commission on Audit in issuing the Notice of Disallowance.

The issues for this Court's resolution are:

First, whether or not the Commission on Audit has jurisdiction to determine whether a corporation such as Corregidor Foundation, Inc. is a government-owned or controlled corporation; and

Second, whether or not Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit jurisdiction of the Commission on Audit.

The Petition is dismissed.

Respondent Commission on Audit did not gravely abuse its discretion in issuing Notice of Disallowance No. CFI-2006-001. It has the competency to determine the status of corporations such as Corregidor Foundation, Inc. as government-owned or controlled, and correctly found that Corregidor Foundation, Inc. is, indeed, a government-owned or controlled corporation under its audit jurisdiction.

I

We first address respondent Commission's contention that petitioners erroneously referred to their Petition as a "Petition for Review on Certiorari" under Rule 64 of the Rules of Court.

---

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

A petition for review on certiorari is the remedy provided in Rule 45, Section 1 of the Rules of Court against an adverse judgment, final order, or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law:

RULE 45
Appeal by Certiorari to the Supreme Court

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

On the other hand, Rule 64 of the Rules of Court pertains to "Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit." Section 1 of Rule 64 defines the scope of the Rule, while Section 2 refers to "Mode of Review" and provides that the judgments, final orders, and resolutions of the Commission on Audit are to be brought on certiorari to this Court under Rule 65. The pertinent provisions of Rules 64 and 65 are as follows:

RULE 64
Review of Judgments and Final Orders or Resolutions of the Commission on Elections and the Commission on Audit

SECTION 1. *Scope*. — This Rule shall govern the review of judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit.

SECTION 2. *Mode of Review*. — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided.

SECTION 3. *Time to File Petition*. — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new

trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

. . . . . .

RULE 65
Certiorari, Prohibition and Mandamus

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

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

. . . . . .

SECTION 4. *Where Petition Filed.* — The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

The foregoing provisions readily reveal that a Petition for Review on Certiorari under Rule 45 is an appeal and a true

review that involves "digging into the merits and unearthing errors of judgment."[55] However, despite the repeated use of the word "review" in Rule 64, the remedy is principally one for certiorari that "deals exclusively with grave abuse of discretion, which may not exist even when the decision is otherwise erroneous."[56]

That the remedy against an adverse decision, order, or ruling of the Commission on Audit is a petition for certiorari, not review or appeal, is based on Article IX-A, Section 7 of the Constitution, thus:

ARTICLE IX
Constitutional Commissions

A. *Common Provisions*

. . . . . .

SECTION 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. *Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.* (Emphasis Supplied)

This is affirmed in *Reyna v. Commission on Audit*,[57] where the Court maintained its certiorari jurisdiction over judgments, final orders or resolutions of the Commission on Audit:

In the absence of grave abuse of discretion, questions of fact cannot be raised in a petition for certiorari, under Rule 64 of the Rules of Court. The office of the petition for certiorari is not to correct

---

[55] *Aratuc v. Commission on Elections*, 177 Phil. 205, 223 (1979) [Per *J*. Barredo, *En Banc*].

[56] *Id*.

[57] 657 Phil. 209 (2011) [Per *J*. Peralta, *En Banc*].

simple errors of judgment; any resort to the said petition under Rule 64, in relation to Rule 65, of the 1997 Rules of Civil Procedure is limited to the resolution of jurisdictional issues.[58]

We agree with respondent Commission that petitioners erroneously denominated their Petition as a "Petition for Review on Certiorari." Except for the designation, however, we find that the Petition was filed under Rule 64 of the Rules of Court given that the Petition refers to Rule 64 and was filed within 30 days from notice of the Resolution dated December 6, 2013 denying petitioners' Motion for Reconsideration before the Commission on Audit. Therefore, we shall resolve the Petition in the exercise of our certiorari jurisdiction under Article IX-A, Section 7 of the Constitution.

II

The Constitution, the Administrative Code of 1987, and the Government Auditing Code of the Philippines define the powers of the Commission on Audit. Article IX-D, Section 2 of the Constitution provides:

> SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, *including government-owned or controlled corporations with original charters, and on a post-audit basis*: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; *(c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity*. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to

---

[58] *Id.* at 225.

correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, *to define the scope of its audit and examination*, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties. (Emphasis supplied)

A provision similar to Article IX-D, Section 2(1) is found in Book V, Title I, Subtitle B, Chapter 4, Section 11 of the Administrative Code:

SECTION 11. *General Jurisdiction*. — (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, *including government-owned or controlled corporations with original charters*, and *on a post-audit basis*: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; *(c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity*. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto. (Emphasis supplied)

The Government Auditing Code of the Philippines, in Section 26, likewise provides:

SECTION 26. *General Jurisdiction*. — The authority and powers of the Commission shall extend to and comprehend all matters relating

to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the *examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government*. (Emphasis supplied)

Based on the foregoing provisions, the Commission on Audit generally has audit jurisdiction over public entities.[59] In the Administrative Code's Introductory Provisions, the Commission on Audit is even allowed to categorize government-owned or controlled corporations for purposes of the exercise and discharge of its powers, functions, and responsibilities with respect to such corporations.[60]

---

[59] *Fernando v. Commission on Audit*, G.R. Nos. 237938 and 237944-45, December 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64808> [Per *J*. Tijam, *En Banc*]

[60] ADM. CODE OF 1987, Introductory Provisions, Sec. 2(13) provides:

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

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: *Provided*, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the

The extent of the Commission on Audit's audit authority even extends to non-governmental entities that receive subsidy or equity from or through the government.[61]

Therefore, it is absurd for petitioners to challenge the competency of the Commission on Audit to determine whether or not an entity is a government-owned or controlled corporation. Jurisdiction is "the power to hear and determine cases of the general class to which the proceedings in question belong,"[62] and the determination of whether or not an entity is the proper subject of its audit jurisdiction is a necessary part of the Commission's constitutional mandate to examine and audit the government as well as non-government entities that receive subsidies from it. To insist on petitioners' argument would be to impede the Commission on Audit's exercise of its powers and functions.

This Court upheld the competence of the Commission on Audit to determine the status of an entity as a government-owned or controlled corporation in *Feliciano v. Commission on Audit*[63] and *Boy Scouts of the Philippines*,[64] among others. In these cases, the Court took cognizance of petitions assailing the Commission on Audit's determination that Leyte Metropolitan Water District and Boy Scouts of the Philippines are government-owned or controlled corporations, and are thus subject to the Commission's audit jurisdiction.

Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

[61] Presidential Decree No. 1445, Sec. 29 (1)(5).

[62] *Villagracia v. Fifth Shari'a District Court*, 734 Phil. 239, 251 (2014) [Per J. Leonen, Third Division] citing *Reyes v. Diaz*, 73 Phil. 484, 486 (1941) [Per J. Moran, *En Banc*].

[63] 464 Phil. 439 (2004) [Per J. Carpio, *En Banc*].

[64] 666 Phil. 140 (2011) [Per J. Leonardo-De Castro, *En Banc*].

III

The Commission on Audit's power to determine whether an entity is a government-owned or controlled corporation is already settled. We thus proceed to resolve the issue of whether the Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit jurisdiction of the Commission on Audit.

The term "government-owned or controlled corporation" is defined in several laws. Presidential Decree No. 2029, issued by then President Ferdinand E. Marcos, defines a government-owned or controlled corporation in Section 2, thus:

SECTION 2. *Definition*. — A government-owned or controlled corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock;

Provided, that a corporation organized under the general corporation law under private ownership at least a majority of the shares of stock of which were conveyed to a government financial institution, whether by a foreclosure or otherwise, or a subsidiary corporation of a government corporation organized exclusively to own and manage, or lease, or operate specific physical assets acquired by a government financial institution in satisfaction of debts incurred therewith, and which in any case by enunciated policy of the government is required to be disposed of to private ownership within a specified period of time, shall not be considered a government-owned or controlled corporation before such disposition and even if the ownership or control thereof is subsequently transferred to another government-owned or controlled corporation;

Provided, further, that a corporation created by special law which is explicitly intended under that law for ultimate transfer to private ownership under certain specified conditions shall be considered a government-owned or controlled corporation, until it is transferred to private ownership; and

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

The Administrative Code, in section 2(13) of its Introductory Provisions, defines a government-owned or controlled corporation in this wise:

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

. . . . . .

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock: *Provided*, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

In Republic Act No. 10149, otherwise known as the GOCC Governance Act of 2011, the term is defined in Section 3(o):

SECTION 3. *Definition of Terms*. —

. . . . . .

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

Based on the above provisions, an entity is considered a government-owned or controlled corporation if all three (3) attributes are present: (1) the entity is organized as a stock or non-stock corporation;[65] (2) its functions are public in character;[66] and (3) it is owned[67] or, at the very least, controlled[68] by the government.

Examples of government-owned or controlled corporations are the Leyte Metropolitan Water District and the Boy Scouts of the Philippines. As found in *Feliciano*, the Leyte Metropolitan Water District is a stock corporation organized under an original charter or special law, i.e., Presidential Decree No. 198 or the Provincial Water Utilities Act of 1973. It performs a public service by providing water to its water district and, as a local water utility, it is controlled by the government considering that its directors are appointed by the head of the local government unit. It was in *Feliciano* where this Court said that "the determining factor of the [Commission on Audit's] audit jurisdiction is government ownership or control of the corporation."[69]

As for the Boy Scouts of the Philippines, this Court held in *Boy Scouts of the Philippines v. Commission on Audit*[70] that it is a non-stock corporation created under an original charter, specifically, Commonwealth Act No. 111. Its functions primarily involve implementing the state policy provided in Article II, Section 13 of the Constitution on promoting and protecting the well-being of the youth; and that it is an attached agency of the then Department of Education, Culture, and Sports, now Department of Education.

---

[65] *Funa v. Manila Economic and Cultural Office*, 726 Phil. 63, 90 (2014) [Per *J*. Perez, *En Banc*].

[66] *Id*.

[67] *Id*.

[68] *Id*. at 94.

[69] 464 Phil. 439, 462 (2004) [Per *J*. Carpio, *En Banc*].

[70] 666 Phil. 140 (2011) [Per *J*. Leonardo-De Castro, *En Banc*].

In contrast, the Philippine Society for the Prevention of Cruelty to Animals, the Manila Economic and Cultural Office, and the Executive Committee of the Metro Manila Film Festival were all declared not subject to the audit jurisdiction of the Commission on Audit. The Court in *Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*[71] held that the petitioner corporation, though created through an original charter, eventually became a private corporation when its "sovereign powers" to arrest offenders of animal welfare laws and the power to serve processes in connection therewith were withdrawn via an amendatory law. The second attribute—the public character of the corporation's functions—was therefore absent. It was in *Philippine Society for the Prevention of Cruelty to Animals* where the Court held that "[t]he true criterion. . . to determine whether a corporation is public or private is found in the totality of the relation of the corporation to the State,"[72] adding that "[if] the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is public; otherwise, it is private."[73]

The Manila Economic and Cultural Office is a non-stock corporation performing certain "'consular and other functions' relating to the promotion, protection and facilitation of Philippine interests in Taiwan."[74] However, none of its members, officers or trustees were found to be government appointees or public officers designated by reason of their office. Because of the absence of the third attribute, i.e., government ownership or control, this Court held in *Funa v. Manila Economic and Cultural Office*[75] that respondent corporation was not a

---

[71] 560 Phil. 385 (2007) [Per *J.* Austria-Martinez, *En Banc*].

[72] *Id.* at 408.

[73] *Id.*

[74] *Funa v. Manila Economic and Cultural Office*, 726 Phil. 63, 92 (2014) [Per *J.* Perez, *En Banc*].

[75] 726 Phil. 63 (2014) [Per *J.* Perez, *En Banc*].

government-owned or controlled corporation. Instead, it was declared a "sui generis entity" whose accounts were nevertheless subject to the audit jurisdiction of the Commission on Audit because it receives funds on behalf of the government.

As for the Executive Committee of the Metro Manila Film Festival, the Court declared that is not a government-owned or controlled corporation in *Fernando v. Commission on Audit*[76] because it was not organized either as a stock or a non-stock corporation. Despite the absence of the first element, the Court held that it is subject to the audit jurisdiction of the Commission on Audit because it receives its funds from the government.

Taking the foregoing into consideration, we rule that the Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit jurisdiction of the Commission on Audit.

Corregidor Foundation, Inc. was organized as a non-stock corporation under the Corporation Code. It was issued a certificate of registration[77] by the Securities and Exchange Commission on October 28, 1987 and, according to its Articles of Incorporation,[78] Corregidor Foundation, Inc. was organized and to be operated in the public interest:

> NINTH: That the Foundation is organized and shall be operated in the public interest and shall have no capital stock, no premium profit, and shall devote all of its income from whatever source including gifts, donations, grants, subsidies or other form of philantrophy (sic) and income derived from business - gate receipts, tourists, [and] entrance fees to the accomplishment of the purpose enumerated herein.[79]

---

[76] G.R. Nos. 237938 and 237944-45, December 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64808> [Per *J*. Tijam, *En Banc*].

[77] *Rollo*, p. 38, Annex G of the Petition.

[78] *Id*. at 39-43, Annex H of the Petition.

[79] *Id*. at 42.

Corregidor Foundation, Inc. was organized primarily to maintain and preserve the war relics in Corregidor and develop the area's potential as an international and local tourist destination. Its Articles of Incorporation provides the following purposes:

SECOND: That the purposes for which the Foundation is formed are as follows:

1. To maintain and preserve war relics on Corregidor Island and the development of its potentials as an international and local tourist destination, and to that end and purpose, to promote and encourage the recovery, collection, preservation, restoration and protection of materials and objects, including land and buildings, forming part or otherwise depicting the historic character and role of the island fortress in the defense of the country's territorial integrity and sovereignty, such as but not limited to maps, sketches, drawings, flags, documents, books and military armaments, equipment and facilities.

2. To enter into, make, perform and carry out of (sic) cancel and rescind contracts of every kind and for any lawful purpose with any person, firm, association, corporation, entity, domestic or foreign, or others, in which it has a lawful interest.

3. To acquire, purchase, own, hold, operate, develop, lease, mortgage, pledge, exchange, sell, transfer, or otherwise in any manner permitted by law, real and personal property of every kind and description or any interest therein as may be necessary to carry out its purposes.

4. To raise or borrow money for any of the purposes of the Foundation and from time to time without limits as to amount to draw, make, accept, endorse, guarantee, execute and issue promisory (sic) notes, drafts, bills of exchange, warrants, debentures, and other negotiable or non-negotiable instruments and evidence of indebtedness, and to secure the payment thereof, and of the interest thereon by mortgage on, or pledge, conveyance or assignment in trust of the whole or any part of the assets of the Foundation, real, personal, or mixed, including contract rights, whether at the time owned or thereafter acquired; and to sell[,] pledge, or otherwise dispose of such securities or other obligations for the Foundation in furtherance of its purposes.

5. To invest funds as it may be able to obtain from donations, grants, or loans and from all other sources, in securities or properties

from the return of which the foundation hopes to subsist and carry on the activities and purposes for which it was organized.

6. In general, to carry on any activity and to have and exercise any and all of the powers conferred by law, and to do any and all acts and things herein set forth to the same extent as juridical persons could do, and in any part of the world, as principal, factor, agent or otherwise either alone, or in syndicate, partnership, association or corporation, domestic or foreign, and to establish and maintain offices and agencies and to exercise all or any of its corporate powers and rights within the Philippines or abroad, as may be directly or indirectly incidental or conducive to the attainment of the above-mentioned purposes.[80]

The enumeration shows that Corregidor Foundation, Inc.'s purposes are related to the promotion and development of tourism in the country, a declared state policy[81] and, therefore, a function public in character.

When Corregidor Foundation, Inc. was organized, all of its incorporators were government officials, to wit: (1) Jose Antonio U. Gonzalez, Secretary of Tourism; (2) Rafael Ileto, Secretary of National Defense; (3) General Fidel Ramos, Chief of Staff; (4) Dominador O. Reyes, Undersecretary of Tourism for Internal Services; and (5) Atty. Ramon Binamira, General Manager, Philippine Tourism Authority.[82]

Corregidor Foundation, Inc.'s Articles of Incorporation also require that the members of its Board of Trustees be all

---

[80] *Id*. at 39-40.

[81] ADM. Code, Book IV, Title XIII, Ch. 1, Sec. 1 provides:

SECTION 1. *Declaration of Policy*. — The State shall promote, encourage and develop tourism as a major national activity in which private sector investment, effort and initiative are fostered and supported, and through which socio-economic development may be accelerated, foreign exchange earned, international visitors offered the opportunity to travel to the Philippines and appreciate its natural beauty, history and culture, and Filipinos themselves enabled to see more of their country and imbued with greater pride in and commitment to the nation.

[82] *Rollo*, pp. 40-41.

government officials and shall so hold their position as members of the Board by reason of their office:

SIXTH: That the affairs of the Foundation shall be administered and governed by the Board of Trustees composed of seven (7) members who are to serve until their successors are chosen or elected and qualified as provided by the By-Laws and their names, nationalities, residences and official address are as follows:

Name	Citizenship	Address
HON. JOSE ANTONIO U. GONZALEZ Secretary of Tourism	Filipino	. . . DOT Bldg., Kalaw Street, Ermita, Manila
HON. RAFAEL ILETO Secretary of National Defense	Filipino	. . . Camp Emilio Aguinaldo Quezon City
GENERAL FIDEL RAMOS Chief of Staff	Filipino	. . . Camp Crame, Quezon City
MS. BETH DAY ROMULO	Filipino	. . .
MS. NINI QUEZON AVANCEÑA	Filipino	. . .
MR. NICHOLAS PLATT	American	U.S. Embassy Roxas Blvd., Metro Manila
ATTY. RAMON BINAMIRA	Filipino	. . .
General Manager, Philippine Tourism Authority		DOT Bldg., Kalaw Street Ermita, Manila

Provided, however, that the abovenamed government officials shall hold their position as members of the Board by reason of their respective offices.

Provided, further, that a representative of the Department of Science and Technology or any other governmental agency which may succeed to the functions of said agency shall be allowed to sit with the Board of Trustees of the Foundation as Department of Science and Technology representative therein.[83]

There is no showing that these requirements were ever amended.

As the foregoing established, the government has substantial participation in the selection of Corregidor Foundation, Inc.'s governing board.[84] The government controls Corregidor Foundation, Inc. making it a government-owned or controlled corporation.

Petitioners nevertheless contend that Corregidor Foundation, Inc. is not a government-owned or controlled corporation because it was not organized as a stock corporation and was incorporated under a general law, not a special law or an original charter.

These arguments are wrong. Even a cursory reading of the statutory definitions of "government owned-or controlled corporation" readily reveals that a non-stock corporation may be government-owned or controlled. These definitions begin with "a government-owned or controlled corporation"[85] and refers to a "stock or non-stock corporation. . ."[86] Furthermore, there is nothing in the law which provides that government-owned or controlled corporations are always created under an original charter or special law. As held in *Feliciano*, there are

---

[83] *Id.* at 41.

[84] *Funa v. Manila Economic and Cultural Office*, 726 Phil. 63, 94 (2014) [Per *J.* Perez, *En Banc*].

[85] *See* Presidential decree 2029 (1986), Sec. 2.

[86] *See* Presidential decree 2029 (1986), Sec. 2.

government-owned or controlled corporations without an original charter, that is, those created under the Corporation Code.[87]

It is immaterial whether a corporation is private or public for purposes of exercising the audit jurisdiction of the Commission on Audit. So long as the government owns or controls the corporation, as in this case, the Commission on Audit may audit the corporation's accounts. In *Feliciano*:

> [T]he constitutional criterion on the exercise of [the Commission on Audit's] audit jurisdiction depends on the government's ownership or control of a corporation. The nature of the corporation, whether it is private, quasi-public, or public is immaterial.
>
> *The Constitution vests in the [Commission on Audit] audit jurisdiction over* "government-owned and controlled corporations with original charters," as well "*government-owned or controlled corporations*" *without original charters*. [Government-owned or controlled corporations] with original charters are subject to [the Commission's] pre-audit, while [government-owned or controlled corporations] without original charters are subject to [the Commission's] *post-audit*. *[Government-owned or controlled corporations] without original charters refer to corporations created under the Corporation Code but are owned or controlled by the government.* The nature or purpose of the corporation is not material in determining [the Commission's] audit jurisdiction. Neither is the manner of creation of a corporation, whether under a general or special law.[88] (Emphasis supplied)

Just because the employees of Corregidor Foundation, Inc. are not under the jurisdiction of the Civil Service Commission does not mean that Corregidor Foundation, Inc. is not government-owned or controlled. Article IX-B, Section 2(1)[89]

---

[87] 464 Phil. 439, 461-462 (2004) [Per *J*. Carpio, *En Banc*]. *See also Philippine National Construction Corporation v. Pabion*, 311 Phil. 1019 (1999) [Per *J*. Panganiban, Third Division].

[88] 464 Phil. 439, 461-462 (2004) [Per *J*. Carpio, *En Banc*].

[89] CONST., Art. IX-B, Sec. 2(1) provides:

> SECTION 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters. (Emphasis supplied)

of the Constitution is clear that the jurisdiction of the Civil Service Commission is over government-owned or controlled corporations with original charters, not over those without original charters like Corregidor Foundation, Inc. Addressing a similar argument, this Court in *Davao City Water District v. Civil Service Commission*,[90] cited in Feliciano, said that:

> By "government-owned or controlled corporation with original charter," We mean government owned or controlled corporation created by a special law and not under the Corporation Code of the Philippines. Thus, in the case of *Lumanta v. NLRC* (G.R. No. 82819, February 8, 1989, 170 SCRA 79, 82), We held:
>
> > "The Court, in National Service Corporation (NASECO) v. National Labor Relations Commission, G.R. No. 69870, promulgated on 29 November 1988, quoting extensively from the deliberations of the 1986 Constitutional Commission in respect of the intent and meaning of the new phrase 'with original charter,' in effect held that *government-owned and controlled corporations with original charter refer to corporations chartered by special law as distinguished from corporations organized under our general incorporation statute - the Corporation Code*. In NASECO, the company involved had been organized under the general incorporation statute and was a subsidiary of the National Investment Development Corporation (NIDC) which in turn was a subsidiary of the Philippine National Bank, a bank chartered by a special statute. Thus, government-owned or controlled corporations like NASECO are effectively, excluded from the scope of the Civil Service." (Emphasis supplied)
>
> From the foregoing pronouncement, it is clear that what has been excluded from the coverage of the [Civil Service Commission] are those corporations created pursuant to the Corporation Code.[91]

Also, there is no proof that Corregidor Foundation, Inc.'s funding primarily comes from grants and donations of international organizations or foreign entities as petitioners contend. On the

---

[90] 278 Phil. 605 (1991) [Per *J.* Medialdea, *En Banc*].

[91] *Id.* at 612.

contrary, for the period audited by the Commission on Audit or in 2003, 99.66% of Corregidor Foundation, Inc.'s budget or Four Hundred Twenty-Three Million, One Hundred Sixty-Four Thousand, One Hundred Fifteen Pesos (P423,164,115.00) came from the government, specifically, from the Department of Tourism, Duty Free Philippines, and the Philippine Tourism Authority.[92] This was never controverted by petitioners.

Indeed, the following provisions of the September 3, 1996 Memorandum of Agreement indubitably show that Corregidor Foundation, Inc. is funded by the government through the Philippine Tourism Authority. Corregidor Foundation, Inc. is required to submit its budget for approval of the Philippine Tourism Authority. It even voluntarily submitted itself to the audit jurisdiction of the Commission on Audit:

MEMORANDUM OF AGREEMENT
CORREGIDOR ISLAND MANAGEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement made and entered into this 3rd day of September, 1996 by and between:

The PHILIPPINE TOURISM AUTHORITY, a government owned corporation with office address at DOT Building, Kalaw, Ermita, Manila, represented herein by its General Manager, EDUARDO T. JOAQUIN, hereinafter referred to as AUTHORITY;

-and-

CORREGIDOR FOUNDATION, INC., a private non-stock, non-profit corporation existing and doing business under the laws of the Philippines with office address at Tourism Building, T. M. Kalaw Street, Ermita, Manila, represented herein by its Executive Director, ALFRED A. X. BURGOS, SR., hereinafter referred to as FOUNDATION;

-WITNESSETH-

WHEREAS, pursuant to a Memorandum of Agreement, referred to as ANNEX I, the then Ministry of National Defense

---

[92] *Rollo*, p. 27.

ceded and conveyed Corregidor Island to the Department of Tourism/Philippine Tourism Authority for tourist development purposes;

WHEREAS, consistent with the avowed objective of the abovementioned Memorandum of Agreement, the FOUNDATION was eventually organized for private concern to work hand in hand with the government in enhancing the touristic potentials of the Island referred to as ANNEX II;

WHEREAS, the parties in order to further accelerate the desired development find it necessary to transfer the management of the Island to the FOUNDATION for the purpose of centralizing its planning and development;

WHEREAS, the AUTHORITY, cognizant of the inability of the FOUNDATION to source fund for the purpose, hereby assumes responsibility of providing the budgetary requirements that will enable the latter to perform the mandate it has received from the former under this agreement;

NOW, THEREFORE, for and in consideration of the foregoing premises and covenants and undertakings hereinafter setforth (sic), parties hereto agreed to the following:

1. PTA hereby authorizes FOUNDATION to manage and operate CORREGIDOR ISLAND including all existing facilities therein;

2. FOUNDATION shall use, manage and operate the aforesaid Island together with its facilities in order to update and standardize its service systems;

. . . . . .

4. Upon execution of the Agreement, AUTHORITY shall release an operating fund as financial assistance to the FOUNDATION equivalent to three (3) months operating expenses based on the present budget provided for the Island by FOUNDATION. It is understood that with the execution of this Agreement, FOUNDATION shall submit a budget for Corregidor Island for AUTHORITY'S approval. Within five (5) days of the first month and every month thereafter, the equivalent of two (2) months operating fund based on the approved budget shall be

released by AUTHORITY. Releases of the operating fund shall be scheduled in such manner that FOUNDATION shall always have at its disposal three (3) months operating fund.

FOUNDATION shall submit an annual report on receipts and disbursements of AUTHORITY funds on or before the 15th day of the first month of each year, duly approved and certified by the Executive Director. Said report shall be subject n to audit by AUTHORITY Internal Auditor and Commission on Audit.

. . . . . .

6. All collections of revenue shall be taken up in the books of the FOUNDATION as accountability to AUTHORITY and to be deposited by FOUNDATION in a distinct and separate account in the name of Corregidor Island, the disposition of which shall be as per approved annual budget of the FOUNDATION whether for Capital Expenditures and for Operating Expenses.[93] (Emphasis supplied)

At any rate, even if it were true that Corregidor Foundation, Inc. is funded by international organizations and foreign entities, these foreign grants already became public funds the moment they were donated to Corregidor Foundation, Inc. Thus, these funds may be audited by the Commission on Audit. The Court elucidated in *Fernando v. Commission on Audit*:[94]

[D]espite the private source of funds, ownership over the same was already transmitted to the government by way of donation. As donee, the government had become the owner of the funds, with full ownership rights and control over the use and disposition of the same, subject only to applicable laws and COA rules and regulations. Thus, upon donation to the government, the funds became public in character.

---

[93] *Id*. at 53-54.

[94] G.R. Nos. 237938 and 237944-45, December 4, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64808> [Per *J*. Tijam, *En Banc*].

This is in contrast to cases where there is no transfer of ownership over the funds from private parties to the government, such as in the case of cash deposits required in election protests filed before the trial courts, Commission on Elections, and electoral tribunals. In these cases, the government becomes a mere depositary of such fund, the use and disposition of which is subject to the conformity of the private party-depositor who remains to be the owner thereof.[95]

Lastly, while it is true that just like any other corporation organized under the Corporation Code, Corregidor Foundation, Inc. may determine voluntarily and solely the successors of its members in accordance with its own by-laws, this does not change the public character of its functions and the control the government has over it. As discussed, the promotion and development of tourism is a public function and, as provided in its Articles of Incorporation, the members of Corregidor Foundation, Inc. must be government officials who shall hold their membership by reason of their office.

In sum, Corregidor Foundation, Inc. is a government-owned or controlled corporation. Thus, it is under the audit jurisdiction of the Commission on Audit.

IV

There are cases where this Court, despite the disallowance by the Commission on Audit, nevertheless enjoined the refund of the disallowed amounts.[96] In these instances, this Court found that the parties received the disallowed amounts in good faith, defined as "that state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry.[97] It also means "an honest intention

---

[95] *Id.*

[96] *See Blaqnera v. Alcala*, 356 Phil. 678 (1998) [Per *J.* Purisima, *En Banc*]; and *De Jesus v. Commission on Audit*, 451 Phil. 812 (2003) [Per *J.* Carpio, *En Banc*].

[97] *Nayong Pilipino Foundation, Inc. v. Pitlido Tan*, G.R. No. 213200, September 19, 2017, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63446> [Per *J.* A.B. Reyes, Jr., *En Banc*].

to abstain from taking any unconscientious disadvantage of another, even though technicalities of law, together with the absence of all information, notice, or benefit or belief of facts which render transactions unconscientious."[98]

Here, we cannot ascribe good faith to petitioners in receiving the disallowed amounts. Department of Budget and Management Circular No. 2003-5 is clear that only the following are entitled to honoraria:

4. General Guidelines

4.1. teaching personnel of the Department of Education, Commission on Higher Education, Technical Education and Skills Development Authority, State Universities and Colleges and other educational institutions engaged in actual classroom teaching whose teaching load is outside of the regular office hours and/or in excess of the regular load;

4.2 those who act as lecturers, resource persons, coordinators and facilitators in seminars, training programs and other similar activities in training institutions, including those conducted by entities for their officials and employees; and

4.3. chairs and members of Commissions/Board Councils and other similar entities which are hereinafter referred to as a collegial body including the personnel thereof, who are neither paid salaries nor per diems but compensated in the form of honoraria as provided by law, rules and regulations.[99]

It is obvious that Corregidor Foundation, Inc. is not an educational institution and petitioners are not its teaching personnel. Neither are petitioners lecturers by virtue of their positions in Corregidor Foundation, Inc. nor are there laws or rules allowing the payment of honoraria to personnel of the Corregidor Foundation, Inc.

Finally, petitioners knew fully well that they serve in Corregidor Foundation, Inc. by reason of their office in the Philippine Tourism

---

[98] *Id.*

[99] *Rollo*, p. 74.

Authority. It is also undisputed that petitioners, as officers and personnel of the Philippine Tourism Authority, already received honoraria and cash gifts. Considering that this Court pronounced as early as 1991 in *Civil Liberties Union v. The Executive Secretary*[100] that an ex-officio position is "actually and in legal contemplation part of the principal office,"[101] receiving another set of honoraria and cash gift for rendering services to the Corregidor Foundation, Inc. would be tantamount to payment of additional compensation proscribed in Article IX-B, Section 8 of the Constitution. These circumstances negate any claim of good faith.

The present case is different from *Blaquera v. Alcala*[102] and *De Jesus v. Commission on Audit*[103] where this Court enjoined the refund of the disallowed amounts. Both cases had ostensible legal bases on which the recipients honestly believed that the disallowed amounts paid were due to them.

In *Blaquera*, productivity incentive benefits of not less than ₱2,000.00 were given to employees of the Philippine Tourism Authority in 1991. The grant was made on the basis of Administrative Order No. 268, series of 1992. The next year, productivity incentive benefits were again granted, but a subsequently issued Administrative Order No. 29, series of 1993 ordered a forced refund of productivity incentive benefits that were more than ₱1,000.00. This Court upheld the validity of Administrative Order No. 29, the latter's issuance being part of the power of control of the President. However, this Court enjoined the refund of the disallowed amounts because the employees received the benefits "in the honest belief that the amounts given were due. . . and the latter accepted the same with gratitude, confident that they richly deserve such benefits."[104]

---

[100] 272 Phil. 147 (1991) [Per *C.J.* Fernan, *En Banc*].

[101] *Id.* at 167.

[102] 356 Phil. 678 (1998) [Per *J.* Purisima, *En Banc*].

[103] 451 Phil. 812 (2003) [Per *J.* Carpio, *En Banc*].

[104] *Blaquera v. Alcala*, 356 Phil. 678, 766 (1998) [Per *J.* Purisima, *En Banc*].

In *Blaquera*, Administrative Order No. 268 ostensibly authorized the payment of the productivity incentive benefits.

In *De Jesus*, allowances and bonuses were given to the members of the Interim Board of Directors of the Catbalogan Water District on the basis of the Local Water Utilities Administration's Resolution No. 313, series of 1995. The Commission on Audit disallowed the payment because, according to Section 13 of the Provincial Water Utilities Act of 1973, directors of local water utilities shall only receive per diems. This Court affirmed the disallowance but held that the recipients "need not refund the [disallowed] allowances and bonus they received[.]"[105] In *De Jesus*, Local Water Utilities Administration's Resolution No. 313, series of 1995 ostensibly authorized the payment of the allowances and bonuses.Unlike in *Blaquera* and *De Jesus*, no such ostensible legal basis was presented in this case. There was no reason for petitioners to honestly believe that another set of honoraria and cash gifts, by reason of their ex-officio positions in Corregidor Foundation, Inc., were due them. It cannot be said that they received the disallowed amounts in good faith.

All told, Corregidor Foundation, Inc. is a government-owned or controlled corporation. It is subject to Department of Budget and Management Circular No. 2003-5 limiting the payment of honoraria to certain personnel of the government. Furthermore, petitioners, being employees of the Philippine Tourism Authority, are public officers prohibited from receiving additional, double or indirect compensation as per Article IX-B, Section 8 of the Constitution. The Commission on Audit did not gravely abuse its discretion in disallowing the payment of honoraria and cash gift to petitioners.

WHEREFORE, the Petition for Certiorari is **DISMISSED**.

SO ORDERED.

---

[105] *De Jesus v. Commission on Audit*, 451 Phil. 812, 824 (2003) [Per *J.* Carpio, *En Banc*].

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

Jardeleza, J., no part.

Caguioa and *Carandang, JJ.*, on official leave.

FIRST DIVISION

[A.C. No. 10015. June 6, 2019]
(Formerly CBD Case No. 10-2591)

RUBEN S. SIA *petitioner, vs.* **ATTY. TOMAS A. REYES,** *respondent.*

SYLLABUS

LEGAL ETHICS; DISBARMENT AND SUSPENSION; CHARGES AGAINST THE LAWYER MUST BE CONVINCINGLY ESTABLISHED BY CLEARLY PREPONDERANT EVIDENCE; CASE AT BAR. — In a long line of cases, the Court has repeatedly held that the burden of proof in disbarment and suspension proceedings lies with the complainant. The Court will exercise its disciplinary power over members of the Bar if, and only if, the complainant successfully shows that the charges against the respondent has been convincingly established by clearly preponderant evidence. The serious consequences that flow from disbarment or suspension of a lawyer must call for the production or presentation of clear, convincing, and preponderant evidence. It is axiomatic that the law presumes that an attorney is innocent of the charges against him, until the contrary is proven. x x x The Court agrees with the IBP that petitioner has failed to establish, with the requisite degree of proof, that the subject deeds were notarized without his consent, knowledge and physical presence. Petitioner admits his physical presence before respondent on January 3, 2006, but denies he gave his consent to the notarization. Except for

his bare allegation that he did not give his consent to the notarization of the subject deeds, petitioner failed to adduce sufficient proof to establish his alleged lack of consent. Moreover, petitioner did not explain why it took him four years and eight months to complain about the alleged spurious notarization of the subject deeds. His inaction or delay for such a considerable period of time casts doubt not only upon his motive or sincerity, but also upon the validity or truth of his claim.

APPEARANCES OF COUNSEL

Nelson P. Paraiso for petitioner.
Felix V. Brazil, Jr. for respondent.

R E S O L U T I O N

DEL CASTILLO, *J.*:

This resolves the Petition[1] filed under Section 12 (c), Rule 139-B of the Rules of Court assailing the Notice of Resolution[2] No. XX-2012-75 dated February 11, 2012 of the Integrated Bar of the Philippines-Board of Governors (IBP-BOG), which dismissed the complaint lodged by petitioner Ruben S. Sia (petitioner) against respondent Atty. Tomas A. Reyes (respondent) for grave misconduct and/or conduct unbecoming of a notary public.

The present administrative case was precipitated by the notarization by respondent of five deeds of absolute sale, allegedly done without the knowledge, consent, and physical presence of the seller therein — the herein petitioner.

Factual Antecedents

In his Sworn Statement,[3] petitioner averred that, on March 17, 2005, Ruby Shelter Builders and Realty Development

---

[1] *Rollo,* pp. 103-109.

[2] *Id.* at 70; penned by Acting National Secretary Nasser A. Marohomsalic.

[3] *Id*. at 5-7.

Corporation, represented by petitioner as president and duly authorized representative, entered into a Memorandum of Agreement[4] (MOA) with Roberto L. Obiedo (Obiedo) and Romeo Y. Tan (Tan). The MOA stipulated among others, that: (1) said corporation acknowledges its indebtedness to Obiedo and Tan in the total amount of ₱95,700,620.00 covered by real estate mortgages over five parcels of land enumerated therein; (2) Obiedo and Tan allow said corporation to settle the said debt on or before December 31, 2005; (3) said corporation, by way of *dacion en pago*, shall execute deeds of absolute sale over said properties to be uniformly dated January 2, 2006; (4) and, in case of failure to pay said debt within the aforesaid period, Obiedo and Tan may present said deeds to the Register of Deeds for registration. Petitioner claimed that, pursuant to said MOA, he signed five (5) deeds of absolute sale (subject deeds) in favor of Obiedo and Tan over said properties, which were previously mortgaged to the latter, as afore-stated. However, the date of the subject deeds were left blank, and, after petitioner signed the same, Obiedo and Tan took custody of the subject deeds. Prior to the due date for settlement of the said debt, petitioner requested for a meeting with Obiedo and Tan to correct errors in the computation of the amount owed. On January 3 and 4, 2006, negotiations were held but nothing was agreed upon. Hence, he asked for another meeting.

Petitioner further claimed that, thereafter, he learned that the subject deeds were notarized by respondent on January 3, 2006 by supplying entries in the blank spaces without petitioner's knowledge, consent and physical presence. No notarization took place on January 3, 2006, because on said date the negotiations were still ongoing. Subsequently, petitioner learned that the subject deeds were filed with the Register of Deeds of Naga City for which corresponding titles were issued in the names of Obiedo and Tan. As a result of which, petitioner claimed that he was unlawfully deprived of ownership and possession of said properties and that he caused the filing of appropriate cases in court for annulment of sales and cancellation of titles.

---

[4] *Id.* at 8-11.

In his Answer,[5] respondent countered that, during the notarization of the subject deeds, he personally asked petitioner whether it was his (petitioner's) signature that was affixed on the subject deeds, and whether the execution of the subject deeds was his free and voluntary act, to which questions petitioner replied in the affirmative. To corroborate his claim, respondent submitted the affidavits[6] of Atty. Avelino V. Sales, Jr. (Atty. Sales) and Atty. Salvador Villegas, Jr. (Atty. Villegas). In his affidavit, Atty. Sales stated that Obiedo and Tan are his clients; that, on January 3, 2006, Tan requested him to go to Obiedo's office at Robertson Mall, Diversion Road, Naga City; that upon his arrival, he saw Tan, Obiedo and petitioner; that he is one of the instrumental witnesses to the subject deeds and as such could not notarize the same; that Obiedo's retained lawyer, Atty. Villegas, was called upon to notarize the subject deeds, however, Atty. Villegas informed them that his notary commission has just expired last December 31, 2005; that it was suggested that another lawyer, in the person of respondent, be asked to notarize the subject deeds; that respondent came and asked petitioner, whom respondent personally knows, if the signature above his (petitioner's) name in the subject deeds are his; and that petitioner answered in the affirmative. In his affidavit, Atty. Villegas, confirmed the afore-stated narration by Atty. Sales.

In addition, respondent claimed that he was not aware of the MOA executed between petitioner, on the one hand, and Obiedo and Tan, on the other. Respondent also ascribed ill motive on the part of petitioner because of the belated filing of the instant administrative complaint four years and eight months after respondent notarized the subject deeds.

---

[5] *Id*. at 50-56.

[6] *Id*. at 59-62.

Report and Recommendation of the Investigating Commissioner[7]

The IBP-Commission on Bar Discipline (CBD) recommended that the administrative complaint against respondent be dismissed. It gave credence to the affidavits of Atty. Sales and Atty. Villegas, *viz.*:

> The respondent has in his favor the Affidavit of [Atty. Sales] who stated that [petitioner] was present when the [subject deeds] were notarized by the respondent. Atty. Sales was one of the instrumental witnesses to the [subject deeds].
>
> Respondent has also in his favor the Affidavit of [Atty. Villegas], who stated that [respondent] asked [petitioner if] the signature [appearing above] his x x x name in the [subject deeds] were his. [Petitioner] answered the respondent in the affirmative. Thereafter, [respondent] notarized the [subject deeds in] their presence and in the presence of [petitioner] who earlier affirmed the signatures as appearing in the [subject deeds].
>
> **Moreover, [petitioner] did not challenge the authenticity of his signatures in [the subject deeds]. It is emphasized that [petitioner] filed this administrative suit belatedly or after four years and eight months after respondent notarized the [subject deeds] on January 3, 2006.**[8] (Emphasis supplied)

Resolution of the IBP-BOG

The IBP-BOG resolved[9] to adopt and approve the aforesaid findings and recommendation. Petitioner filed a motion for reconsideration, which was denied by the IBP-BOG in its April 5, 2013 Resolution.[10]

Hence, this Petition.

---

[7] *Id.* at 71-73; penned by Commissioner Salvador B. Hababag.

[8] *Id.* at 72.

[9] *Id.* at 70.

[10] *Id.* at 96.

Issue

Whether respondent is administratively liable for grave misconduct and conduct unbecoming of a notary public.

Our Ruling

The Court adopts the findings and recommendation of the IBP-BOG.

Petitioner contends that, on December 27, 2005, before the aforesaid debt became due on December 31, 2005, he requested a meeting with his creditors, Obiedo and Tan, to settle some misunderstanding with respect to the computation of interest on the debt. On January 3, 2006, at around 2:00 p.m., he went to Obiedo and Tan's office at 2nd Floor, Robertson Mall Building, Roxas Avenue, Diversion Road, Naga City for said meeting where he met respondent, together with Obiedo, Tan, Atty. Sales and Arty. Villegas. He went there not for the purpose of having the subject deeds notarized, but in order to negotiate with Obiedo and Tan. According to petitioner, when respondent asked him (petitioner) whether the signature in the subject deeds were his, petitioner was not apprised that respondent was about to notarize the subject deeds. Petitioner claims that respondent merely casually inquired about the subject deeds, and petitioner was unaware that respondent would later notarize the subject deeds.

In his Comment, respondent counters that the subject deeds were properly notarized in the presence of petitioner and after respondent asked him (petitioner) whether the signature in the subject deeds were his. Respondent reiterates that the instant complaint is a vindictive scheme. After the notarization of the subject deeds on January 3, 2006, petitioner filed criminal and civil cases against respondent. However, the instant administrative complaint was filed by petitioner against respondent only after four years and eight months from said notarization indicating that it was a mere afterthought. Respondent further avers that the affidavits of Atty. Sales and Atty. Villegas sufficiently corroborate respondent's claim that the subject deeds were properly notarize.

In a long line of cases,[11] the Court has repeatedly held that the burden of proof in disbarment and suspension proceedings lies with the complainant. The Court will exercise its disciplinary power over members of the Bar if, and only if, the complainant successfully shows that the charges against the respondent has been convincingly established by clearly preponderant evidence. The serious consequences that flow from disbarment or suspension of a lawyer must call for the production or presentation of clear, convincing, and preponderant evidence. It is axiomatic that the law presumes that an attorney is innocent of the charges against him, until the contrary is proven.

The Court notes that, in his Petition before this Court, petitioner admits that on January 3, 2006, he met Obiedo and Tan along with respondent, Atty. Sales and Atty. Villegas; and that, during said meeting, respondent casually asked him (petitioner) whether the signature in the subject deeds were his. However, petitioner claims that he was not apprised that respondent was about to notarize the subject deeds. In effect, petitioner admits that he appeared before respondent and acknowledged his signature in the subject, but denied that he consented to the notarization of the subject deeds for the purpose of the meeting was to renegotiate his debt with Obiedo and Tan and not to notarize the subject deeds.

The Court agrees with the IBP that petitioner has failed to establish, with the requisite degree of proof, that the subject deeds were notarized without his consent, knowledge and physical presence. Petitioner admits his physical presence before respondent on January 3, 2006, but denies he gave his consent to the notarization. Except for his bare allegation that he did not give his consent to the notarization of the subject deeds, petitioner failed to adduce sufficient proof to establish his alleged lack of consent. Moreover, petitioner did not explain why it

---

[11] *Lanuza v. Atty. Magsalin III,* 749 Phil. 104 (2014); *Atty. Villamor, Jr. v. Atty. Santos*, 759 Phil. 1 (2015); *Coronel v. Fortun,* A.C. No. 9630, June 5, 2017; *Arsenio v. Tabuzo*, A.C. No. 8658, April 24, 2017, 824 SCRA 45.

took him four years and eight months to complain about the alleged spurious notarization of the subject deeds. His inaction or delay for such a considerable period of time casts doubt not only upon his motive or sincerity, but also upon the validity or truth of his claim.

WHEREFORE, premises considered, the Court **ACCEPTS** and **ADOPTS** the findings and recommendation of the Integrated Bar of the Philippines-Board of Governors. Accordingly, the Complaint against respondent Atty. Tomas A. Reyes is **DISMISSED** for lack of merit.

SO ORDERED.

Bersamin, C.J., Jardeleza, and *Gesmundo, JJ.,* concur.

Carandang, J., on official leave.

FIRST DIVISION

[G.R. No. 196264. June 6, 2019]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **LINA B. NAVARRO, REPRESENTED BY HER ATTORNEY-IN-FACT, FELIPE B. CAPILI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; FACTS STIPULATED DURING PRE-TRIAL ARE CONSIDERED JUDICIAL ADMISSIONS CONCLUSIVE TO THE PARTIES; EXCEPTIONS; PALPABLE MISTAKE LIKE CLERICAL OVERSIGHT. — As a rule, facts stipulated during pre-trial are considered judicial admissions which are legally binding on the parties making them. Even if placed at a disadvantageous

position, a party may not be allowed to rescind them unilaterally and must assume the consequence of the disadvantage. However, the rule on conclusiveness of judicial admission admits of two exceptions: 1) when it is shown that the admission was made through palpable mistake; and 2) when it is shown that no such admission was in fact made. In *Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue*, we ruled that a fact stipulated is not binding on a declarant if it was proved that it was made through palpable mistake such as in the case of a clerical oversight, x x x Similarly, in this case before us, the record shows that a palpable mistake was committed in the arithmetical computation of the total areas stated in the Emancipation Patents (EPs) and the typing/ recording of the area taken pursuant to the agrarian reform program.

2. CIVIL LAW; PROPERTY; STIPULATION OF FACTS STATING THE PERCENTAGE OF SHARES IN LAND DID NOT DETERMINE A DEFINITE PORTION OF THE PROPERTY; CASE AT BAR. ––That Item No. 4 of the Stipulation of Facts states that Lina's 25% share is equivalent to 5.4725 hectares (now, 5.4501 hectares) does not mean that a specific or definite portion was determined ahead of the property's actual partition. A definite portion of the land refers to specific metes and bounds of a co-owned property. x x x Here, the 21.8005-hectare property is owned by Jovita and Lina at a 75% and 25% ratio, respectively. Following the illustration in *Cabrera*, the undivided interest of Jovita is 16.3504 hectares while the undivided interest of Lina is 5.4501 hectares. Thus, when the parties entered into the Stipulation of Facts stating the hectarage of Lina's 25% share, they did not determine a definite or specific portion of the property; rather, they merely provided for the undivided interest of Lina. We also reject Land Bank of the Philippines (LBP's) argument that, since the property is not yet partitioned, Lina's 25% share is necessarily included when Jovita transferred 6.5006 hectares of the property to tenant-farmers under the direct payment scheme. A co-owner has an absolute ownership of his/her undivided and *pro-indiviso* share in the co-owned property. He/she has the right to alienate, assign and mortgage it, even to the extent of substituting a third person in its enjoyment provided that no personal rights will be affected. This is allowed by Article 493 of the Civil Code.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE THAT NO QUESTIONS WILL BE ENTERTAINED ON APPEAL UNLESS IT HAS BEEN RAISED IN THE PROCEEDINGS BELOW ADMITS OF EXCEPTIONS. — The rule that no questions will be entertained on appeal unless it has been raised in the proceedings below admits of exceptions. These exceptions include: (1) the issue of lack of jurisdiction which may be raised at any stage; (2) cases of plain error; (3) when there are jurisprudential developments affecting the issues; and (4) when the issues raised present a matter of public policy.

4. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; JUST COMPENSATION; WHEN AGRARIAN REFORM PROCESS UNDER PD 27 REMAINS INCOMPLETE AND IS OVERTAKEN BY RA 6657, JUST COMPENSATION SHOULD BE DETERMINED AND THE PROCESS CONDUCTED UNDER RA 6657, AS AMENDED, WITH PD 27 AND EO 228 APPLYING ONLY SUPPLETORILY; CASE AT BAR. — When the agrarian reform process under PD 27 remains incomplete and is overtaken by RA 6657, such as when the just compensation due to the landowner has yet to be settled, as in this case, just compensation should be determined and the process conducted under RA 6657, as amended, with PD 27 and EO 228 applying only suppletorily. x x x Pursuant to its rule-making power under Section 49 of RA 6657, the Department of Agrarian Reform (DAR) translated the valuation factors enumerated in Section 17 into a basic formula outlined in DAR AO No. 5, series of 1998, AO No. 2, series of 2009, AO No. 1, series of 2010, and the most recent DAR AO No. 7, series of 2011, x x x In no case shall the value of idle land using the formula (MV x 2), (MV meaning market value per tax declaration based on government assessment) exceed the lowest value of land within the same estate under consideration or within the same barangay, municipality or province (in that order) approved by the LBP within one (1) year from receipt of the claim folder. In the recent case of *Alfonso v. Land Bank of the Philippines (Alfonso)*, we underscored the mandatory character of the application of Section 17, as amended, and translated into a basic formula by the DAR x x x [W]e reviewed the record of the case and find insufficient data to arrive at a valuation of the property. As we are not a trier of facts, we cannot receive any new evidence from the parties to aid us in the prompt

resolution of the case. Hence, we remand the case to the Special Agrarian Court (SAC) for the fixing of just compensation for Lina's 25% share in accordance with Section 17 of RA 6657, as amended, and the pertinent DAR regulations, as held in *Alfonso*.

5. ID.; ID.; JUST COMPENSATION FOR PROPERTY TAKEN; IMPOSITION OF INTEREST IN THE NATURE OF DAMAGES FOR DELAY IN PAYMENT OF JUST COMPENSATION.— In its petition, the LBP did not dispute the date of taking of the property as June 13, 1988, the date when EPs were issued to the tenant-farmers under the agrarian reform program. It also did not dispute Lina's allegation (as validated by the SAC) that it was only on March 11, 1993 that the LBP offered to pay for the property. Evidently, property was taken for public use without payment of just compensation. We note that, even the offer of payment, made five years after the actual taking, was also delayed. Thus, the imposition of interest on the final amount of just compensation is warranted under the circumstances. x x x The award of interest is imposed in the nature of damages for delay in payment which, in effect, makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner. x x x [I]n conformity with *Nacar v. Gallery Frames*, [t]he just compensation due to Lina (as finally determined by the SAC on remand) shall earn legal interest at the rate of 12% *per annum* computed from the time of taking on June 13, 1988 until June 30, 2013. From July 1, 2013 until full payment, the amount shall earn an interest at the rate of 6% *per annum* in accordance with *Bangko Sentral ng Pilipinas* Monetary Board Circular No. 799, series of 2013. The amount which Lina already received from the LBP pursuant to the writ of execution issued by the CA pending appeal shall be deducted from the amount of just compensation finally determined by the SAC.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Cariaga Law Offices for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] assailing the June 25, 2009 Decision[2] and March 18, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 79097. The CA affirmed with modification the June 17, 2002 Decision[4] of the Regional Trial Court acting as Special Agrarian Court[5] (SAC) in Civil Case No. 23,806-95. In this case, we restate the rule that courts should consider the factors stated in Section 17 of Republic Act No. (RA) 6651,[6] as amended, and as translated into a basic formula by the Department of Agrarian Reform (DAR) in their determination of just compensation for properties covered by the said law.[7]

Lina is the daughter of Antonio Buenaventura (Antonio) and stepdaughter of Jo vita Buenaventura (Jovita). Antonio and Jovita owned Lot No. 6561, Cad-174 of the Guianga Cadastre located at Catalunan Grande, Davao City. The property, covered by Original Certificate of Title (OCT) No. P-2182, is an agricultural land with an area of 29.0772 hectares or 290,772 square meters (sq. m.). When Antonio died, Jovita was appointed as the administratix of his estate in Special Proceeding Case No. 1920. Lot No. 6561 was also partitioned between Jovita

---

[1] *Rollo*, pp. 12-61.

[2] *Id*. at 65-84. Penned by Associate Justice Romulo V. Borja with Associate Justices Jane Aurora C. Lantion and Edgardo T. Lloren, concurring.

[3] *Id*. at 87-90. Penned by Associate Justice Romulo V. Borja with Associate Justices Edgardo T. Lloren and Ramon Paul L. Hernando (now a Member of this Court), concurring.

[4] Records, pp. 478-485.

[5] 11th Judicial Region, Branch 15, Davao City.

[6] Comprehensive Agrarian Reform Law of 1988.

[7] *Alfonso v. Land Bank of the Philippines*, G.R. Nos. 181912 and 183347, November 29, 2016, 811 SCRA 27.

and Lina, Jovita got a 75% *pro-indiviso* share while Lina received the remaining 25% *pro-indiviso* share.[8]

Sometime in 1988, the government, pursuant to its land transfer program under Presidential Decree No. (PD) 27,[9] expropriated 21.890 hectares of Lot No. 6561 (property). The DAR valued it at P49,025.15 based on the Landowner-Tenant Production Agreement and Farmer's Undertaking (LTPA-FU) executed between Jovita and the farmer/tenant-beneficiaries over the property.[10] Petitioner Land Bank of the Philippines (LBP) concurred with the valuation of the DAR. Out of the ₱49,025.15, Jovita was paid ₱36,768.86. Lina on the other hand rejected a tender of ₱12,256.29 for her share.[11]

On August 9, 1995, Lina filed a petition[12] with the SAC for the fixing of just compensation against the DAR and the LBP. She alleged that the property was expropriated by the government, by virtue of which Emancipation Patents (EPs) were issued to tenant-farmers, namely: EP 221 to EP-234.[13] She stated that the DAR valued the property at ₱0.17 per sq. m. only, which is ridiculously low. Thus, she did not accept the payment for her 25% *pro-indiviso* share amounting to P12,256.29 for being confiscatory, unrealistic, and violative of her rights to just compensation and due process.[14] She asked the SAC to consider the comparable sales of lots similarly situated within or near the location of the property.

---

[8] *Rollo*, p. 66.

[9] 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 (1972).

[10] *Rollo*, p. 66.

[11] *Id*. at 67.

[12] Records, pp. 1-5.

[13] *Id*. at 2.

[14] *Id*. at 3.

In its answer,[15] the LBP denied that the valuation was confiscatory. The property was valued in accordance with the provisions of PD 27 as amended by Executive Order No. (EO) 228.[16] It further argued that the property is not physically subdivided between Jovita and Lina. Thus, the portion belonging to Lina for purposes of determining just compensation still cannot be identified.[17] The LBP prayed for the dismissal of the case for lack of merit. Similarly, the DAR claimed that its valuation is fair and just, as it was fixed in accordance with the criteria prescribed under Section 17 of RA 6657. The DAR contended that since Lina failed to exhaust administrative remedies, her case should be dismissed for lack of jurisdiction.[18] Lina filed a reply[19] alleging that the doctrine of exhaustion of administrative remedies is not applicable to her action.[20]

Pre-trial followed. On May 30, 2002, the parties submitted a Stipulation of Facts, which we quote in full as follows:

STIPULATION OF FACTS

THE PARTIES, assisted by their respective counsels, and unto this Honorable Court hereby stipulate as follows, that:

1. Out of the total land area of 29.0772 has. belonging to the estate of Antonio Buenaventura and covered by OCT No. P-2182[,] 21.890 was covered by the DAR under P.D. 27 as shown by TCT Nos. EP-221 up to EP-234 to be marked in exhibit as Exhibits "O" up to "BB";

---

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

[16] Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27: Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. No. 27; and Providing for the/Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner (1987).

[17] Records, p. 19.

[18] *Id*. at 23.

[19] *Id*. at 34-35.

[20] *Id*. at 34.

2. Of the 21.890 that was covered by the DAR, 6.5006 was paid directly by the tenants to Jovita Buenaventura representing a portion of her 75% share in the 21.890 has. and these are covered by EP 229 (Exh. "V") for 2.4268 has., EP 228 (Exh. ("U") for 3.8889 has., EP 221 (Exh. "O") for 900 sq.m. and EP-222 (Exh. "P") for 948 sq.m.;

3. The remaining 15.2999 has. was paid for by the government through the Land Bank as evidenced by the Deed of Assignment, Warranties, and Undertaking (or DAWU) to be marked in exhibit as Exhibit "1" - LBP;

4. Hence, the share of petitioner for which just compensation should be fixed is 5.4725 has. (i.e., 25% of 21.890 has.)

RESPECTFULLY SUBMITTED.[21]

On even date, the SAC issued an Order[22] submitting the case for decision.

In its Decision[23] dated June 17, 2002 the SAC ruled in favor of Lina. It explained that out of Lot No. 6561's total area of 290,772 sq. m., **234,702 sq. m.** were taken by the DAR and distributed among the tenant-farmers through EPs 221-234. The estate of Antonio retained 56,070 sq. m.[24] The SAC computed Lina's 25% share out of the 234,702 sq. m. to be equivalent to **58,675.50 sq. m.** It also declared that the actual taking of the property happened on June 13, 1988 when OCT No. P-2182 was cancelled and EPs were issued. Despite this, the LBP offered to pay Lina the value of the property as of March 11, 1993 as shown by LBP's letter of the same date.[25] Subsequently, in arriving at the valuation of ₱10.00 per sq. m., the SAC considered the market value approach as the "fairer gauge."[26]

---

[21] *Id.* at 438-439.

[22] *Id.* at 470.

[23] *Supra* note 4.

[24] Records, p. 482.

[25] *Id.* at 483.

[26] *Id.* at 484.

Lina filed a motion for reconsideration[27] but it was denied.[28] The parties separately filed their respective notices of appeal. The LBP took issue with the date of taking as found by the SAC, as well as the factors and formula by the court in arriving at the valuation of ₱10.00 per sq. m. It alleged that the property was covered and acquired by the government pursuant to PD 27; thus, the SAC should have followed the valuation formula under that law.[29] The LBP also questioned the imposition of legal interest on the just compensation awarded.[30] Lina, meanwhile, faulted the SAC for fixing just compensation at a low price and for ruling that she did not claim for attorney's fees in her petition.[31] Lina asserts the SAC failed to consider that the value of the property as of 1988 was ₱20.00 per sq. m., as established by the testimonies of the duly licensed real estate appraisers she presented as witnesses.[32]

On November 27, 2003, while the appeal was still at the completion-of-records stage, Lina filed before the CA a motion for execution pending appeal of the SAC Decision. She cited her old age and sickness and the fact that 14 years had already elapsed since the taking of her property by the government.[33] The CA granted the motion and ordered the Division Clerk of Court to issue a writ of execution. The LBP sought reconsideration but this was denied by the CA.[34]

After the case was submitted for decision, the LBP filed a manifestation/compliance relative to the execution of the SAC Decision pending appeal, stating that:

---

[27] *Id*. at 489-493.

[28] *Id.* at 497.

[29] *Rollo*, p. 77.

[30] *Id*. at 71.

[31] *Id*. at 70.

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

[33] *Id*. at 71.

[34] *Id*. at 72.

5. While we are ready and willing to comply with the *Alias Writ of Execution Pending Appeal* of 10 pesos per square meter, we are faced, however, with a compelling reality that only 3.8249 hectares rightfully belonged to Lina Navarro.

16. It is for this reason that LBP can only effect payment on the 3.8249 hectares, (25% of 15.2999 hectares) despite the SAC's pronouncement of 5.8070 hectares (25% of 23.4702). Accordingly, a Manager's Check (No. 29586) dated January 12, 2007 in the amount of ₱1,235,578.93 x x x payable to LINA B. NAVARRO was delivered by LBP, through its AOC in Davao, to the handling Sheriff on January 19, 2007 as LBP's compliance for the writ of execution.[35] (Citation omitted.)

The CA then required the parties to simultaneously submit a memorandum on the matter of the hectarage of the property.[36]

Lina claimed in her memorandum that a typographical error attended the recording of the total area placed under agrarian reform. Instead of recording the total area as covering only 21.8005 hectares, what was recorded was an area of 21.890 hectares.[37] Nevertheless, she contended that the controversy as to the actual area of the property, to which she was entitled had long been settled in the parties' Stipulation of Facts. In its Item No. 4, the parties agreed that Lina's 25% share shall be based on [21.890] 21.8005 hectares. Thus, her compensable share should be 5.4501 hectares.[38]

The LBP for its part asserted that the total area acquired by the government, based on the LTPA-FU and the Land Valuation Summary and Farmer's Undertaking, was 15.2999 hectares only.[39] Under Item No. 2 of the Stipulation of Facts clearly stated that, of the 21.890 hectares placed under agrarian reform, 6.5006 hectares was paid directly by the tenants to Jo

---

[35] *Id.*

[36] *Id.*

[37] *Rollo*, p. 14.

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

[39] *Id.* at 73.

vita represented a portion of her 75% share in the 21.980 hectares. The remaining 15.2999 hectares was paid for by the government. The LBP insisted that Lina's 25% share should only be based on the 15.2999 hectares because the payment for 6.5006 hectares was directly paid by the tenants to Jovita. Thus, the difference in area of about 1.7 hectares may be recovered by Lina from Jovita, but not from LBP.[40]

In its Decision[41] dated June 25, 2009, the CA denied the appeal and affirmed the ruling of the SAC with modification, to wit:

> WHEREFORE, the appeal is DENIED. The assailed Decision is hereby AFFIRMED with MODIFICATION that the total area to which petitioner is entitled should be [5.4501 hectares] only and not 5.8070 hectares. The Court directs the LBP to pay petitioner the value of the remaining portion of 1.7 hectares at P10.00 per square meter plus twelve percent (12%) per annum interest to be computed from June 13, 1988 until fully paid.
>
> SO ORDERED.[42]

The CA was convinced that the total land area covered by the agrarian reform program is 21.8005 hectares. Likewise, it held that Lina's 25% share shall be based on 21.8005 hectares, and not 15.2999 hectares as alleged by the LBP. The CA opined that LBP is bound by the Stipulation of Facts, Item No. 2 of which states that the 6.5006 hectares (which was directly paid for by the tenant-farmers) is chargeable to Jovita's 75% share and not to Lina's 25% share.[43] Thus, it ruled that Lina is entitled to a compensable area of 5.4501 hectares.

The CA, however, held that LBP's reliance on the valuation formula under PD 27 was misplaced. Lina's property was taken by the government under PD 27, but it was only on March 11,

---

[40] *Id*. at 75.

[41] *Supra* note 2.

[42] *Rollo*, p. 83.

[43] *Id*. at 75.

1993, or after five years that the LBP offered payment.[44] When RA 6657 was enacted into law in 1998, the amount to be paid to Lina was still unsettled. Hence, the CA declared that just compensation should be determined and the expropriation process conducted under RA 6657. It opined that this is provided for in *Land Bank of the Philippines v. Heirs of Angel T. Domingo*[45] and *Land Bank of the Philippines v. Natividad*.[46] There we ruled that the determination of just compensation for lands taken under PD 27 should be made in accordance with Section 17 of RA 6657, with PD 27 and EO 228 merely having suppletory effect.[47]

For purposes of computing just compensation, the CA noted that the date of taking of the property should be reckoned from the issuance of the EPs because these constitute the conclusive authority for the issuance of transfer certificate of title in the name of the grantee. Otherwise stated, it is from the issuance of an EP that the grantee can acquire the vested right of ownership in the landholding, subject to the payment of just compensation to the landowner.[48]

Meanwhile, the CA sustained the valuation of the ₱10.00 per sq. m. It stated that the fact that the SAC did not consider the commissioners' recommendation of ₱20.00 per sq. m. does not make the SAC's finding erroneous. Reports of commissioners are merely advisory and recommendatory in character and courts are not bound by them.[49]

Finally, the CA noted that pursuant to the writ of execution pending appeal, the LBP had already paid Lina for the value of 3.8249 hectares at P10.00 per sq. m. Hence, it directed the

---

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

[45] G.R. No. 168533, February 4, 2008, 543 SCRA 627

[46] G.R. No. 127198, May 16, 2005, 458 SCRA 441.

[47] *Rollo*, p. 78.

[48] *Id*. at 80.

[49] *Id*. at 82.

LBP to pay Lina the value of the *remaining* 1.72011 hectares also at ₱10.00 per sq. m.[50]

The LBP filed a motion for reconsideration[51] reiterating its earlier argument that just compensation should be fixed using the valuation provided under PD 27 and that Lina be compensated only for the value of 3.8249 hectares. However, before the CA could resolve the motion, the LBP filed a manifestation and motion, informing the court of the passage of RA 9700[52] which took effect on July 1, 2009.[53] Section 5 of RA 9700 provides that "all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of [RA 6657], as amended x x x." The case falls under this category, the LBP pleaded that the issue of whether the SAC disregarded the valuation under PD 27 in determining just compensation is now moot and academic. Nevertheless, it asserted that while the applicable law is RA 6657, still, the SAC's valuation of the property is not compliant with the pertinent DAR valuation guidelines. The LBP thus prayed for the remand of the case to the SAC for further proceedings to determine just compensation under Section 17 of RA 6657.[54]

In a Resolution[55] dated March 18, 2011, the CA denied LBP's motion for reconsideration. Hence, this petition.

The LBP raises the following issues:

---

[50] *Id*. at 83.

[51] Id. at 93-127.

[52] An Act Strengthening the Comprehensive Agrarian Reform Program, 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 1998, as Amended, and Appropriating Funds Therefor.

[53] *Rollo*, p. 142.

[54] *Id*. at 143-144.

[55] *Supra* note 3.

1. Whether the CA erred in holding that Lina's compensable share in the property is 5.4725 hectares;
2. Whether the just compensation fixed by the SAC and affirmed by the CA is correct; and
3. Whether the CA erred in upholding the imposition of 12% interest over the compensation awarded.

The petition is partly meritorious.

I

At the outset, we shall settle the matter of the hectarage of the property. This determination is crucial in identifying the compensable area to which Lina is entitled. In this regard, we note that the parties entered into a Stipulation of Facts before the SAC. Item No. 1 reads:

> 1. Out of the total land area of 29.0772 has. belonging to the estate of Antonio Buenaventura and covered by OCT No. P-2182[,] **21.890 was covered by the DAR under P.D. 27** as shown by TCT Nos. EP-221 up to EP-234 to be marked in exhibit as Exhibits "O" up to "BB"[.][56] (Emphasis supplied.)

Lina pleaded before the CA that there was a typographical error in recording the total area placed under agrarian reform. Instead of 21.8005 hectares, the Stipulation of Facts stated 21.890 hectares. As proof, Lina presented the 14 EPs derived from the property and which was subsequently issued to tenants-beneficiaries by the DAR. These EPs were the same ones referred to in the Stipulation of Facts as Exhibits "O" to "BB". Adding up the land area covered by each of the EPs, Lina concluded that the total area acquired by the government is 21.8005 hectares only.[57] The CA agreed and reckoned Lina's 25% share from 21.8005 hectares.

---

[56] Records, p. 438.

[57] CA *rollo*, pp. 398-399.

We concur with the CA. As a rule, facts stipulated during pre-trial are considered judicial admissions which are legally binding on the parties making them. Even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally and must assume the consequence of the disadvantage.[58] However, the rule on conclusiveness of judicial admission admits of two exceptions: 1) when it is shown that the admission was made through palpable mistake; and 2) when it is shown that no such admission was in fact made.[59] In *Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue*,[60] we ruled that a fact stipulated is not binding on a declarant if it was proved that it was made through palpable mistake such as in the case of a clerical oversight, to wit:

> Respondent commissioner counters that by virtue of the Joint Stipulation of Facts, petitioner is bound by its admission therein that it was registered as a VAT enterprise effective only from August 15, 1990, well beyond the first quarter of 1990, the period for which it is applying for tax credit.
>
> We agree with the Court of Appeals that, as a rule, a judicial admission, such as that made by petitioner in the Joint Stipulation of Facts, is binding on the declarant. However, such rule does not apply when there is a showing that (1) the admission was made through a "palpable mistake," or that (2) "no such admission was made." x x x
>
> x x x x x x x x x

In the present case, we are convinced that a "palpable mistake" was committed. True, petitioner was VAT-registered under Registration No. 32-A-6-00224, as indicated in Item 2 of the Stipulation:

---

[58] *Constantino v. Heirs of Pedro Constatino, Jr.*, G.R. No. 181508, October 2, 2013, 706 SCRA 580, 596-597, citing *Bayas v. Sandiganbayan*, G.R. Nos. 143689-91, November 12, 2002, 391 SCRA 415, 426.

[59] *Constantino v. Heirs of Pedro Constatino, Jr.*, *supra* at 598, citing *Atillo III v. Court of Appeals*, G.R. No. 119053, January 23, 1997, 266 SCRA 596, 602.

[60] G.R. No. 134467, November 17, 1999, 318 SCRA 386.

"2. Petitioner is engaged in the business of mining, production and sale of various mineral products, consisting principally of copper concentrates and gold duly registered with the BIR as a VAT enterprise per its Registration No. 32-A-6-002224 (p. 250, BIR Records)."

Moreover, the Registration Certificate, which in the said stipulation is alluded to as appearing on page 250 of the BIR Records, bears the number 32-0-004622 and became effective August 15, 1990. But the *actual* VAT Registration Certificate, which petitioner mentioned in the stipulation, is numbered 32-A-6-002224 and became effective on January 1, 1988, thereby showing that petitioner had been VAT-registered even prior to the first quarter of 1990. Clearly, there exists a discrepancy, since the VAT registration number *stated* in the joint stipulation is NOT the one mentioned in the actual Certificate attached to the BIR Records.

The foregoing simply indicates that petitioner made a "palpable mistake" either in referring to the wrong BIR record, which was evident, or in attaching the wrong VAT Registration Certificate. The Court of Appeals should have corrected the unintended clerical oversight. In any event, the indelible fact is: the petitioner was VAT-registered as of January 1, 1988.[61] (Emphasis supplied, italics in the original, citation omitted.)

Similarly, in this case before us, the record shows that a palpable mistake was committed in the arithmetical computation of the total areas stated in the EPs and the typing/recording of the area taken pursuant to the agrarian reform program. Our examination of EPs 221 to 234 shows that they cover an aggregate land area of only 21.8005 hectares. Item Nos. 2 and 3 of the Stipulation of Facts also support this conclusion, *viz.*:

2. Of the **21.890** that was covered by the DAR, **6.5006** was paid directly by the tenants to Jovita Buenaventura representing a portion of her 75% share in the 21.890 has. and these are covered by EP 229 (Exh. "V") for 2.4268 has., EP 228 (Exh. ("U") for 3.8889 has., EP 221 (Exh. "O") for 900 sq.m. and EP-222 (Exh. "P") for 948 sq.m.;

3. The remaining **15.2999** has. was paid for by the government through the Land Bank as evidenced by the Deed of Assignment,

---

[61] *Id*. at 396-397.

Warranties, and Undertaking (or DAWU) to be marked in exhibit as Exhibit "1" - LBP[.][62] (Emphasis supplied.)

If we subtract the 6.5006 hectares compensation for which were paid directly by the tenant-farmers from the stipulated 21.890 hectares, the remaining area will be 15.3894 hectares. This will not tally with what was stated in Item No. 3 that there is a remaining 15.2999 hectares. However, if we use 21.8005 hectares as the base area, the remaining portion will be exactly 15.2999 hectares. Unsurprisingly, the LBP did not refute or oppose the correction made by Lina that 21.8005 hectares was the correct hectarage. In fact, in its memorandum before us, the LBP recognized that 21.8005 hectares were acquired for agrarian reform purposes.[63]

Having settled the matter of hectarage, we shall now proceed to the three issues *in seriatim*.

II

a

The LBP faults the CA for finding that Lina is entitled to a compensable area of 5.4725 hectares.[64] It insists that Lina should receive just compensation for only 3.824975 hectares. The LBP avers that while it is true that Item No. 4 of the Stipulation of Facts states that Lina's 25% share is equivalent to 5.4725 hectares, it cannot bind the LBP as a judicial admission for violating Article 493 of the Civil Code. This provision, the LBP asserts, mandates that *pro-indiviso* shares can only be determined with particularity by way of a partition.[65] Since the property is not yet partitioned, specific portions cannot be awarded to Jovita and Lina. Hence, Jovita who has 75% *pro-indiviso* share in the property, could not have validly transferred 6.5006 hectares directly to the tenant-farmers if Lina's 25% *pro-indiviso* share

---

[62] Records, pp. 438-439.

[63] *Rollo*, p. 421.

[64] *Id*. at 29-36. But see CA's Decision which actually states that Lina is entitled to a compensable area of 5.4501 hectares, *id*. at 83.

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

was not included.[66] It thereafter proposes that Lina's 25% share in the property be determined as follows:

— 25% or 1.62515 hectares of the 6.5006 hectares sold through the direct payment scheme; and

— **25% or 3.824975 hectares of the 15.2999 hectares financed by petitioner LBP for acquisition by the farmer-beneficiaries**.[67] (Emphasis supplied.)

The LBP further maintains that it cannot be estopped in relation to the facts stipulated because any act in violation of Article 493 is illegal, and estoppel cannot be predicated on an illegal act.[68]

The LBP is incorrect.

That Item No. 4 of the Stipulation of Facts states that Lina's 25% share is equivalent to 5.4725 hectares (now, 5.4501 hectares)[69] does not mean that a specific or definite portion was determined ahead of the property's actual partition. A definite portion of the land refers to specific metes and bounds of a co-owned property. Thus, in *Cabrera v. Ysaac*,[70] we ruled that:

> If the alienation precedes the partition, the co-owner cannot sell a definite portion of the land without consent from his or her co-owners. He or she could only sell the undivided interest of the co-owned property. As summarized in *Lopez v. Ilustre*, "[i]f he is the owner of an undivided half of a tract of land, he has a right to sell and convey an undivided half, but he has no right to divide the lot into two parts, and convey the whole of one part by metes and bounds."

---

[66] *Id* at 32.

[67] *Id*. at 35.

[68] *Id*. at 34.

[69] We earlier resolved the matter of hectarage of the property to be 21.8005 hectares and not 21.890 hectares as written in the Stipulation of Facts. Item No. 4 of the Stipulation of Facts based the 25% share of Lina from 21.890 hectares thus it stated 4.5725 hectares. However, applying the correct hectarage, Lina's 25% share is equivalent to 5.4501 hectares.

[70] G.R. No. 166790, November 19, 2014, 740 SCRA 612.

The *undivided interest* of a co-owner is also referred to as the "ideal or abstract quota" or "proportionate share." On the other hand, the *definite portion* of the land refers to specific metes and bounds of a co-owned property.

To illustrate, if a ten-hectare property is owned equally by ten co-owners, the undivided interest of a co-owner is one hectare. The definite portion of that interest is usually determined during judicial or extrajudicial partition. After partition, a definite portion of the property held in common is allocated to a specific co-owner. The co-ownership is dissolved and, in effect, each of the former co-owners is free to exercise autonomously the rights attached to his or her ownership over the definite portion of the land. It is crucial that the co-owners agree to which portion of the land goes to whom.[71] (Citations omitted, emphasis supplied.)

Here, the 21.8005-hectare property is owned by Jovita and Lina at a 75% and 25% ratio, respectively. Following the illustration in *Cabrera*, the undivided interest of Jovita is 16.3504 hectares while the undivided interest of Lina is 5.4501 hectares. Thus, when the parties entered into the Stipulation of Facts stating the hectarage of Lina's 25% share, they did not determine a definite or specific portion of the property; rather, they merely provided for the undivided interest of Lina.

b

We also reject LBP's argument that, since the property is not yet partitioned, Lina's 25% share is necessarily included when Jovita transferred 6.5006 hectares of the property to tenant-farmers under the direct payment scheme. A co-owner has an absolute ownership of his/her undivided and *pro-indiviso* share in the co-owned property. He/she has the right to alienate, assign and mortgage it, even to the extent of substituting a third person in its enjoyment provided that no personal rights will be affected.[72] This is allowed by Article 493 of the Civil Code, which states:

---

[71] *Id*. at 629-630.

[72] *Torres, Jr. v. Lapinid*, G.R. No. 187987, November 26, 2014, 742 SCRA 646, 651.

Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

Here, the LBP admitted that the 6.5006 hectares were taken from the 75% share of Jovita. Item No. 2 of the Stipulation of Facts is clear, *viz.*:

2. Of the 21.890 that was covered by the DAR, **6.5006 was paid directly by the tenants to Jovita Buenaventura representing a portion of her 75% share in the 21.890 has.** and these are covered by EP 229 (Exh. "V") for 2.4268 has., EP 228 (Exh. ("U") for 3.8889 has., EP 221 (Exh. "O") for 900 sq.m. and EP-222 (Exh. "P") for 948 sq.m.[.][73] (Emphasis supplied.)

As explained earlier, facts stipulated by the parties during pre-trial are binding on them as judicial admissions. Since the LBP did not deny that it made the admission nor allege that the admission was made through palpable mistake, it is bound by the admissions it made in the Stipulation of Facts. It cannot now argue that a proportionate part of the 6.5006 hectares should be charged to Lina's 25% share. Further, the LBP failed to present any evidence to support its contention or to refute its admission. In fine, the CA did not err in ruling that Lina's compensable area which represents her 25% share in the property is equivalent to 4.501 hectares.

III

With the passage of RA 9700, the LBP abandoned its original theory that just compensation of the property should be fixed in accordance with the valuation formula provided in PD 27. It alleges, however, that while the CA is correct that Section 17

[73] Records, p. 438.

of RA 6657 should govern the determination of just compensation, the appellate court erred in sustaining the valuation made by the SAC because the court *a quo* did not actually apply Section 17. Instead, the SAC determined just compensation solely on the basis of the market value of the property.[74] The LBP asserts that the SAC should have applied the factors stated in Section 17 as well as the pertinent provisions of DAR AO No. 5, in computing the valuation of the property.[75]

Lina, for her part, avers that the issue of non-compliance with DAR AO No. 5 was not raised by the LBP during trial or on appeal. Thus, she maintains that the LBP is barred from raising it for the first time before us.[76]

We are not persuaded. The rule that no questions will be entertained on appeal unless it has been raised in the proceedings below[77] admits of exceptions. These exceptions include: (1) the issue of lack of jurisdiction which may be raised at any stage; (2) cases of plain error; (3) when there are jurisprudential developments affecting the issues; and (4) when the issues raised present a matter of public policy.[78] As will be seen shortly, the second, third and fourth instances obtain in this case. Accordingly, we shall proceed to resolve the LBP's contention that the SAC and the CA committed reversible error in fixing the just compensation of the property.

When the agrarian reform process under PD 27 remains incomplete and is overtaken by RA 6657, such as when the just compensation due to the landowner has yet to be settled, as in this case, just compensation should be determined and

---

[74] *Rollo*, p. 37.

[75] *Id*. at 39.

[76] *Id*. at 353-354.

[77] *Lorzano v. Tabayag, Jr.,* G.R. No. 189647, February 6, 2012, 665 SCRA 38, 49-50.

[78] *Del Rosario v. Bonga,* G.R. No. 136308, January 23, 2001, 350 SCRA 101, 110-111.

the process conducted under RA 6657, as amended, with PD 27 and EO 228 applying only suppletorily.[79]

Notably, in its Decision, the CA correctly ruled that the provisions of RA 6657, particularly Section 17, apply in this case. The property was taken pursuant to PD 27 but the issue of just compensation was not yet settled when RA 6657 took effect in 1988. Further, while the case was still pending before the CA, RA 9700 extending the agrarian reform program under RA 6657 was passed into law. Section 5 of RA 9700 states that "all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended." Section 17 reads:

> Sec. 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR), translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Pursuant to its rule-making power under Section 49 of RA 6657, the DAR translated the valuation factors enumerated in Section 17 into a basic formula outlined in DAR AO No. 5, series of 1998, AO No. 2, series of 2009, AO No. 1, series of 2010, and the most recent DAR AO No. 7, series of 2011,[80] to wit:

---

[79] *Land Bank of the Philippines v. Lajom*, G.R. No. 184982, August 20, 2014, 733 SCRA 511, 520.

[80] *Land Bank of the Philippines v. Prado Verde Corp.*, G.R. No. 208004, July 30, 2018.

LV = (CM x 0.6) + (CS x 0.30) + (MV x 0.10)

Where: LV = Land Value

CNI = Capitalized Net Income (based on land use and productivity)

CS = Comparable Sales (based on fair market value equivalent to 70% of BIR zonal value)

MV = Market Value per Tax Declaration (based on Government assessment)

a. If the three factors are present

When the CNI, CS and MV are present, the formula shall be:

LV = (CNI x 0.60) + (CS x 0.30) + (MV x 0.10)

b. If two factors are present

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

LV = (CNI x 0.90) + (MV x 0.10)

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

LV = (CS x 0.90) + (MV x 0.10)

c. If only one factor is present

When both the CS and CM are not present and only MV is applicable, the formula shall be:

LV = MV x 2

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, municipality or province (in that order) approved by the LBP within one (1) year from receipt of the claim folder.[81]

---

[81] Section 85, DAR AO No. 7, series of 2011.

In the recent case of *Alfonso v. Land Bank of the Philippines (Alfonso)*,[82] we underscored the mandatory character of the application of Section 17, as amended, and translated into a basic formula by the DAR, to wit:

> **This Court thus for now gives full constitutional presumptive weight and credit to Section 17 of RA 6657, DAR AO No. 5 (1998) and the resulting DAR basic formulas.** x x x
>
> x x x x x x x x x
>
> 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 str**ict application of said formulas is not warranted under the specific circumstances of the case before 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.[83] (Citations omitted, emphasis supplied.)

In this case, we find that the SAC wantonly disregarded Section 17, as amended, and the applicable DAR formula, in its valuation of the property. The SAC used the "market approach" in arriving at the valuation of ₱10.00 per sq. m., to wit:

> 19) That as of 1988 there were already four existing big subdivisions, Skyline, Montemaria, NHA and the biggest Regional Major Seminary in Mindanao within a radius of 7 kilometers from the petitioner's lot, the major national highway was seven kilometers from it, the land is traversed by an all weather barangay road which links it to the main city roads and the city poblacion is only about 30 minutes by car.

---

[82] *Supra* note 7.

[83] *Id*. at 121-123.

20) **That the market value approach is a fairer gauge**; the Zonal Valuation is often unreliable while the tax declaration valuation is unrealistic as the state knows the landowner tries to reduce the value of his land for real estate tax purposes and the landowner's appraisal of his land is not against law[,] public order, public policy and good customs, that it is the Assessment law that forces the landowner to declare how much his land is worth for taxation purposes and since the law give (sic) no guidelines to the landowner on how much it should be, there is no fraud or bad faith in putting the value the landowner thinks it should be for taxation purposes.

21) That there are very few [fruit] trees on the land.

22) That the reports of the Commissioners show that the selling price of the land in Catalunan Grande since 1980 is per square meter and not per hectare.

23) That the subdivisions were fully developed] in 1988 and have few empty lots.

x x x x x x x x x

WHEREFORE, the respondents shall solidarity pay the petitioner ten pesos per square [meter] for the fifty eight thousand seventy square meters plus twelve percent per annum interest to be computed from June 13, 1988 until fully paid.

SO ORDERED.[84] (Emphasis supplied.)

We note that the SAC decided the issue of just compensation on June 17, 2002, well before the passage of RA 9700 in 2009 and DAR AO No. 7 in 2011. Nevertheless, Section 17 of RA 6657 was at that time translated into a basic formula under DAR AO No. 5, series of 1998. As the applicable law and rule at the time, the SAC should have considered their applicability for purposes of arriving at a valuation of Lina's property. This it did not do. What the SAC applied, instead, was the market value approach, which it deemed to be the "fairer gauge" of just compensation. Similarly, the CA, in sustaining the SAC's ruling, did not test whether the latter applied the appropriate formula. It merely noted that courts are not bound by the reports

[84] Records, pp. 484-485.

of commissioners as to the surrounding circumstances of the property and their recommendation as to the valuation of the property. Consequently, we reject the just compensation of the property as determined by the SAC and affirmed by the CA for failure to observe the statutory guidelines for fixing just compensation.

Meanwhile, we reviewed the record of the case and find insufficient data to arrive at a valuation of the property. As we are not a trier of facts, we cannot receive any new evidence from the parties to aid us in the prompt resolution of the case.[85] Hence, we remand the case to the SAC for the fixing of just compensation for Lina's 25% share in accordance with Section 17 of RA 6657, as amended, and the pertinent DAR regulations, as held in *Alfonso*.

IV

The LBP avers that the SAC and the CA erred in imposing 12% legal interest *per annum* on the compensation awarded to Lina. It alleges that there was no delay on its part in the payment of just compensation as it was Lina who refused to accept the payment.[86] It also asserts that the courts *a quo* failed to give factual and legal bases for the grant of interest.

We disagree.

In its petition, the LBP did not dispute the date of taking of the property as June 13, 1988, the date when EPs were issued to the tenant-farmers under the agrarian reform program. It also did not dispute Lina's allegation (as validated by the SAC) that it was only on March 11, 1993 that the LBP offered to pay for the property. Evidently, property was taken for public use without payment of just compensation. We note that, even the offer of payment, made five years after the actual taking, was also delayed. Thus, the imposition of interest on the final amount

---

[85] *Land Bank of the Philippines v. Eusebio, Jr.*, G.R. No. 160143, July 2, 2014, 728 SCRA 447, 467.

[86] *Rollo*, p. 50.

of just compensation is warranted under the circumstances. In this regard, we cite our ruling in *National Power Corporation v. Manalastas*,[87] *viz.*:

> We recognized in *Republic v. Court of Appeals* the need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. We ruled in this case that:
>
> The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, i[f] fixed at the time of the actual taking by the government.
>
> Thus, ***if property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.*** x x x[88] (Emphasis in the original.)

The award of interest is imposed in the nature of damages for delay in payment which, in effect, makes the obligation on the part of the government one of forbearance to ensure prompt payment of the value of the land and limit the opportunity loss of the owner.[89]

---

[87] G.R. No. 196140, January 27, 2016, 782 SCRA 363.

[88] *Id*. at 369-370, citing *Republic v. Court of Appeals*, G.R. No. 146587, July 2, 2002, 383 SCRA 611, 622-623.

[89] *Land Bank of the Philippines v. Spouses Avanceña* (Concurring Opinion), G.R. No. 190520, May 30, 2016, 791 SCRA 319, 330, citing *Republic v. Soriano*, G.R. No. 211666, February 25, 2015, 752 SCRA 71, 92-93; *Land Bank of the Philippines v. Rivera*, G.R. No. 182431, February 27, 2013, 692 SCRA 148, 153, citing *Land Bank of the Philippines v. Celada*, G.R. No. 164876, January 23, 2006, 479 SCRA 495, 512, also citing *Land*

Accordingly, we find that the CA was correct in upholding SAC's imposition of interest on the just compensation awarded to Lina. However, we modify the rate of legal interest in conformity with *Nacar v. Gallery Frames*.[90] The just compensation due to Lina (as finally determined by the SAC on remand) shall earn legal interest at the rate of 12% *per annum* computed from the time of taking on June 13, 1988 until June 30, 2013. From July 1, 2013 until full payment, the amount shall earn an interest at the rate of 6% *per annum* in accordance with *Bangko Sentral ng Pilipinas* Monetary Board Circular No. 799, series of 2013.[91] The amount which Lina already received from the LBP pursuant to the writ of execution issued by the CA pending appeal shall be deducted from the amount of just compensation finally determined by the SAC.

WHEREFORE, and in view of the foregoing, the petition is **PARTLY GRANTED**. The June 25, 2009 Decision and March 18, 2011 Resolution of the CA in CA-G.R. CV No. 79097 are **REVERSED** and **SET ASIDE** insofar as they upheld the valuation of Lina's compensable share in the property computed by the SAC. The finding of the CA that Lina's compensable area is equivalent to 5.4501 hectares is however **AFFIRMED**. Consequently, the case is **REMANDED** to the Regional Trial Court, 11th Judicial Region, Branch 15, Davao City for recomputation of just compensation. The trial court is **DIRECTED** to conform strictly to the ruling and guidelines set forth in the Court's Decision in G.R. Nos. 181912 and 183347, entitled "*Alfonso v. Land Bank of the Philippines*" promulgated on November 29, 2016, and to conduct the proceedings with reasonable dispatch.

Bank of the Philippines v. Wycoco, G.R. No. 140160, January 13, 2004, 419 SCRA 67, 80, further citing *Reyes v. National Housing Authority*, G.R. No. 147511, January 20, 2003, 395 SCRA 494, 505-506.

[90] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

[91] Rate of Interest in the Absence of Stipulation; See also *Land Bank of the Philippines v. Spouses Avanceña,* supra at 330-331; *Land Bank of the Philippines v. Lajom, supra* note 79 at 524; *Department of Agrarian Reform v. Beriña*, G.R. No. 183901, July 9, 2014, 729 SCRA 403, 418; and *Land Bank of the Philippines v. Eusebio, Jr., supra* note 85 at 467.

Whatever amounts received by Lina from the LBP pursuant to the writ of execution pending appeal shall be deducted from the recomputed amount. Thereafter, the final amount of just compensation shall earn legal interest at the rate of 12% *per annum* from June 13, 1988 to June 30, 2013. Then from July 1, 2013 until full payment, the legal interest shall be at the rate of 6% *per annum*.

SO ORDERED.

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

Carandang, J., on official leave.

FIRST DIVISION

[G.R. No. 229049. June 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ABELARDO SORIA *y* VILORIA, *alias* "GEORGE,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. — "In a prosecution for the illegal sale of dangerous drugs, such as *shabu*, the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor." In other words, the prosecution must not only adduce proof that the transaction or sale actually took place, but must also present the seized dangerous drugs as evidence in court. As regards the charge of illegal possession of dangerous drugs, the prosecution must prove the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the

accused was freely and consciously aware of being in possession of dangerous drugs.

2. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURTS, RESPECTED. — [B]oth the RTC and the CA correctly found that all the elements of the crimes charged were present, x x x Absent any indication that both courts had *overlooked, misunderstood* or *misconstrued* the real import or significance of the facts and circumstances adduced in these cases, we find no reason to overturn their factual findings. After all, "the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties."

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY; ABSENCE OF THE REQUIRED WITNESSES EXCUSED AS EARNEST EFFORTS TO SECURE THEIR ATTENDANCE HAD BEEN SUFFICIENTLY PROVEN. –- [T]he buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165. x x x [T]he prosecution had sufficiently accounted for each link in the chain of custody, from the moment the sachets of *shabu* were seized up to their presentation in court as evidence, x x x With regard to the absence of representatives from the media and the DOJ during the conduct of the physical inventory and photograph-taking of the seized *shabu*, we are of the view that *earnest efforts* to secure the attendance of the necessary witnesses had been sufficiently proven by the prosecution.

4. ID.; ID.; UNAUTHORIZED SALE OF SHABU REGARDLESS OF THE QUANTITY AND PURITY AND ILLEGAL POSSESSION OF SHABU WITH A QUANTITY OF LESS THAN FIVE (5) GRAMS; PENALTY. — [W]e affirm appellant's conviction for the crimes charged. The penalty for the unauthorized sale of *shabu* under Section 5, Article II of RA 9165, regardless of the quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. Thus, the penalty of life imprisonment and a fine of ₱500,000.00 imposed by the court *a quo* in Criminal Case No. A-6134 is within the range provided by law. x x x The penalty for the illegal possession of *shabu* with a quantity of less than five (5) grams, as in this case, is imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of ₱300,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this appeal is the August 5, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR. HC. [No.] 06535 which affirmed the November 13, 2013 Joint Decision[2] of the Regional Trial Court (RTC), Branch 32, Agoo, La Union, finding Abelardo Soria y Viloria (appellant) guilty beyond reasonable doubt of the illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of Republic Act (RA) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The Antecedent Facts

Appellant was charged with the illegal sale and illegal possession of dangerous drugs under Sections 5 and 11, Article II of RA 9165 in two Informations dated February 20, 2012 which read:

Criminal Case No. A-6134

That on or about the 17th day of February 2012, in the Municipality of Rosario, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly sell and deliver to a "poseur[-]buyer" a heat[-]sealed plastic sachet containing 0.1639 [gram] of "shabu" or methamphetamine hydrochloride for and in consideration of ₱500.00, more or less, without any lawful authority.

---

[1] *Rollo*, pp. 2-18; penned by Associate Justice Leoncia Real-Dimagiba and concurred in by Associate Justices Ramon R. Garcia and Jhosep Y. Lopez.

[2] CA *rollo*, pp. 44-65; penned by Acting Presiding Judge Rose Mary R. Molina-Alim.

CONTRARY TO LAW.[3]

Criminal Case No. A-6135

That on or about the 17th day of February 2012, in the Municipality of Rosario, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly have in his possession, control and custody three (3) heat[-]sealed plastic sachets containing 0.1246, 0.1470 and 0.0386 [gram] of "shabu" or methamphetamine hydrochloride, respectively, without any lawful authority.

CONTRARY TO LAW.[4]

During his arraignment for these two informations on March 13, 2012, appellant entered a plea of not guilty.[5] Trial thereafter ensued.

Version of the Prosecution

On February 17, 2012, at around 10:00 a.m., PO2 Eleuterio V. Esteves (PO2 Esteves) received information from a confidential informant (CI) that appellant was engaged in the sale of *shabu* in the Municipality of Rosario, Province of La Union. PO2 Esteves immediately notified Police Chief Inspector Erwin Dayag (PCI Dayag) who decided to conduct a buy-bust operation against appellant.[6]

In preparation for the buy-bust operation, PCI Dayag coordinated with the Philippine Drug Enforcement Agency (PDEA), as evidenced by the Pre-Operation Report,[7] the Coordination Form,[8] and the Certificate of

---

[3] Records (Crim. Case No. A-6134), p. 1.

[4] Records (Crim. Case No. A-6135), p. 1.

[5] See Records (Crim. Case No. A-6134), p. 27; and Records (Crim. Case No. A-6135), p. 28.

[6] CA *rollo*, p. 139.

[7] Records (Crim. Case No. A-6134), p. 92.

[8] *Id*. at 93.

Coordination[9] issued by PDEA Agent Elaine Grace C. Ordono. Meanwhile, PO2 Esteves withdrew the amount of ₱500.00 from their finance officer to be used as marked money, upon which he placed the markings "EVE."[10]

PO2 Esteves then instructed the CI to arrange a meeting with appellant and to give a description of the latter's physical appearance prior to the meeting.[11]

Together with the PDEA agents, the buy-bust team proceeded to the meeting place beside the road near the Our Lady of Lourdes Church in Brgy. Damortis, Rosario, La Union. PO2 Esteves and the designated poseur-buyer waited for appellant at a waiting shed in front of the church while the other team members strategically positioned themselves around the perimeter.[12]

After a few minutes, PO2 Esteves saw appellant alight from a mini-bus. Appellant approached PO2 Esteves and asked, "*Ikaw ba yon*?" and the latter nodded his head in affirmation. When the appellant understood that PO2 Esteves was buying ₱500.00-worth of *shabu*, appellant took one heat-sealed, transparent plastic sachet containing a white crystalline substance from his right pocket and gave it to PO2 Esteves. PO2 Esteves, in turn, handed appellant the ₱500.00-marked money. Once the exchange was completed, PO2 Esteves scratched his head, the pre-arranged signal that the transaction had already been consummated.[13]

The other members of the buy-bust team immediately rushed to the scene. PO2 Rommel R. Dulay (PO2 Dulay) placed appellant under arrest and informed him of his constitutional

---

[9] *Id*. at 94.

[10] CA *rollo*, p. 139.

[11] *Id*.

[12] *Id*. at 139-140.

[13] *Id*. at 140. See also TSN, September 4, 2012, pp. 17-19.

rights.[14] PO2 Esteves then conducted a body search of appellant in the presence of Brgy. Captain Alberto Valdez and Brgy. Secretary Daniel Sison. From appellant's right pocket were taken three (3) transparent plastic sachets containing white crystalline substances. PO2 Esteves likewise recovered from appellant the ₱500.00-marked money, one ₱100.00-bill, two ₱50.00-bills, and a cellphone.[15]

Also in the presence of the *barangay* officials, PO2 Esteves marked the plastic sachet subject of the sale with "AS-1 02-17-2012" with his signature, and the three plastic sachets recovered from appellant with "AS-2 to AS-4 02-17-2012" with his signature.[16] He then recorded the same in the Receipt/Inventory of Property Seized[17] while PO2 Dulay took photographs[18] of the confiscated items. Afterwards, the buy-bust team proceeded to the Rosario Police Station with PO2 Esteves in possession of the seized items.[19] There, the incident was recorded in the police blotter.[20]

At around 9:15 p.m., PO2 Esteves personally turned over the seized plastic sachets to PO2 Marie June F. Milo of the Regional Crime Laboratory Office 1, along with the Request for Laboratory Examination,[21] as evidenced by the Chain of Custody Form[22] dated February 17, 2012. Per Chemistry Report No. D-011-2012[23] prepared by Police Senior Inspector Maria

---

[14] *Rollo*, p. 4. See also TSN, September 4, 2012, p. 20.

[15] *Id*. See also CA *rollo*, p. 140.

[16] CA *rollo*, p. 140.

[17] Records (Crim. Case No. A-6134), p. 96.

[18] *Id*. at 97-100.

[19] CA *rollo*, p. 140.

[20] *Id*.

[21] Records (Crim. Case No. A-6134), p. 102.

[22] *Id*. at 105.

[23] *Id*. at 104.

Theresa Amor C. Manuel (P/Sr. Insp. Manuel), the subject specimens tested positive for methamphetamine hydrochloride, more commonly known as *shabu*.

Version of the Defense

Appellant raised the defenses of *frame-up* and *denial*. He testified that:

> On 17 February 2012, at around 8:30 o'clock in the evening, [appellant] was on his way home to Rosario, La Union. While waiting for a minibus in Damorits [sic], La Union, he was confronted by the policemen of Rosario saying in Ilocano[,] "*Shabu, adda shabum dita*?" (you have a [sic] shabu in your possession.) He told them that [there was nothing in his pockets or his hands]. The police officers[,] however[,] insisted on putting their hands in his pocket to see if there [was] something inside. When they did not get anything from his pocket[s], one policeman handed a crumpled piece of paper and put it inside his pocket. He was brought near the church of Damortis and in front of a store. They waited for barangay officials of the place. When they arrived, they brought out the crumpled piece of paper and opened it and saw money and a sachet of drugs. He told them to release him but to no avail, thus, he was brought to the Municipal Hall in Rosario.[24]

Ruling of the Regional Trial Court

In its Joint Decision dated November 13, 2013, the RTC found appellant guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165.[25] It held that the prosecution was able to prove the elements of the illegal sale and illegal possession of dangerous drugs, *viz.*:

> As the designated poseur-buyer, PO2 Esteves was unwavering in his positive identification of [appellant] during the trial as the person who sold the illegal drugs. He never faltered in his testimony when he said he used the marked money as payment for the object of the crime, that is, the *shabu* which [appellant] handed to him.[26]

---

[24] CA *rollo*, p. 92.

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

[26] *Id*. at 61.

x x x x x x x x x

Ostentatiously, the owner and possessor of the transparent plastic sachets [was] no other than [appellant] himself, "who [had] neither shown any proof of the absence of *animus possidendi* nor presented any evidence that would show that he was duly authorized by law to possess them during the buy-bust operation, thus leading to no other conclusion than that [appellant] [was] equally liable for illegal possession of dangerous drugs under Section 11, Article II of RA 9165."[27]

Accordingly, the RTC sentenced appellant as follows: (*a*) to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 in Criminal Case No. A-6134; and (*b*) to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and to pay a fine of ₱300,000.00 in Criminal Case No. A-6135.[28]

Ruling of the Court of Appeals

The CA affirmed the RTC's Joint Decision but it *modified* the period of imprisonment originally imposed by the trial court in **Criminal Case No. A-6135** to an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, considering that the total weight of the *shabu* found in appellant's possession was only 0.3102 gram.[29]

Like the RTC, the CA found that all the elements of the illegal sale and illegal possession of dangerous drugs were satisfactorily established by the prosecution, *viz.*:

In the present case, all the elements of the crime have been sufficiently established. The prosecution's evidence positively identified PO2 Esteves as the buyer and [appellant] as the seller of *shabu*. The prosecution established through testimony and evidence the object of the sale, one (1) heat-sealed plastic sachet containing

---

[27] *Id*. at 63.

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

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

white crystalline substance and one (1) marked Php500.00 bill, as the consideration thereof. Finally, the delivery of the *shabu* sold and its payment were clearly testified to by the prosecution witnesses.[30]

x x x x x x x x x

In the case at bench, the prosecution was able to establish with moral certainty the guilt of [appellant] for the crime of illegal possession of dangerous drugs. [Appellant] was apprehended, indicted, and convicted by way of a buy-bust operation, a form of entrapment to capture lawbreakers in the execution of their criminal plan. The arresting officer, PO2 Esteves, positively identified [appellant] as the person caught in actual possession of three (3) plastic sachets of *shabu*presented in court. He stated that the *shabu* were validly confiscated from the person of [appellant] during a body search conducted on him after the latter was arrested in *flagrante delicto* selling *shabu* to PO2 Esteves during the buy-bust operation.[31]

The CA rejected appellant's contention that the chain of custody over the seized items was broken as there were no representatives from the media and the Department of Justice (DOJ) when said items were inventoried and photographed. It explained that:

x x x Here, the records reveal that the police officers substantially complied with the process of preserving the integrity of the seized drugs. As explained by PO2 Esteves, despite their efforts to coordinate with the media and the DOJ, no representatives were able to appear during the inventory. Considering the possible perils that any delay might entail[,] coupled [with] the fact that there was a heavy downpour at that time, it would [have been] illogical to waste precious time waiting for other representatives to arrive at the scene of the operation[,] especially since there were already *barangay* officials present to witness the event. Indeed, the presence of these officials during the inventory was already substantial compliance with the requirements of R.A. No. 9165 and its IRR.[32]

Aggrieved, appellant filed the present appeal.

---

[30] *Id*. at 9.

[31] *Id*. at 15.

[32] *Id*. at 11.

The Issues

Appellant raises the following issues for the Court's resolution:

First, whether his guilt had been proven beyond reasonable doubt, given the "serious and inexplicable discrepancies" in the testimony of PO2 Esteves as regards the important details surrounding the buy-bust operation;[33]

Second, whether the chain of custody over the seized items had been sufficiently established despite the prosecution's failure to present the testimony of the duty officer who received the specimens at the Regional Crime Laboratory;[34]

And ***third***, whether the integrity and evidentiary value of the seized dangerous drugs had been compromised, considering the absence of representatives from the media and the DOJ during the conduct of inventory and taking of photographs of the confiscated items.[35]

The Court's Ruling

The appeal is unmeritorious.

"In a prosecution for the illegal sale of dangerous drugs, such as *shabu*, the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor."[36] In other words, the prosecution must not only adduce proof that the transaction or sale actually took place, but must also present the seized dangerous drugs as evidence in court.[37]

---

[33] CA *rollo*, pp. 94-95.

[34] *Id*. at 96.

[35] *Id*. at 98-99.

[36] *People v. Cabiles*, G.R. No. 220758, June 7, 2017, 827 SCRA 89, 95.

[37] *People v. Dumlao*, 584 Phil. 732, 738 (2008).

As regards the charge of illegal possession of dangerous drugs, the prosecution must prove the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs.[38]

In this case, both the RTC and the CA correctly found that all the elements of the crimes charged were present, as the records clearly showed that: ***first***, appellant was caught *in flagrante delicto* selling one (1) heat-sealed transparent plastic sachet containing *shabu* to PO2 Esteves, the poseur-buyer, for the amount of ₱500.00[39] during a legitimate buy-bust operation;[40] and ***second***, three (3) other heat-sealed, plastic sachets containing *shabu* with an aggregate weight of 0.3102 gram[41] were recovered from appellant during the search made incidental to his arrest.[42] Absent any indication that both courts had *overlooked, misunderstood* or *misconstrued* the real import or significance of the facts and circumstances adduced in these cases, we find no reason to overturn their factual findings.[43] After all, "the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties."[44]

We further hold that the buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165.

---

[38] *People v. Dela Rosa*, 655 Phil. 630, 647 (2011).

[39] TSN, September 4, 2012, pp. 17-19.

[40] *Id*. at 6-7. See also Records (Crim. Case No. A-6134), pp. 92-94.

[41] Per Chemistry Report No. D-011-2012, the three (3) heat-sealed, transparent plastic sachets recovered from appellant contained 0.1246, 0.1470 and 0.0386 gram of *shabu*. See Records (Crim. Case No. A- 6134), p. 104.

[42] TSN, September 4, 2012, p. 22.

[43] See *Reyes, Jr. v. Court of Appeals*, 424 Phil. 829, 836 (2002).

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

The record shows that PO2 Esteves immediately placed the markings "AS-1 02-17-2012 to AS-4 02-17-2012" on the four (4) heat-sealed, transparent plastic sachets containing suspected *shabu* that were seized during the buy-bust operation against appellant.[45] The buy-bust team then conducted the physical inventory and photograph-taking of said items while still at the scene, in the presence of Brgy. Captain Alberto Valdez and Brgy. Secretary Daniel Sison.[46] The seized plastic sachets were then secured, taken to the police station, and thereafter, to the crime laboratory by PO2 Esteves where they tested positive for *shabu*.[47] Finally, the same specimens were duly identified in court.[48]

On this matter, we note that the prosecution had sufficiently accounted for each link in the chain of custody, from the moment the sachets of *shabu* were seized up to their presentation in court as evidence, given the testimonies of PO2 Esteves and P/Sr. Insp. Manuel, coupled with the Chain of Custody Form[49] on record.

With regard to the absence of representatives from the media and the DOJ during the conduct of the physical inventory and photograph-taking of the seized *shabu*, we are of the view that *earnest efforts* to secure the attendance of the necessary witnesses had been sufficiently proven by the prosecution.

In *People v. Sipin*,[50] we explained that in cases where the presence of the required witnesses was not obtained, the prosecution must allege and prove that their absence was due to reason/s such as:

---

[45] TSN, September 4, 2012, p. 23.

[46] *Id*. at 23-27.

[47] *Id*. at 36-38.

[48] *Id*. at 33-34. See also TSN, May 14, 2012, p. 12.

[49] Records (Crim. Case No. A-6134), p. 105.

[50] G.R. No. 224290, June 11, 2018.

x x x (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[d] 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.[51]

In this case, PO2 Esteves testified that no representatives from the media and the DOJ were available despite their best efforts to contact them.[52] He further declared that there was heavy downpour at the time and they were only able to stay at the crime scene for an hour to quickly conduct the physical inventory and photograph-taking of the seized items before proceeding to the police station.[53] We find these explanations credible, as there appears to be a genuine and sufficient attempt to comply with the law.[54]

In conclusion, we affirm appellant's conviction for the crimes charged. The penalty for the unauthorized sale of *shabu* under Section 5, Article II of RA 9165, regardless of the quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. Thus, the penalty of life imprisonment and a fine of ₱500,000.00 imposed by the court *a quo* in Criminal Case No. A-6134 is within the range provided by law.

---

[51] *Id*. Emphasis omitted.

[52] TSN, December 4, 2012, p. 29.

[53] *Id*. at 30.

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

However, we deem it proper to modify the penalty in Criminal Case No. A-6135 in accordance with prevailing jurisprudence. The penalty for the illegal possession of *shabu* with a quantity of less than five (5) grams, as in this case, is imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of ₱300,000.00.[55] Thus, we *reduce* the maximum period of imprisonment imposed on appellant from fourteen (14) years and eight (8) months to fourteen (14) years in Criminal Case No. A-6135.

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision dated August 5, 2016 of the Court of Appeals in CA-G.R. CR. HC. [No.] 06535 convicting Abelardo Soria y Viloria for violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby **AFFIRMED** with **MODIFICATION** in that appellant is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of ₱300,000.00 in Criminal Case No. A-6135.

SO ORDERED.

Bersamin, C.J., Jardeleza, and *Gesmundo, JJ.*, concur.

Carandang, J., on official leave.

---

[55] *Supra* note 44.

FIRST DIVISION

[G.R. No. 229680. June 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL GOYENA *y* ABRAHAM,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE ILLEGAL SALE OF DANGEROUS DRUGS IS CONSUMMATED UPON THE COMPLETION OF THE SALE TRANSACTION BETWEEN THE BUYER AND THE SELLER. — "In a prosecution for the illegal sale of dangerous drugs, such as *shabu*, the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor." Simply stated, the prosecution must prove that the transaction or sale actually took place, coupled with the presentation of the seized dangerous drugs as evidence in court. In *People v. Dumlao*, we explained that the illegal sale of dangerous drugs is consummated *upon the completion of the sale transaction* between the buyer and seller.

2. ID.; ID.; A BUY-BUST OPERATION IS A VALID AND LEGITIMATE FORM OF ENTRAPMENT OF THE DRUG PUSHER. — [T]he prosecution had sufficiently established that appellant was caught in *flagrante delicto* selling *shabu* in a legitimate entrapment operation. Aside from the Authority to Operate and the Pre-Operation Report on record, the prosecution witnesses also described in detail the events leading to and during the conduct of the buy-bust operation against appellant. Hence, appellant's warrantless arrest and the subsequent search on his person are perfectly legal. In *People v. Andaya*, we held that "a buy-bust operation is a valid and legitimate form of entrapment of the drug pusher,"

3. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; PENALTY. — [W]e affirm appellant's conviction of the offense charged. The penalty for the unauthorized sale of dangerous drugs under Section 5, Article II of RA 9165, regardless of the quantity and purity, is life imprisonment to death and a fine ranging from

₱500,000.00 to ₱10,000,000.00. However, given the enactment of RA 9346, only life imprisonment and a fine may be imposed upon appellant. Thus, we find that the penalty of life imprisonment and payment of fine in the amount of ₱1,000,000.00 is within the range prescribed by law.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this appeal is the January 15, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07151, which affirmed the November 3, 2014 Judgment[2] of the Regional Trial Court (RTC), Branch 4, Legazpi City, finding Michael Goyena *y* Abraham (appellant) guilty beyond reasonable doubt of the illegal sale of dangerous drugs under Section 5, Article II of Republic Act (RA) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The Antecedent Facts

Appellant was charged with the illegal sale of dangerous drugs under Section 5, Article II of RA 9165 in an Information[3] dated November 29, 2012 which reads:

That on the 28th day of November, 2012, in the City of Legazpi, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, knowingly, unlawfully and feloniously sell and deliver to a PDEA poseur[-]buyer one (1) medium[-]size[d,] heat-sealed transparent plastic sachet containing

---

[1] *Rollo*, pp. 2-17; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Sesinando E. Villon and Pedro B. Corales.

[2] CA *rollo*, pp. 48-72; penned by Judge Edgar L. Armes.

[3] Records, p. 1-2.

Methamphetamine Hydrochloride[,] popularly known as Shabu, a dangerous drug, weighing 0.301 gram, in consideration of Five Hundred Pesos (₱500.00), without authority of law.

CONTRARY TO LAW.

During his arraignment on December 20,2012, appellant entered a plea of not guilty.[4] Trial thereafter ensued.

Version of the Prosecution

The prosecution's version of the incidents is, as follows:

On November 28, 2012, at around 10:00 a.m., the Philippine Drug Enforcement Agency (PDEA) Special Enforcement Team in Camp General Simeon Ola, Legazpi City received information from a confidential informant (CI) that appellant and his sister, Cyramil Goyena (Cyramil), were engaged in the sale of dangerous drugs in Cabangan, Legazpi City.[5] Upon further verification, it was confirmed that Cyramil was indeed included in the PDEA's list of persons suspected of selling dangerous drugs in Albay.[6]

In the presence of PDEA Agents Enrico Barba and Jonathan Ivan Revilla (Agent Revilla), the CI called Cyramil to set up the purchase of ₱3,500.00-worth of *shabu* for a buy-bust operation.[7] Cyramil agreed and informed the CI that it was appellant who would meet him for this purpose as she was indisposed.[8]

The PDEA thereafter coordinated with the Legazpi City Police Intelligence Unit for the conduct of a buy-bust operation against appellant and Cyramil. During the pre-operational briefing, a buy-bust team was formed with Agent Revilla as poseur-buyer, Police Officer 2 Jose Caspe (PO2 Caspe) as back-up

---

[4] *Id*. at 37.

[5] CA *rollo*, p. 84.

[6] *Id*.

[7] *Id*.

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

and arresting officer, and the other team members as perimeter security.[9]

At around 2:00 p.m., the buy-bust team proceeded to the target area where Agent Revilla and the CI posed as passengers waiting for a ride along the road in front of a dilapidated building; the rest of the team positioned themselves strategically around the area.[10]

Not long after, appellant approached Agent Revilla and the CI. After introductions were made, appellant asked Agent Revilla if he was indeed buying ₱3,500.00-worth of *shabu*, and the latter replied in the affirmative. Appellant then handed Agent Revilla one medium-sized, heat-sealed transparent plastic sachet containing white crystalline substance suspected as *shabu*. Agent Revilla, in return, gave appellant the ₱500.00-marked money and the boodle money. Once the exchange was completed, Agent Revilla turned his baseball cap, the pre-arranged signal that the transaction had been consummated.[11]

Appellant tried to resist when PO2 Caspe placed him under arrest but he was eventually subdued with the help of the other team members.[12] Agent Revilla then marked the seized plastic sachet with his initials, "JIR-11/28/12," while still at the scene.[13] But, due to a brewing commotion, the buy-bust team returned to the police station together with appellant.[14]

At the police station, PO2 Caspe conducted a body search on the person of appellant, which yielded a black pouch containing the marked money, a Nokia 3310 cellular phone, a lighter and a .22 caliber bullet. PO2 Caspe marked the seized items with

---

[9] *Id*. at 85.

[10] *Id*.

[11] *Id*.

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

[13] *Id*. at 86.

[14] *Id*.

his initials, "JBC" and the date of seizure, "11/28/12," and prepared the Certificate of Inventory.[15] The incidents in the PDEA office were all duly documented by photographs.[16] The inventory-taking of the seized items was witnessed by the appellant, by *Barangay* Captain Santos Perez, by *Barangay Kagawad* Richard Diaz, by media representative Darlan Barcelon and by a Department of Justice representative Jesus Arsenio Aragon.[17]

The buy-bust team thereafter proceeded to the PNP Regional Crime Laboratory Office V in Legazpi City where Agent Revilla, who had retained custody over the seized plastic sachet from the time of confiscation,[18] personally submitted the same, together with the Request for Laboratory Examination,[19] to P/SI Wilfredo Pabustan, Jr. (P/SI Pabustan), the forensic chemist, for quantitative and qualitative examination.[20] Per Chemistry Report No. D-173-2012,[21] the subject specimen tested positive for methamphetamine hydrochloride, more commonly known as *shabu*.

Appellant *denied* the allegations against him. He testified that:

> On November 28, 2012[,] at around 3:30 in the afternoon, [appellant] was playing "cara y cruz" at an old building in Cabangan, Legazpi City while waiting for his sibling[,] Cyramil. He momentarily left his group to relieve himself. While heading back to the game, about ten (10) men suddenly accosted him. When he asked why he was being arrested, the men ordered him just to follow them. [Appellant] called for help from the barangay captain and his "cara y cruz" playmates but to no avail.

---

[15] Records, p. 17.

[16] *Id*. at 25-27.

[17] CA *rollo*, p. 86.

[18] *Id*.

[19] Records p. 22.

[20] CA *rollo*,p. 86.

[21] Records, p. 23.

The men then handcuffed him and led him away. At this point, he felt something being inserted into his pocket. One of them, who turned out to be [A]gent Revilla, then retrieved a black pouch from [his] pocket and[,] in turn[,] brought out therefrom a five hundred (₱500.00)-peso bill and a plastic sachet which contained a substance similar to "tawas." [Appellant] was surprised since the only thing he had in his pocket then was his coin purse.

He again cried for help because he felt that the men were planting evidence against him. Many people were then starting to arrive at the scene, such that [A] gent Revilla and his companions made [him] board a black vehicle and thereafter brought him to the Legazpi City Police Station where a man named "Caspe" presented the items seized from him. On the arrival of the barangay captain, a kagawad, a representative from the Department of Justice, and a photographer, he was frisked which search yielded his coin purse. His photo was taken and [he was] subsequently subjected to investigation. [Appellant] denied the accusation against him, saying he was merely arrested for illegal gambling, playing "cara y cruz."[22]

Ruling of the Regional Trial Court

In its Judgment of November 3, 2014, the RTC found appellant guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165. It held that the prosecution succeeded in establishing the elements of the illegal sale of dangerous drugs, *viz.*:

The consummation of the aforesaid sale transaction of illegal drugs was made in the afternoon of November 28, 2012. In the buy-bust operation, the accused, as conspirator of [his] sister Cyramil, was the one who delivered the illegal drug which turned out to be "shabu," subject matter of the aforesaid sale transaction to poseur-buyer Agent Revilla, facilitated by the Cl. Accused also received the payment from Agent Revilla.[23]

The RTC noted that Agent Revilla had positively identified appellant as the person who sold to him the subject *shabu* in

---

[22] *Rollo*, pp. 8-9.

[23] CA *rollo*, pp. 60-61.

the buy-bust operation on November 28, 2012. The RTC also found the positive testimony of Agent Revilla to be candid, straightforward and credible.[24]

Accordingly, the RTC sentenced appellant to suffer the penalty of life imprisonment and to pay a fine of ₱1,000,000.00.[25] Against this judgment, appellant appealed to the CA.[26]

Ruling of the Court of Appeals

The CA affirmed the RTC's Judgment *in toto*.[27]

Like the RTC, the CA found that all the elements of the illegal sale of dangerous drugs were satisfactorily established by the prosecution,[28] *viz.*:

> In the instant case, [appellant's] identity as the culprit cannot be doubted, having been caught in *flagrante delicto* for selling an illegal drug. He was positively identified as the person who sold to [A]gent Revilla, the poseur-buyer, a heat-sealed transparent plastic sachet containing a white crystalline substance during the buy-bust operation. This positive identification prevails as [appellant] could only offer an uncorroborated and weak defense of denial. Against the positive testimonies of the prosecution witnesses, [appellant's] plain denial of the offense charged, unsubstantiated by any credible and convincing evidence, must simply fail.[29]

The CA rejected appellant's contention that his warrantless arrest was illegal, as the prosecution was able to prove that appellant was apprehended after a legitimate buy-bust operation.[30] "Hence, having been caught in *flagrante delicto*,

---

[24] *Id*. at 62.

[25] *Id*. at 71.

[26] *Rollo*, pp. 18-19.

[27] *Id*. at 16.

[28] *Id*. at 12.

[29] *Id*. at 11.

[30] *Id*. at 12.

the police officers were not only authorized but were even duty-bound to arrest him even without a warrant."[31]

Likewise, the CA held that the law enforcers in this case sufficiently complied with the chain of custody requirement over the seized *shabu*.[32] It explained that:

> At any rate, the prosecution had sufficiently shown the law enforcers' unbroken chain of custody over the subject specimen, from the time of [appellant's] arrest up to the submission of the specimen to P/SI Pabustan, Jr. Agent Revilla, the poseur-buyer, marked the seized item in front of [appellant] and thereafter continued the inventory immediately upon arrival at the Police Station in the presence of two (2) barangay officials, [a] media representative, [a] DOJ representative and other members of the buy-bust team. The arresting officers then delivered the seized item to the PNP Crime Laboratory for examination on the same day. Then, on the stand, [A]gent Revilla identified the subject specimen bearing the marking "JIR-11/28/12" as the same item retrieved from [appellant] during the buy-bust sale held on 28 November 2012.[33]

Aggrieved, appellant filed the present appeal.

The Issues

Appellant raises the following issues for the Court's resolution:

First, whether his warrantless arrest was illegal, for which reason, any evidence obtained from him were inadmissible as evidence for being 'fruits of the poisonous tree';[34]

And ***second***, whether the integrity and identity of the seized *shabu* had been preserved, considering the PDEA agents' failure to mark and conduct the inventory of the same at the place of arrest.[35]

---

[31] *Id.*

[32] *Id.* at 14.

[33] *Id.* at 14-15.

[34] CA *rollo*, pp. 40-42.

[35] *Id.* at 43-44.

The Court's Ruling

The appeal is unmeritorious.

"In a prosecution for the illegal sale of dangerous drugs, such as *shabu*, the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor."[36] Simply stated, the prosecution must prove that the transaction or sale actually took place, coupled with the presentation of the seized dangerous drugs as evidence in court.[37]

In *People v. Dumlao*,[38] we explained that the illegal sale of dangerous drugs is consummated *upon the completion of the sale transaction* between the buyer and seller, *viz:*

x x x The commission of the offense of illegal sale of dangerous drugs requires merely the consummation of the selling transaction, which happens the moment the buyer receives the drug from the seller. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of the goods.[39]

In this case, the prosecution positively identified appellant as the seller of the white crystalline substance which was later found to be methamphetamine hydrochloride, more commonly known as *shabu*, a dangerous drug.[40] It was also shown that appellant had sold the *shabu* to Agent Revilla, the poseur-buyer, for a sum of ₱3,500.00.[41]

---

[36] *People v. Cabiles*, G.R. No. 220758, June 7, 2017, 827 SCRA 89, 95.

[37] *People v. Dumlao*, 584 Phil. 732, 738 (2008).

[38] *Id.*

[39] *Id.* at 738.

[40] TSN, February 12, 2014, pp. 9-10. See also Agent Revilla's Judicial Affidavit, records, pp. 204-205.

[41] Records, p. 205.

The heat-sealed, transparent plastic sachet containing said white crystalline substance presented before the trial court was positively identified by Agent Revilla as the *shabu* sold and delivered to him by appellant.[42] Per the Chemistry Report No. D-173-2012 dated November 28, 2012,[43] the white crystalline substance found inside the same plastic sachet indeed tested positive for *shabu*.

We also find that the prosecution had sufficiently established that appellant was caught in *flagrante delicto* selling *shabu* in a legitimate entrapment operation. Aside from the Authority to Operate[44] and the Pre-Operation Report[45] on record, the prosecution witnesses also described in detail the events leading to and during the conduct of the buy-bust operation against appellant. Hence, appellant's warrantless arrest and the subsequent search on his person are perfectly legal.

In *People v. Andaya*,[46] we held that "a buy-bust operation is a valid and legitimate form of entrapment of the drug pusher,"[47] *viz.*:

> x x x In such operation, the poseur buyer transacts with the suspect by purchasing a quantity of the dangerous drugs and paying the price agreed upon, and in turn[,] the drug pusher turns over or delivers the dangerous drug subject of their agreement in exchange for the price or consideration. Once the transaction is consummated, the drug pusher is arrested, and can be held to account under the criminal law. The justification that underlies the legitimacy of the buy-bust operation is that the suspect is arrested *in flagrante delicto*, that is, the suspect has just committed, or is in the act of committing, or is attempting to commit the offense in the presence of the arresting police officer or private person. **The arresting police officer or private**

---

[42] *Id.*

[43] *Id.* at 23.

[44] *Id.* at 14.

[45] *Id.* at 15.

[46] 745 Phil. 237 (2014).

[47] *Id.* at 246.

person is favored in such instance with the presumption of regularity in the performance of official duty.[48] (Emphasis supplied)

We find no sufficient reason to overturn the presumption of regularity in favor of the PDEA agents, given appellant's failure to present *clear and convincing evidence* that the PDEA agents did not properly perform their duties or that they were inspired by improper motive.[49]

We likewise agree with the CA's conclusion that the integrity and evidentiary value of the seized *shabu* had been preserved.

The record shows that Agent Revilla immediately put the markings "JIR-11/28/12" on the seized heat-sealed, transparent plastic sachet while still at the scene and in the presence of appellant.[50] Moreover, Agent Revilla, who had retained custody over the heat-sealed, transparent plastic sachet from the time of confiscation,[51] personally delivered said plastic sachet together with the request for laboratory examination to P/SI Pabustan at the PNP Regional Crime Laboratory.[52] After the laboratory examination, P/SI Pabustan marked and sealed the subject specimen and turned it over to the evidence custodian.[53]

Clearly, the prosecution's evidence sufficiently established an *unbroken* chain of custody over the seized sachet of *shabu* from the entrapment team to the crime laboratory, to the evidence custodian for safe-keeping, up to the time it was offered in evidence before the court.

In conclusion, we affirm appellant's conviction of the offense charged. The penalty for the unauthorized sale of dangerous drugs under Section 5, Article II of RA 9165, regardless of the

---

[48] *Id*. at 246-247.

[49] See *People v. Pasion*, 752 Phil. 359, 370 (2015).

[50] Records, p. 205.

[51] TSN, February 12, 2014, p. 11.

[52] *Id*. See also P/SI Pakistan's Judicial Affidavit, records, pp. 186-187.

[53] Records, p. 189.

quantity and purity, is life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. However, given the enactment of RA 9346,[54] only life imprisonment and a fine may be imposed upon appellant. Thus, we find that the penalty of life imprisonment and payment of fine in the amount of ₱1,000,000.00 is within the range prescribed by law.

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision dated January 15,2016 of the Court of Appeals in CA-G.R. CR-HC No. 07151 convicting Michael Goyena *y* Abraham for violation of Section 5, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

SO ORDERED.

Bersamin, C.J., Jardeleza, and *Gesmundo, JJ.*, concur.

Carandang, J., on official leave.

FIRST DIVISION

[G.R. No. 230624. June 6, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALDO DE VERA *y* HOLDEM,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE IDENTITY OF THE ACCUSED MAY SUFFICIENTLY BE ESTABLISHED BY THE SOUND OF HIS VOICE AND FAMILIARITY WITH HIS PHYSICAL FEATURES. — During the commission of the first lascivious

---

[54] "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

act on November 3, 2009, AAA was able to confirm the accused-appellant's identity when he told her to allow him to touch her breasts. The accused-appellant's identity was again confirmed on November 5, 2009, not only by AAA herself, but also by his younger daughter, CCC, who had awakened while accused-appellant was attempting to force himself on AAA again. In this jurisdiction, the identity of an accused may sufficiently be established by the sound of his voice and familiarity with his physical features where the witness and the accused had known each other personally and closely for a number of years.

2. **ID.; ID.; ID.; THERE IS NO CLEAR-CUT STANDARD EXPECTED FROM A VICTIM OF RAPE OR ACTS OF LASCIVIOUSNESS, ESPECIALLY WHEN THE OFFENDER IS THE VICTIM'S OWN FATHER. —** The Court disagrees with the accused-appellant's assertion that AAA's testimony was incredible in that she could have easily shouted for help, or sought the help of her other family members who were sleeping nearby when the incidents happened. Time and again, this Court has ruled that there is no clear-cut standard required, or expected from a rape victim or a victim of acts of lasciviousness, especially when the offender is the victim's own biological father who has a history of being violent, or being irrational, as in the present case. Thus, AAA's failure to shout or call for help cannot be taken against her.

3. **ID.; ID.; ID.; NO DAUGHTER, ESPECIALLY A MINOR, WOULD IMPUTE A SERIOUS CRIME OF RAPE AGAINST HER OWN FATHER UNLESS IMPELLED BY A DESIRE TO VINDICATE HER HONOR. —** [C]redence [cannot] be accorded to accused-appellant's claim that AAA filed these cases because she did not agree with his method of disciplining her. No daughter, especially a minor like AAA, would impute a serious crime of rape against her own biological father, unless she was impelled by a desire to vindicate her honor, aware as she is that her action or decision must necessarily subject herself and her family to the burden of trial and public humiliation, if the same were untrue. Absent any proof that the filing of the cases was inspired by any ill-motive, the Court cannot be swayed from giving full credence to the victim's testimony.

4. **CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS. —** The elements necessary to sustain a conviction for rape are: (1)

that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented. Moreover, rape is qualified 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."

5. ID.; ID.; PENALTY AND DAMAGES. — The RTC, as affirmed by the CA, correctly imposed upon the accused-appellant the penalty of *reclusion perpetua*, by virtue of RA No. 9346 which suspended the imposition of the penalty of death, the imposable penalty for qualified rape under Article 266-B of the RPC. With respect to the award of damages, the Court affirms the modifications made by the CA as to the amounts awarded in Criminal Case No. 09-1119, in consonance with this Court's ruling in *People v. Jugueta*, that AAA is entitled to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for the crime of qualified rape.

6. ID.; LASCIVIOUS CONDUCT UNDER ARTICLE 336 OF THE REVISED PENAL CODE (RPC) IN RELATION TO RA 7610 (ACT PROVIDING FOR STRONGER PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION); AND CONSIDERING THE ATTENDANT CIRCUMSTANCE OF RELATIONSHIP; PENALTY AND DAMAGES. –- To sustain a conviction under Section 5(b), Article III of RA No. 7610, the prosecution must establish the following elements: (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 sexual abuse; and (3) the child, whether male or female, is below 18 years of age. x x x [A]ccused-appellant is hereby found guilty of two counts of lascivious conduct under Article 336 of the RPC, in relation to RA No. 7610, in Criminal Case Nos. 09-1118 and 09-1121. As regards the penalty imposed, the RTC properly imposed the penalty of *reclusion perpetua*. Under Section 5(b) of RA No. 7610, the imposable penalty for lascivious conduct is *reclusion temporal* in its medium period to *reclusion perpetua*

since AAA was over 12 but under 18 years of age at the time of the commission of the offense. Considering, however, the attendant circumstance of relationship, the penalty must be applied in its maximum period, which is *reclusion perpetua*, without eligibility of parole, in accordance with Section 31 (c) of RA No. 7610. However, the damages awarded in Criminal Case Nos. 09-1118 and 09-1121 must be modified in light of recent jurisprudence where the victim is entitled to civil indemnity, moral damages and exemplary damages, for each count, each in the amount of ₱75,000.00, regardless of the number of qualifying/aggravating circumstances present if the circumstances surrounding the crime call for the imposition of *reclusion perpetua*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the September 13, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 07301, which affirmed with modification the November 26, 2014 Decision[2] of the Regional Trial Court (RTC), Branch 65, Sorsogon City, in Criminal Case Nos. 09-1118, 09-1119, and 09-1121, convicting Ronaldo de Vera y Holdem (accused-appellant) of qualified rape and two counts of acts of lasciviousness.

Antecedent Facts

Three separate Informations were filed against the accused-appellant charging him with acts of lasciviousness and two counts

---

[1] *Rollo*, pp. 2-29; penned by then CA Associate Justice Amy C. Lazaro-Javier (now a member of this Court) and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.

[2] CA *rollo*, pp. 76-90; penned by RTC Judge Adolfo G. Fajardo.

of qualified rape, in relation to Republic Act (RA) No. 7610.[3] The accusatory portions of the Informations read, as follows:

Criminal Case No. 09-1118

That on or about 11:00 x x x in the evening of November 3, 2009 at x x x, Province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, by means of force and intimidation, and acting with discernment, did then and there willfully, unlawfully and feloniously commit lascivious conduct on the person of [AAA],[4] a 17-year old girl, a minor, by touching her breasts, against her will and without her consent, which act likewise constitute [s] child abuse as it debases, degrades and demeans the dignity of the victim as a child causing emotional and psychological trauma, to her damage and prejudice.

The following aggravating circumstances are present: relationship and minority. The victim being the daughter of the accused and x x x only 17 years old at the time of the incident.

CONTRARY TO LAW.[5]

Criminal Case No. 09-1119

That on or about 11:00 x x x in the evening of November 4, 2009 at x x x, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, acting with discernment, with lewd designs, by means of force and intimidation, and taking advantage of the minority of the victim, did then and

---

[3] *Rollo*, pp. 3-5

[4] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties for its Violation, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

[5] Records (Criminal Case No. 09-1118), p. 1.

there, willfully, unlawfully and feloniously, have carnal knowledge [of] one [AAA], a 17-year old girl, a minor, against her will and without her consent, which act likewise constitute [s] child abuse as it debases, degrades and demeans the dignity of the victim as a child causing emotional and psychological trauma, to her damage and prejudice.

The following aggravating circumstances are present: relationship and minority. The victim being the daughter of the accused and x x x only 17 years old at the time of the incident.

CONTRARY TO LAW.[6]

Criminal Case No. 09-1121

That on or about 12:00 x x x midnight of November 5, 2009 at x x x, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, acting with discernment, with lewd designs, by means of force and intimidation, and taking advantage of the minority of the victim, did then and there, willfully, unlawfully and feloniously, [insert] his finger inside the vagina of one [AAA], a 17-year old girl, a minor, against her will and without her consent, which act likewise constitute [s] child abuse as it debases, degrades and demeans the dignity of the victim as a child causing emotional and psychological trauma, to her damage and prejudice.

The following aggravating circumstances are present: relationship and minority. The victim being the daughter of the accused and x x x only 17 years old at the time of the incident.

CONTRARY TO LAW.[7]

The accused-appellant pleaded not guilty to all three charges during his arraignment.[8] Thereafter, the three cases were consolidated for trial.[9]

---

[6] Records (Criminal Case No. 09-1119), p. 1.

[7] Records (Criminal Case No. 09-1121), p. 1.

[8] *Rollo*, p. 5.

[9] *Id*.

During the pre-trial conference, the parties stipulated on the identity of the accused-appellant;[10] that AAA was the biological daughter of the accused-appellant; and that she was a 17-year old minor at the time the alleged crimes were commit ed. Trial on the merits ensued.[11]

Version of the Prosecution

The prosecution presented AAA and Dr. James Apin (Dr. Apin), Municipal Health Officer of Pataleon Gotladera, Bulan, Sorsogon,[12] as witnesses.

AAA testified that, on November 3, 2009, at around 11:00 p.m., while inside their house, accused-appellant approached her while she was lying in bed and proceeded to insert his hands inside her shirt and touched her breasts, saying that she should let him touch them.[13]

The following day, on November 4, 2009, again at around 11:00 p.m., while inside their house, the accused-appellant touched AAA's breasts and vagina. He also inserted his finger into her vagina and proceeded to undress AAA and himself. He then mounted AAA and inserted his penis into her vagina.[14]

The next day, on November 5, 2009, while inside their house, the accused-appellant once more approached AAA while she was sleeping and touched her vagina.[15] However, when he started to undress AAA, her younger sibling, CCC, woke up and uttered "*Papa, Si Neneng,*" thinking that she was their other sister, Neneng. CCC noticed that AAA was crying, but she kept pinching CCC so that the former would not leave. CCC also cried and asked why AAA was crying. CCC wanted to report the incident

---

[10] CA *rollo*, p. 33

[11] *Id*.

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

[13] *Id*. at 33-34.

[14] *Id*. at 34.

[15] *Id*.

to their mother, who at that time was sleeping a little farther from them, but still inside the same bedroom.[16]

The accused-appellant then went inside the comfort room and started banging his head on the wall, which was witnessed by DDD, AAA's 20-year old brother. DDD also noticed that AAA was crying, and it was at this time that their mother, BBB, woke up. DDD then asked AAA why she was crying, but because she did not answer, BBB slapped her.[17] That was when the accused-appellant left the house.[18] When the accused-appellant returned, he told BBB not to hurt AAA and that it would be better to have him incarcerated as it was he who did something wrong.[19]

The prosecution presented AAA's birth certificate and her sworn statement executed on November 6, 2009 before the Municipal Police Station of Bulan, Sorsogon; both of these documents were duly identified by AAA.[20] The prosecution also asked AAA to identify accused-appellant, which she did by pointing to him in open court.[21]

Dr. Apin testified that AAA came to him with a Letter-Request dated November 6, 2009 from the Philippine National Police for a medical examination. On internal examination of her vagina, he found recent lacerations at the 9 o'clock, 11 o'clock and 6 o'clock positions, indicating that it had been penetrated. He also observed that there was no resistance when his index finger was inserted into her vagina during the examination, which could have been the result of a previous penetration. He issued a Medical Report dated November 7, 2009 which he duly identified in open court.[22]

---

[16] *Id*.

[17] *Id*.

[18] *Id*. at 34-35.

[19] *Id*. at 35.

[20] *Id*. at 41.

[21] *Id*. at 35.

[22] *Id*. at 35.

Version of the Defense

The accused-appellant testified that AAA was the second of his six children. He lived with all six children in their house with their mother, BBB. His three sons occupied one bedroom and his three daughters occupied another bedroom, while he and BBB slept on a mat near the kitchen. He denied having committed any lascivious conduct on AAA on November 3, 2009 or having raped her on November 4 and 5, 2009. He claimed that AAA filed these cases against him because he tried to discipline her as she was in the habit of going out at night.[23]

Ruling of the Regional Trial Court

The RTC upheld AAA's candid, vivid, and straightforward account of her ordeal at the hands of the accused-appellant, especially so because it was sufficiently corroborated by the medical findings of Dr. Apin.[24] The RTC ruled that the accused-appellant's defense of denial could not prevail over the positive testimony of the victim-daughter, who moreover clearly identified him as her molester. The RTC noted that the accused-appellant failed to present any strong evidence of innocence, which made his denial purely self-serving.[25]

However, in Criminal Case No. 09-1121, the RTC found the accused-appellant liable only for acts of lasciviousness because the prosecution failed to prove that there was any penetration of AAA's vagina on the night of November 5, 2009, whether by his penis, finger, or any other object.[26] The RTC ruled that the prosecution merely succeeded in establishing that the accused-appellant had touched AAA's vagina before CCC woke up and saw him undressing AAA.[27] The RTC also

---

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

[24] *Id.* at 37-38.

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

[26] *Id.* at 41.

[27] *Id.*

appreciated against accused-appellant the attendant circumstances of relationship and minority because these had been sufficiently alleged in the information and proven during the trial.[28]

Thus, on November 26, 2014, the RTC rendered its Decision,[29] the decretal portion of which reads:

> WHEREFORE, in view of the foregoing, accused RONALDO DE VERA y HOLDEM having been found GUILTY BEYOND REASONABLE DOUBT OF QUALIFIED RAPE IN RELATION TO RA. 7610 in Criminal Case No. 09-1119 and ACTS OF LASCIVIOUSNESS in Criminal Case Nos. 09-1118 and 09-1121, he is sentenced to suffer —
>
> 1. In Criminal Case No. 09-1119, the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages;
> 2. In Criminal Case No. 09-1118, the penalty of *reclusion perpetua* and ordered to pay AAA ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and a fine of P15,000.00; and
> 3. In Criminal Case No. 09-1121, the penalty of *reclusion perpetua* and ordered to pay AAA ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, and a fine of ₱15,000.00; and
>
> AAA is entitled to an interest on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.
>
> SO ORDERED.[30]

From this Decision, the accused-appellant appealed to the CA.

---

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

[29] *Id*. at 76-90.

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

Ruling of the Court of Appeals

In the assailed Decision, the CA affirmed with modification the findings of the RTC, to wit:

> ACCORDINGLY, the appeal is DENIED. The assailed Decision dated November 26, 2014 is AFFIRMED with MODIFICATION with respect to Criminal Case No. 09-1119, INCREASING the award of civil indemnity from ₱75,000.00 to ₱100,000.00, moral damages from ₱75,000.00 to ₱100,000.00, and exemplary damages from ₱30,000.00 to ₱100,000.00.
>
> SO ORDERED.[31]

The CA sustained the conviction of the accused-appellant for two counts of acts of lasciviousness in Criminal Case Nos. 09-1118 and 09-1121. It found that the elements of acts of lasciviousness under Article 336 of the Revised Penal Code (RPC), in relation to RA No. 7610, had been sufficiently established by the prosecution.[32] It ruled that the accused-appellant used his moral ascendancy or influence, in lieu of force or intimidation, to commit acts of lewdness on AAA.[33]

The CA also sustained the RTC's findings that the accused-appellant was guilty of qualified rape in relation to RA No. 7610.[34] It emphasized that AAA was accused-appellant's biological minor daughter, over whom he exercised moral ascendancy and influence, sufficiently powerful enough to cause her to submit herself to his sexual desires.[35] The CA ruled that his acts of purposely touching her breasts and vagina, and the subsequent insertion of his finger and penis into her vagina to commit sexual intercourse with her against her will, clearly established the felony of qualified rape.[36]

---

[31] *Rollo*, pp. 28-29.

[32] *Id.* at 11-20.

[33] *Id.* at 13.

[34] *Id.* at 20-24.

[35] *Id.* at 23-24.

[36] *Id.*

The CA nonetheless modified the awards of civil indemnity, moral damages, and exemplary damages in Criminal Case No. 09-1119,[37] in light of this Court's ruling in *People v. Jugueta*.[38]

Hence, this appeal.

The accused-appellant insists that the CA gravely erred in finding him guilty of the crimes charged.[39] He contends that the evidence of the prosecution fell short of the legal standard to convict him because AAA's testimony was incredible and inconsistent with human experience;[40] that it was unbelievable that AAA failed to seek help from her family members who were then sleeping beside her when the incidents happened;[41] that AAA's testimony showed that she was unsure of the identity of her attacker until the November 5, 2009 incident occurred;[42] and finally, that AAA concocted the charges against him as an act of vengeance for having punished AAA for staying out late with her friends.[43]

Ruling

The appeal has no merit.

The Court cannot give any credence to the accused-appellant's argument that his identity was never established by the prosecution. It was clear from AAA's testimony that she was certain that it was her father who committed the vicious acts against her on November 3, 2009 to November 5, 2009. While the defense attempted to confuse the victim and cast doubt on her testimony on cross-examination, AAA never wavered in

---

[37] *Id*. at 28-29

[38] 783 Phil. 806, 848 (2016).

[39] CA *rollo*, pp. 63-73.

[40] *Id*. at 69.

[41] *Id*. at 70.

[42] *Id*. at 71.

[43] *Id*. at 68.

her statement that it was the accused-appellant who forced himself upon her on November 4, 2009 as she confirmed his identity when she was able to touch his tattoo while the act was being committed.

During the commission of the first lascivious act on November 3, 2009, AAA was able to confirm the accused-appellant's identity when he told her to allow him to touch her breasts. The accused-appellant's identity was again confirmed on November 5, 2009, not only by AAA herself, but also by his younger daughter, CCC, who had awakened while accused-appellant was attempting to force himself on AAA again. In this jurisdiction, the identity of an accused may sufficiently be established by the sound of his voice and familiarity with his physical features where the witness and the accused had known each other personally and closely for a number of years.[44]

The Court disagrees with the accused-appellant's assertion that AAA's testimony was incredible in that she could have easily shouted for help, or sought the help of her other family members who were sleeping nearby when the incidents happened. Time and again, this Court has ruled that there is no clear-cut standard required, or expected from a rape victim or a victim of acts of lasciviousness, especially when the offender is the victim's own biological father who has a history of being violent, or being irrational, as in the present case.[45] Thus, AAA's failure to shout or call for help cannot be taken against her.

Nor can credence be accorded to accused-appellant's claim that AAA filed these cases because she did not agree with his method of disciplining her. No daughter, especially a minor like AAA, would impute a serious crime of rape against her own biological father, unless she was impelled by a desire to vindicate her honor, aware as she is that her action or decision must necessarily subject herself and her family to the burden of trial and public humiliation, if the same were untrue.[46] Absent

---

[44] *People v. Bulasag*, 582 Phil. 243, 250-251 (2008).

[45] *People v. Pacheco*, 632 Phil. 624, 633-634 (2010).

[46] *People v. Mendoza*, 441 Phil. 193,206 (2002).

any proof that the filing of the cases was inspired by any ill-motive, the Court cannot be swayed from giving full credence to the victim's testimony.[47]

We sustain the conviction of accused-appellant for the crime of qualified rape in relation to RA No. 7610 in Criminal Case No. 09-1119.

The elements necessary to sustain a conviction for rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[48] Moreover, rape is qualified 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."[49]

A thorough review of the records of the case supports the conclusion that the prosecution had sufficiently established the presence of all the elements of qualified rape. AAA clearly testified that it was her own biological father, the herein accused-appellant, who sexually assaulted her on November 4, 2009, without her consent, while she was still a 17-year old minor. The accused-appellant's paternal relations with AAA and her minority were in fact stipulated upon by the parties during the pre-trial stage.[50] Moreover, AAA's account of the rape was corroborated by Dr. Apin, who testified that his examination revealed that AAA suffered hymenal lacerations.[51]

---

[47] *People v. Rusco*, 796 Phil. 147, 157-158 (2006).

[48] REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353 (1997).

[49] REVISED PENAL CODE, Article 266-B, as amended by Republic Act No. 8353 (1997).

[50] Records (Criminal Case No. 09-1121), p. 21.

[51] TSN, March 26, 2012, pp. 4-6.

The RTC, as affirmed by the CA, correctly imposed upon the accused-appellant the penalty of *reclusion perpetua*, by virtue of RA No. 9346 which suspended the imposition of the penalty of death, the imposable penalty for qualified rape under Article 266-B of the RPC.

With respect to the award of damages, the Court affirms the modifications made by the CA as to the amounts awarded in Criminal Case No. 09-1119, in consonance with this Court's ruling in *People v. Jugueta*,[52] that AAA is entitled to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for the crime of qualified rape.

As for Criminal Case Nos. 09-1118 and 09-1121, the Court agrees with the CA that the accused-appellant is guilty in both instances.

To sustain a conviction under Section 5(b), Article III of RA No. 7610, the prosecution must establish the following elements: (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 sexual abuse; and (3) the child, whether male or female, is below 18 years of age.

In the present cases, the above elements were duly established by the prosecution. On two separate occasions, the accused-appellant was found to have subjected his 17-year old daughter, AAA, to sexual abuse and committed lascivious conduct against her, using his moral ascendancy or influence, in lieu of force or intimidation. On November 3, 2009, he was accused of sliding his hands under AAA's shirt and touching her breasts while they were inside their house when the other members of their family were sleeping. This reprehensible act was again repeated on November 5, 2009 when the accused-appellant touched AAA's vagina and would have proceeded to have carnal knowledge of her had not his other daughter awakened and called him out.

---

[52] *Supra* note 38.

However, there is a need to modify the nomenclature of the offenses and the damages imposed, in light of this Court's ruling in *People v. Caoili*,[53] to wit:

> Conversely, when the victim, at the time the offense was committed is aged twelve (12) years or over but under eighteen (18), or is eighteen (18) or older but unable to fully take care of herself/himself or protect himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the nomenclature of the offense should be Lascivious Conduct under Section 5(b) of R.A. No. 7610, since the law no longer refers to Article 336 of the RPC, and the perpetrator is prosecuted solely under R.A. No. 7610.
>
> x x x x x x x x x
>
> 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*.[54]

Accordingly, accused-appellant is hereby found guilty of two counts of lascivious conduct under Article 336 of the RPC, in relation to RA No. 7610, in Criminal Case Nos. 09-1118 and 09-1121. As regards the penalty imposed, the RTC properly imposed the penalty of *reclusion perpetua*. Under Section 5(b) of RA No. 7610, the imposable penalty for lascivious conduct is *reclusion temporal* in its medium period to *reclusion perpetua*

---

[53] G.R. Nos. 196342 and 196848, August 8, 2017, 107 SCRA 153.

[54] *Id*. at 154.

since AAA was over 12 but under 18 years of age at the time of the commission of the offense.[55] Considering, however, the attendant circumstance of relationship, the penalty must be applied in its maximum period, which is *reclusion perpetua*, without eligibility of parole, in accordance with Section 31 (c) of RA No. 7610.[56]

However, the damages awarded in Criminal Case Nos. 09-1118 and 09-1121 must be modified in light of recent jurisprudence where the victim is entitled to civil indemnity, moral damages and exemplary damages, for each count, each in the amount of ₱75,000.00, regardless of the number of qualifying/aggravating circumstances present if the circumstances surrounding the crime call for the imposition of *reclusion perpetua*.[57]

WHEREFORE, the appeal is hereby **DISMISSED**. The assailed September 13, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 07301 is **AFFIRMED with MODIFICATION** that in Criminal Case Nos. 09-1118 and 09-1121, accused-appellant is ordered to pay AAA, for each count, the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, and a fine of ₱15,000.00, respectively, which shall all earn interest at the rate of 6% *per annum* from finality of this Decision until fully paid.

---

[55] *People v. Ladra*, G.R. No. 221443, July 17, 2017, 252 SCRA 267.

[56] ARTICLE XII of RA 7610 - Common Penal Provisions

Sec. 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; x x x.

[57] *Id*. at 848.

SO ORDERED.

Bersamin, C.J., Jardeleza, and *Gesmundo, JJ.*, concur.

Carandang, J., on official leave.

INDEX

INDEX

Venue — Venue is procedural, not jurisdictional, and hence, may be waived; venue is the place of trial or geographical location in which an action or proceeding should be brought; in civil cases, venue is a matter of procedural law; a party's objections to venue must be brought at the earliest opportunity either in a motion to dismiss or in the answer; otherwise, the objection shall be deemed waived; when the venue of a civil action is improperly laid, the court cannot *motu proprio* dismiss the case; the rules on venue are intended to provide convenience to the parties, rather than restrict their access to the courts; it simply arranges for the convenient and effective transaction of business in the courts and do not relate to their power, authority, or jurisdiction over the subject matter of the action. (Cabrera *vs*. Phil. Statistics Authority, G.R. No. 241369, June 3, 2019) p. 615

ADMINISTRATIVE LAW

Energy Regulatory Commission (ERC) — The 2015 DOE Circular explicitly stated the instances that required joint action of the DOE and the ERC: (1) Recognition of the Third Party that will conduct the CSP for the procurement of PSAs by the DUs; (2) Issuance of guidelines and procedures for the aggregation of the un-contracted demand requirements of the DUs; (3) Issuance of guidelines and procedures for the recognition or accreditation of the Third Party that conducts the CSP; and (4) Issuance of supplemental guidelines and procedures to properly guide the DUs and the Third Party in the design and execution of the CSP; the ERC is mandated to act jointly with the DOE; all these instances merely implement CSP, and do not postpone CSP or amend the 2015 DOE Circular, which are beyond mere implementation of CSP; if the ERC cannot act by itself on certain instances in the mere implementation of CSP, then the ERC certainly cannot act by itself in the postponement of CSP or in the amendment of the 2015 DOE Circular. (Alyansa para sa Bagong Pilipinas, Inc. (ABP) *vs*. Energy Regulatory Commission, G.R. No. 227670, May 3, 2019) p. 1

— The EPIRA divided the electric power industry into four sectors, namely: generation, transmission, distribution, and supply; the distribution of electricity to end-users is a regulated common carrier business requiring a franchise; the EPIRA mandates that a distribution utility has the obligation to supply electricity in the least-cost manner to its captive market, subject to the collection of distribution retail supply rate duly approved by the ERC. (*Id*.)

— The ERC Clarificatory Resolution explicitly admitted that its issuance was not accompanied by any public consultation or focus group discussion; rather, the ERC Clarificatory Resolution was unilaterally issued by the ERC, without coordinating with DOE, on the basis of several letters from stakeholders; the stakeholders had no way of knowing the concerns of their peers as there was no interaction or discussion among the stakeholders. (*Id*.)

— The ERC has no power to postpone the effectivity of the 2015 DOE Circular; under the 2015 DOE Circular, the ERC can only issue supplemental guidelines, which means guidelines to implement the 2015 DOE Circular, and not to amend it; postponing the effectivity of CSP amends the 2015 DOE Circular, and does not constitute issuance of mere supplemental guidelines. (*Id*.)

— Under the EPIRA, it is the DOE that issues the rules and regulations to implement the EPIRA, including the implementation of the policy objectives stated in Sec. 2 of the EPIRA; rules and regulations include circulars that have the force and effect of rules or regulations; pursuant to its powers and functions under the EPIRA, the DOE issued the 2015 DOE Circular mandating the conduct of CSP; the function of the ERC is to enforce and implement the policies formulated, as well as the rules and regulations issued, by the DOE; the ERC has no power whatsoever to amend the implementing rules and regulations of the EPIRA as issued by the DOE; the ERC is further mandated under EPIRA to ensure that

the pass through of bulk purchase cost by distributors is transparent and non-discriminatory. (*Id.*)

ADMINISTRATIVE PROCEEDINGS

Criminal actions for the same acts or omissions –– The Sandiganbayan correctly opined that the ruling in the counterpart administrative case holds no water in the instant criminal case, as it is hornbook doctrine in administrative law that administrative cases are independent from criminal actions for the same acts or omissions; given the differences in the quantum of evidence required, the procedures actually observed, the sanctions imposed, as well as the objective of the two (2) proceedings, the findings and conclusions in one should not necessarily be binding on the other; hence, the exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or vice versa. (Josue *vs.* People, G.R. No. 240947, June 3, 2019) p. 580

ALIBI

Defense of –– Alibi is the weakest of all defenses because it can easily be fabricated; more so, when as in this case, it is unsubstantiated, nay, devoid of any showing that it was impossible for the accused to be at the *locus criminis* on the day and time the crime was committed; alibi cannot prevail over the victim's positive and unwavering identification of the accused as the one who succeeded in having carnal knowledge of her through force and violence. (People *vs.* Siscar *y* Andrade, G.R. No. 218571, June 3, 2019) p. 355

–– Alibi is the weakest of all defenses; it is unreliable and can be easily fabricated; more so, when as in this case, it is unsubstantiated by any corroborative evidence; it further crumbles in the absence of any showing that the presence of the accused in some other place precluded him from being physically present at the *locus criminis* on the day and time the crime was committed; appellant's alibi cannot prevail over the positive, clear, and categorical

involving the same; the foregoing constitutes a waiver only as to any question concerning any defects in their arrest, and not with regard to the inadmissibility of the evidence seized during an illegal warrantless arrest. (Vaporoso *vs.* People, G.R. No. 238659, June 3, 2019) p. 508

— In warrantless arrests made pursuant to Sec. 5 (b), Rule 113, it is required that at the time of the arrest, an offense had in fact just been committed and the arresting officer had personal knowledge of facts indicating that the accused had committed it; it is essential that the element of personal knowledge must be coupled with the element of immediacy; otherwise, the arrest may be nullified, and resultantly, the items yielded through the search incidental thereto will be rendered inadmissible in consonance with the exclusionary rule of the 1987 Constitution; the circumstances indubitably show that the twin requisites of personal knowledge and immediacy in order to effectuate a valid "hot pursuit" warrantless arrest are present. (*Id.*)

— Sec. 5, Rule 113 of the Revised Rules on Criminal Procedure provides the general parameters for effecting lawful warrantless arrests; there are three (3) instances when warrantless arrests may be lawfully effected: *(a)* an arrest of a suspect *in flagrante delicto*; (b) an arrest of a suspect where, based on personal knowledge of the arresting officer, there is probable cause that said suspect was the perpetrator of a crime which had just been committed; and (*c*) an arrest of a prisoner who has escaped from custody serving final judgment or temporarily confined during the pendency of his case or has escaped while being transferred from one confinement to another. (*Id.*)

ARSON

Commission of — The Court of Appeals correctly modified appellant's conviction from arson with homicide to simple arson conformably with prevailing jurisprudence; in *People vs. Malngan,* the Court pronounced: Accordingly,

better qualified who should have been preferred; the choice of an appointee from among those who possess the required qualifications is a political and administrative decision calling for considerations of wisdom, convenience, utility and the interests of the service which can best be made by the head of the office concerned, the person most familiar with the organizational structure and environmental circumstances within which the appointee must function. (CSC *vs*. Rebong, G.R. No. 215932, June 3, 2019) p. 294

Rule against designation of a first level position holder to second level position — The appellate court is correct in ruling that respondent's assignments as Team Leader and Field Officer could not be considered as designation to second level positions; the assignments simply meant additional duties on respondent's part; it may be inferred that the prohibition against designation of a first level position holder to a second level position is frowned upon not only to prevent a violation of Sec. 7, Article IX-B of the Constitution which states that "xxx no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries," but also to avoid a situation wherein an employee performs the duties corresponding to two positions, but he is only receiving the compensation attached to the lower position; CSC Memorandum Circular No. 06-05 does not even provide for the consequences of designating a first level position holder to second level positions; nowhere in the said Circular is it provided that such service would not be credited in the employee's favor for purposes of promotion. (CSC *vs*. Rebong, G.R. No. 215932, June 3, 2019) p. 294

Three-salary-grade rule — Item 15 of CSC Memorandum Circular No. 3, Series of 2001 on the three-salary-grade rule states that "an employee may be promoted or transferred to a position which is not more than three (3) salary, pay or job grades higher than the employee's

within the same estate under consideration or within the same barangay, municipality or province (in that order) approved by the LBP within one (1) year from receipt of the claim folder; in the recent case of *Alfonso v. Land Bank of the Philippines*, we underscored the mandatory character of the application of Sec. 17, as amended, and translated into a basic formula by the DAR; the case remanded to the Special Agrarian Court for the fixing of just compensation for Lina's 25% share in accordance with Sec. 17 of R.A. No. 6657, as amended, and the pertinent DAR regulations. (*Id*.)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation — The prosecution had sufficiently established that appellant was caught in *flagrante delicto* selling *shabu* in a legitimate entrapment operation; aside from the Authority to Operate and the Pre-Operation Report on record, the prosecution witnesses also described in detail the events leading to and during the conduct of the buy-bust operation against appellant; hence, appellant's warrantless arrest and the subsequent search on his person are perfectly legal; *People v. Andaya*, cited. (People *vs*. Goyena *y* Abraham, G.R. No. 229680, June 6, 2019) p. 725

Chain of custody rule — Art. II, Sec. 21 of the Comprehensive Dangerous Drugs Act provides the procedures that the apprehending team must observe to comply with the chain of custody requirements in handling seized drugs; that the photographing and physical inventory of the seized drugs must be done immediately where seizure had taken place minimizes the possibility that evidence may be planted; noncompliance with this legally mandated procedure, upon seizure, raises doubt that what was submitted for laboratory examination and as evidence in court was seized from an accused; here, the prosecution failed to provide any evidence that the allegedly seized drugs were photographed upon seizure, in the presence of the accused; worse, the prosecution did not even address

Illegal Sale and Illegal Possession of Dangerous Drugs — In a prosecution for the illegal sale of dangerous drugs, such as *shabu*, the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor; as regards the charge of illegal possession of dangerous drugs, the prosecution must prove the following elements: (1) the accused was in possession of dangerous drugs; (2) such possession was not authorized by law; and (3) the accused was freely and consciously aware of being in possession of dangerous drugs. (People *vs*. Soria *y* Viloria, G.R. No. 229049, June 6, 2019) p. 711

Illegal sale of dangerous drugs — In a prosecution for the illegal sale of dangerous drugs, such as *shabu*, the following elements must be duly established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor"; simply stated, the prosecution must prove that the transaction or sale actually took place, coupled with the presentation of the seized dangerous drugs as evidence in court; ***People v. Dumlao***, cited. (People *vs*. Goyena *y* Abraham, G.R. No. 229680, June 6, 2019) p. 725

— 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 the *corpus delicti* is essential to a judgment of conviction; hence, the identity of the dangerous drug must be clearly established. (People *vs*. Jodan *y* Amla, G.R. No. 234773, June 3, 2019) p. 454

— The penalty for the unauthorized sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, regardless of the quantity and purity, is life imprisonment to death and a fine ranging from 500,000.00 to 10,000,000.00; however, given the enactment of R.A. No. 9346, only life imprisonment and a fine may be imposed upon appellant.

— Respondents failed to show that they used fair and reasonable criteria in determining what positions should be declared redundant; in *Panlilio v. National Labor Relations Commission*, this Court held that fair and reasonable criteria may take into account the preferred status, efficiency, and seniority of employees to be dismissed due to redundancy; yet, respondents never showed that they used any of these in choosing petitioner as among the employees affected by redundancy; although he was among the five (5) employees dismissed, petitioner cannot be similarly situated with the other employees. (*Id*.)

— The Court held that "to establish good faith, the company must provide substantial proof that the services of the employees are in excess of what is required of the company, and that fair and reasonable criteria were used to determine the redundant positions"; the Court finds that the Employment Agreement itself contradicts respondents' allegation. (*Id*.)

EVIDENCE

Judicial admissions — As a rule, facts stipulated during pre-trial are considered judicial admissions which are legally binding on the parties making them; even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally and must assume the consequence of the disadvantage; the rule on conclusiveness of judicial admission admits of two exceptions: 1) when it is shown that the admission was made through palpable mistake; and 2) when it is shown that no such admission was in fact made; *Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue*, cited; similarly, in this case, the record shows that a palpable mistake was committed in the arithmetical computation of the total areas stated in the Emancipation Patents and the typing/recording of the area taken pursuant to the agrarian reform program. (Land Bank of the Phils. *vs*. Navarro, G.R. No. 196264, June 6, 2019) p. 683

may lead to the conclusion that they contracted a work-related injury. (Bright Maritime Corp. *vs*. Racela, G.R. No. 239390, June 3, 2019) p. 536

EVIDENT PREMEDITATION

Elements –– Evident premeditation requires the following elements: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused has clung to his determination; and (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts; to warrant a finding of evident premeditation, it must appear that the decision to commit the crime was the result of meditation, calculation, reflection, or persistent attempt. (People *vs*. Saltarin *y* Talosig, G.R. No. 223715, June 3, 2019) p. 420

FORUM SHOPPING

Existence of –– Jurisprudence has laid down the test for determining whether a party violated the rule against forum shopping; forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other; the requisites of *litis pendentia* not having concurred, and the issues presented in SEC Case No. 09-97-5764 and RTC not being identical, Union Bank is therefore not guilty of forum shopping. (Far East Bank and Trust Co. *vs*. Union Bank of the Phils., G.R. No. 196637, June 3, 2019) p. 206

–– The test for determining the existence of forum shopping is whether a final judgment in one case amounts to *res judicata* in another or whether the following elements of *litis pendentia* are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will,

adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of a case; this rule is embodied in Rule 7, Sec. 5 of the Revised Rules of Court. (Villamor & Victolero Construction Co. *vs.* Sogo Realty and Dev't. Corp., G.R. No. 218771, June 3, 2019) p. 371

GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS

Attributes — A government-owned or controlled corporation may be "stock or non-stock corporation"; there is nothing in the law which provides that government-owned or controlled corporations are always created under an original charter or special law; Art. IX-B, Sec. 2(1) of the Constitution is clear that the jurisdiction of the Civil Service Commission is over government-owned or controlled corporations with original charters, not over those without original charters like Corregidor Foundation, Inc.; for the period audited by the Commission on Audit or in 2003, 99.66% of its budget came from the government, specifically, from the Department of Tourism, Duty Free Philippines, and the Philippine Tourism Authority; even if it were true that it is funded by international organizations and foreign entities, these foreign grants already became public funds the moment they were donated to Corregidor Foundation, Inc.; thus, these funds may be audited by the Commission on Audit; lastly, while it is true that just like any other corporation organized under the Corporation Code, Corregidor Foundation, Inc. may determine voluntarily and solely the successors of its members in accordance with its own by-laws, this does not change the public character of its functions and the control the government has over it. (Oriondo *vs.* COA, G.R. No. 211293. June 4, 2019) p. 633

— The Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit jurisdiction of the Commission on Audit; it was organized as a non-stock corporation under the Corporation Code; it was issued a certificate of registration by the Securities and

ought to put the holder upon inquiry"; it also means "an honest intention to abstain from taking any unconscientious disadvantage of another, even though technicalities of law, together with the absence of all information, notice, or benefit or belief of facts which render transactions unconscientious"; here, we cannot ascribe good faith to petitioners in receiving the disallowed amounts; receiving another set of honoraria and cash gift for rendering services to the Corregidor Foundation, Inc. would be tantamount to payment of additional compensation proscribed in Art. IX-B, Sec. 8 of the Constitution. (Oriondo *vs*. COA, G.R. No. 211293, June 4, 2019) p. 633

INFORMATION

Nature of — The SB did not err in declaring that there was no violation of petitioners' constitutional right to be informed of the nature and cause of the accusation against them by the use of the term "capital outlay" in its Decision without mentioning the same in the Information, as such right merely requires that an Information only state the ultimate facts constituting the offense and not the finer details of why and how the crime was committed. (Josue *vs.* People, G.R. No. 240947, June 3, 2019) p. 580

JUDGES

Conduct of — A judge "must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint; he should choose his words and exercise more caution and control in expressing himself; he is required to always be temperate, patient and courteous, both in conduct and in language"; as a holder of a judicial office that commands respect, respondent judge should accord respect to another officer of the court, a sheriff who is implementing a writ of execution. (Tan-Yap *vs*. Hon. Patricio, A.M. No. MTJ-19-1925 [Formerly OCA IPI No. 17-2937-MTJ], June 3, 2019) p. 149

Conduct unbecoming of a judicial officer — The respondent judge effectively took the law into his own hands, when

proceedings to first resolve the jurisdictional issue. (Alvarez *vs*. Court of Appeals [Former 12th Div.], G.R. No. 192472, June 3, 2019) p. 163

Grounds — Annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled was rendered; it is not a continuation or progression of the same case, as the case it seeks to annul is already final and executory, but rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases; as provided for in Sec. 2, Rule 47 of the 1997 Rules of Court, it is based only on the grounds of extrinsic fraud and lack of jurisdiction; jurisprudence, however, recognizes lack of due process as an additional ground to annul a judgment. (Alvarez *vs*. Court of Appeals [Former 12th Div.], G.R. No. 192472, June 3, 2019) p. 163

LABOR RELATIONS

Employer-employee relationship — Relevant is the economic reality test which this Court has adopted in determining the existence of an employer-employee relationship; under this test, the economic realities prevailing within the activity or between the parties are examined, taking into consideration the totality of circumstances surrounding the true nature of the relationship between the parties. (Dr. Loreche-Amit *vs*. Cagayan De Oro Medical Center, Inc. (CDMC), G.R. No. 216635, June 3, 2019) p. 327

— The fact that petitioner continued to work for other hospitals strengthens the proposition that she was not wholly dependent on CDMC; petitioner admitted that she receives in full her 4% share in the Clinical Section of the hospital regardless of the number of hours she worked therein; she manages her method and hours of work; the rule is that where a person who works for another performs his job more or less at his own pleasure, in the manner he sees fit, not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, no employer-employee relationship exists. (*Id*.)

in a prior case and the second person in a subsequent case, such was deemed sufficient; here, while the members of the CIAC Tribunal were included as respondents in the Petition for *Certiorari*, there still exists an identity of parties between the Petition for *Certiorari* and the Petition for Review. (Villamor & Victolero Construction Co. *vs*. Sogo Realty and Dev't. Corp., G.R. No. 218771, June 3, 2019) p. 371

MAGNA CARTA FOR PUBLIC SCHOOL TEACHERS (R.A. NO. 4670)

Consent for transfer — Sec. 6 of the Magna Carta for Public School Teachers does not apply here; Sec. 6 applies to transfers, not reassignments; petitioner's movement from Surigao National to Toledo Memorial was a reassignment, not a transfer; the legal concept of transfer differs from reassignment; most notably, a transfer involves the issuance of another appointment, while a reassignment does not; transfer and reassignment are defined in Sec. 24 of P.D. No. 807, or the Civil Service Law; also defined in Secs. 11 and 13(a) of Civil Service Commission Resolution No. 1800692 (2017 Omnibus Rules on Appointments and Other Human Resource Actions). (Yangson *vs*. DepEd, G.R. No. 200170, June 3, 2019) p. 236

MITIGATING CIRCUMSTANCES

Lack of intention to commit so grave a wrong — Anent the mitigating circumstance of lack of intention to commit so grave a wrong as that committed, this circumstance addresses itself to the intention of the offender at the particular moment when such offender executes or commits the criminal act; in this case, the undeniable fact is that when accused-appellant attacked the victim, the former used a deadly weapon and inflicted a mortal wound on the latter; while intent to kill is purely a mental process, it may be inferred from the weapon used, the extent of the injuries sustained by the offended party and the circumstances of the aggression, as well as the fact that the accused performed all the acts that should have resulted

of spontaneity and an intent to surrender unconditionally to the authorities, either because the accused acknowledges his guilt or he wishes to spare them the trouble and expense concomitant to his capture; no showing of spontaneity in this case. (People *vs.* Sabalberino *y* Abulencia, G.R. No. 241088, June 3, 2019) p. 594

MURDER

Elements — Murder is defined and penalized under Art. 248 of the Revised Penal Code; Murder requires the following elements: (1) a person was killed; (2) the accused killed him or her; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) the killing does not amount to parricide or infanticide. (People *vs.* Saltarin *y* Talosig, G.R. No. 223715, June 3, 2019) p. 420

Penalty — The Court of Appeals did not err in affirming appellant's conviction for murder; in the absence of any aggravating circumstance, appellant was correctly sentenced to *reclusion perpetua*; on whether the decision must explicitly bear appellant's eligibility for parole, A.M. 15-08-02 clarifies that the phrase *"without eligibility for parole"* shall be used to qualify the penalty of *reclusion perpetua* only if the accused should have been sentenced to suffer the death penalty had it not been for R.A. 9346; appellant was sentenced to *reclusion perpetua* because such indeed is the correct penalty in the absence of any aggravating circumstance that would have otherwise warranted the imposition of the death penalty were it not for R.A. 9346; the phrase *"without eligibility for parole",* therefore, need not be borne in the decision to qualify appellant's sentence. (People *vs.* Saltarin *y* Talosig, G.R. No. 223715, June 3, 2019) p. 420

1997 NATIONAL INTERNAL REVENUE CODE OF THE PHILIPPINES

Protest of assessment — Sec. 228 of the 1997 National Internal Revenue Code of the Philippines provides for the remedies of a taxpayer in case of an adverse final decision by the

PARRICDE

Rules on Employee's Compensation (*AREC*); if he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled; thus, even if it was shown that given the seafarer's delicate post-operative condition, a definitive assessment by the company-designated physician would have been unnecessary as, for all intents and purposes, the seafarer was already unfit for sea duty; still, with the said doctor's failure to issue a definite assessment of the seafarer's condition on the last day of the statutory 240-day period, the seafarer was deemed totally and permanently disabled pursuant to Art. 192(c)(1) of the Labor Code and Rule X, Sec. 2 of the AREC; however, in the aforecited case, respondent sufficiently alleged the causal connection between his work duties/functions and his heart disease; the mere fact that a seafarer's disability exceeded 120 days, by itself, is not a ground to entitle him to full disability benefits; such should be read in relation to the provisions of the POEA Standard Employment Contract which, among others, provide that an illness should be work-related; without a finding that an illness is work-related, any discussion on the period of disability is moot. (Bright Maritime Corp. *vs*. Racela, G.R. No. 239390, June 3, 2019) p. 536

Disability benefits — The entitlement of overseas seafarers to disability benefits is a matter governed, not only by medical findings, but also by law and contract; the pertinent statutory provisions are Arts. 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation to Rule X of the Rules and Regulations Implementing Book IV of the Labor Code; the relevant contracts pertain to the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' CBA; since respondent was hired in 2013, it is the 2010 POEA-SEC (Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships) under Philippine Overseas Employment Authority Memorandum Circular No. 010-

duties and responsibilities. (Yangson *vs*. DepEd, G.R. No. 200170, June 3, 2019) p. 236

Dishonesty and serious dishonesty — In a long line of cases, dishonesty has been defined as a disposition to lie, cheat, deceive, or defraud; unworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive, or betray; considering the circumstances surrounding the taking of the computer set, and given the lack of motive on the part of Executive Judge Estabaya to be untruthful on her disavowal, the Court is inclined to believe the latter's account and hence, upholds the finding that Laranjo indeed committed Serious Dishonesty in an attempt to exculpate himself for his inappropriate conduct. (OCA *vs.* Laranjo, A.M. No. P-18-3859 [Formerly A.M. No. 15-12-135-MCTC], June 4, 2019) p. 622

Misconduct and grave misconduct — Based on case law, "misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior; any transgression or deviation from the established norm of conduct, work-related or not, amounts to misconduct; the misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules," as in this case. (OCA *vs*. Laranjo, A.M. No. P-18-3859 [Formerly A.M. No. 15-12-135-MCTC], June 4, 2019) p. 622

Reassignments — Petitioner's reassignment was for the exigency of service; Sec. 26(7) of the Administrative Code allows any government department or agency that is embraced in the civil service prerogative to reassign employees; it is presumed that reassignments are "regular and made in the interest of public service"; the party questioning its regularity or asserting bad faith carries the burden to prove his or her allegations. (Yangson *vs*. DepEd, G.R. No. 200170, June 3, 2019) p. 236

No. 09-1119, in consonance with this Court's ruling in *People v. Jugueta*, that AAA is entitled to 100,000.00 as civil indemnity, 100,000.00 as moral damages, and 100,000.00 as exemplary damages for the crime of qualified rape. (People *vs*. De Vera *y* Holdem, G.R. No. 230624, June 6, 2019) p. 736

RAPE

Commission of — Appellant's conviction was not based alone on AAA's testimony; a hymenal laceration is the best evidence of forcible sexual penetration; it does not matter whether it is healed or fresh; when the rape victim's detailed, positive and categorical testimony about the sexual violation she experienced solidly conforms with the medical finding of hymenal laceration, the same is sufficient to support a verdict of conviction. (People *vs*. Siscar *y* Andrade, G.R. No. 218571, June 3, 2019) p. 355

— As for appellant's theory that he could not have raped AAA in a place near the road and surrounding residential houses without alerting people to come and help her, the Court has consistently recognized that rape may be committed even in places where people congregate, in parks, along roadside, within school premises, inside an occupied house, and even where other members of the family are sleeping; for lust is no respecter of time or place. (*Id*.)

— As for Manuel's contention that the absence of any finding of hymenal lacerations, injuries, or other signs of sexual abuse during the medical examination of AAA undeniably proves his innocence, case law dictates that the medical report on AAA is only corroborative of the finding of rape; "the absence of fresh external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape, hymenal laceration and like vaginal injuries not being x x x an element of the crime of rape; what is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer; a medical examination of the victim is not indispensable in a

in addition, the Certificate of Live Birth of AAA proves that she was 10 years old when she was raped by appellant and that the latter is her biological father, thus, qualifying the crime of rape. (People *vs*. CCC, G.R. No. 239336, June 3, 2019) p. 523

— While appellant's conviction was primarily based on complainant's testimony, the same solidly conforms with the physical evidence through the medical findings that complainant sustained hymenal lacerations at 3 and 9 o'clock positions showing blunt penetrating trauma; the Court has consistently ruled that when a rape victim's straightforward and truthful testimony conforms with the medical findings of the examining doctor, the same is sufficient to support a conviction for rape. (People *vs*. XXX, G.R. No. 222492, June 3, 2019) p. 384

Force and intimidation — It cannot be denied from the facts of the case that AAA was subjected to sexual abuse; she is clearly a child who, due to the coercion or influence of Manuel, indulged in lascivious conduct; Manuel is the father of AAA; as such, he has moral ascendancy over his minor daughter; settled is the rule that in cases where rape is committed by a relative, such as a father, stepfather, uncle, or common law spouse, moral influence or ascendancy takes the place of "force and intimidation" as an essential element of rape. (Ramilo *vs*. People, G.R. No. 234841, June 3, 2019) p. 471

Minority and relationship — The Information properly alleged that complainant was only thirteen years old at the time of rape and the offender was her own father, herein appellant; complainant's minority and her relationship with appellant were sufficiently proved by complainant's birth certificate on record; the death penalty would have been imposed on appellant were it not for the enactment of R.A. No. 9346 prohibiting the imposition of death penalty in the country; the Court of Appeals correctly sentenced appellant to *reclusion perpetua* without eligibility for parole in accordance with Sec. 3 of

necessarily be acquitted and exonerated from criminal liability. (Vaporoso *vs*. People, G.R. No. 238659, June 3, 2019) p. 508

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Children exploited in prostitution or subjected to other sexual abuse — A child is deemed exploited in prostitution or subjected to other sexual abuse when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit or any other consideration; or (b) under the coercion or any influence of any adult, syndicate or group; in *People v. Tulagan,* we explained that on the one hand, 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, indulges in sexual intercourse; the term "other sexual abuse," on the other hand, is construed in relation to the definitions of "child abuse" under Sec. 3, Art. I of R.A. No. 7610 and of "sexual abuse" under Sec. 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. (Ramilo *vs*. People, G.R. No. 234841, June 3, 2019) p. 471

Lascivious conduct — Before an accused can be held criminally liable for lascivious conduct under Sec. 5(b), Art. III of

instances where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium, and the act is likewise covered by sexual assault under Art. 266-A, par. 2 of the RPC, which is punishable by *prision mayor,* the offender should be liable for violation of Sec. 5(b), Art. III of R.A. No. 7610, where the law provides for the higher penalty of *reclusion temporal* medium, if the offended party is a child victim; but if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least eighteen (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; R.A. No. 7610 is a special law which should clearly prevail over R.A. No. 8353, which is a mere general law amending the RPC; *People* v. *Chingh,* cited; 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."' (*Id*.)

— To sustain a conviction under Sec. 5(b), Art. III of R.A. No. 7610, the prosecution must establish the following elements: (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 sexual abuse; and (3) the child, whether male or female, is below 18 years of age; accused-appellant is found guilty of two counts of lascivious conduct under Art. 336 of the RPC, in relation to R.A. No. 7610, in Criminal Case Nos. 09-1118 and 09-1121; under Sec. 5(b) of R.A. No. 7610, the imposable penalty for lascivious conduct is *reclusion temporal* in its medium period to

it impossible for the victim to defend himself or herself or retaliate, ensuring its commission without risk to the aggressor. (People *vs*. Saltarin *y* Talosig, G.R. No. 223715, June 3, 2019) p. 420

WITNESSES

Credibility of — Appellant attacks the competence of Judge Arturo Clemente B. Revil to accurately ascertain the facts and the credibility of witnesses considering that another judge heard and tried the case from beginning to end; on several occasions, the Court has clarified that the competence of a judge to evaluate the evidence on record and the credibility of witnesses and based thereon, ascertain with marked accuracy the cold facts of the case is not at all diminished simply because another judge heard and tried the case; the judge assigned to decide the case can rely on the transcripts of stenographic notes of the testimonies of the witnesses and calibrate them in conformity with the rules of evidence *vis-à-vis* men's common experience, knowledge and observations. (People *vs*. Dolendo *y* Fediles, G.R. No. 223098, June 3, 2019) p. 403

— Appellant next harps on the alleged inconsistencies in the testimonies of witnesses pertaining to who among the children were inside the house when it was set on fire and what exactly appellant uttered about Leonardo Sr.; these alleged inconsistencies, if at all, refer to trivial matters which do not affect the credibility of the witnesses positively identifying appellant as the one who burned their dwelling, killing the six year old Leonardo Jr. as a result. (*Id*.)

— Appellant's assigned errors all dwell on the issue of credibility; the Court generally accords full respect to the trial court's factual findings on the credibility of witnesses especially when the same carry the concurrence of the Court of Appeals; in the absence of any showing that the trial court had misapprehended the facts or disregarded the evidence on record, there is no valid

knew appellant prior to the incident and where he lived – wholly refer to trivial matters which do not affect Narido's credibility as an eyewitness; his positive identification of appellant as the one who slew his *tatay-tatayan* was consistent, unwavering, and firm. (People *vs*. Saltarin *y* Talosig, G.R. No. 223715, June 3, 2019) p. 420

—— The Court disagrees with the accused-appellant's assertion that AAA's testimony was incredible in that she could have easily shouted for help, or sought the help of her other family members who were sleeping nearby when the incidents happened; time and again, this Court has ruled that there is no clear-cut standard required, or expected from a rape victim or a victim of acts of lasciviousness, especially when the offender is the victim's own biological father who has a history of being violent, or being irrational, as in the present case; thus, AAA's failure to shout or call for help cannot be taken against her. (People *vs*. De Vera *y* Holdem, G.R. No. 230624, June 6, 2019) p. 736

—— The prosecution had established beyond moral certainty the element of carnal knowledge; complainant positively identified appellant, her own flesh and blood, as the man who had carnal knowledge of her against her will; the thirteen-year-old complainant could not have merely concocted these ugly details had she not actually experienced them in the hands of her own father; the trial court found complainant's testimony spontaneous and straightforward; the Court respects the trial court's factual findings on complainant's credibility more so because these factual findings carry the full concurrence of the Court of Appeals. (People *vs*. XXX, G.R. No. 222492, June 3, 2019) p. 384

—— Time and again, the Court has held that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested; a rape victim's actions are oftentimes overwhelmed by fear rather than by reason; the perpetrator of the rape hopes to

sufficient to support appellant's conviction for rape, given the intrinsic nature of the crime of rape where only two persons are usually involved; the Court has consistently held that the testimony of minor victims is normally given full weight and credit. (People *vs*. Siscar *y* Andrade, G.R. No. 218571, June 3, 2019) p. 355

— The testimonies of Rhey and Racel Gonzales pointing to their own mother as the person who, without mercy, beat up their thirteen-year old brother on the night of September 16, 2009, and again the next morning, deserve full faith and credence; more so because these children, young as they were, only had appellant to take care of them as their father had already died; the testimonies of children against their own flesh and blood are given great weight, especially when no ill will is shown, as in this case. (People *vs*. Gonzales *y* Torno, G.R. No. 217022, June 3, 2019) p. 336

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS
(Local)