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SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

JUNE 10 - 18, 2019

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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 9838. June 10, 2019]

PAZ C. SANIDAD, *complainant, vs.* **ATTY. JOSEPH JOHN GERALD M. AGUAS,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; COMPLAINANT MUST PROVE BY SUBSTANTIAL EVIDENCE THE ALLEGATIONS IN THE COMPLAINT.—** In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. For the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.

2. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); RULE THAT A LAWYER SHALL NOT ENGAGE IN UNLAWFUL, DISHONEST, IMMORAL OR DECEITFUL CONDUCT; DISCUSSED.—** Rule 1.0, Canon 1 of the CPR, provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." It is well established that a lawyer's conduct is "not confined to the performance of his professional duties. A lawyer may be disciplined for misconduct committed either in his professional

or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court." Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is "unlawful." "Unlawful" conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element. ***To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straightforwardness*** while conduct that is "deceitful" means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.

3. ID.; ID.; ID.; VIOLATED WHEN LAWYER TOOK ADVANTAGE OF A PERSON TO SECURE UNDUE GAINS FOR HIMSELF; PENALTY.— The Court cannot overstress the duty of a lawyer to at all times uphold the integrity and dignity of the legal profession. He can do this by faithfully performing his duties to society, to the bar, to the courts and to his clients. The ethics of the legal profession rightly enjoin lawyers to act with the highest standards of truthfulness, fair play and nobility in the course of his practice of law. A lawyer may be disciplined or suspended for any misconduct, whether in his professional or private capacity. Public confidence in the law and lawyers may be eroded by the irresponsible and improper conduct of a member of the Bar. Thus, every lawyer should act and comport himself in such a manner that would promote public confidence in the integrity of the legal profession. Clearly, respondent failed to live up to the high standard of morality, honesty, integrity, and fair dealing required of him as a member of the legal profession. Instead, he employed his knowledge and skill of the law and took advantage of Sanidad to secure undue gains for himself. x x x **WHEREFORE,** premises considered, We find Atty. Joseph John Gerald M. Aguas guilty of violation of Rule 1.01 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of **ONE (1) YEAR** and **STERNLY WARNED** that a repetition of the same or similar offense will be dealt with more severely.

APPEARANCES OF COUNSEL

Manuel C. Camacho for complainant.

D E C I S I O N

PERALTA, *J.*:

Before us is a Complaint for Disbarment[1] dated December 8, 2012, filed by complainant Paz C. Sanidad *(Sanidad)* against respondent Atty. Joseph John Gerald M. Aguas *(respondent)* for dishonesty, grossly deceitful conduct, malpractice, and violation of the Code of Professional Responsibility *(CPR).*

The antecedent facts are as follows:

Sometime in 2001, Sanidad alleged that she and respondent, together with the latter's brother, Julius M. Aguas *(Julius),* entered into a verbal agreement for the sale of the co-owned subject property of the latter located at No. 2 Gonzales Drive, Doña Pilar Subdivision, Batasan Hills, Quezon City. They agreed that the subject property will be sold for ₱1,500,000.00 and to be paid in installments. Sanidad averred that she has been residing in the said subject property since 1983.

Thus, from 2001 to 2011, Sanidad claimed that she has made several payments to respondent and Julius by depositing in their BPI bank accounts. Sanidad also alleged that while she has been depositing payments in their bank accounts, no acknowledgment receipt was ever issued to her. She, however, maintained that she has deposited a total payment of One Million One Hundred Fifty-Two Thousand Pesos (₱1,152,000.00) on respondent's and Julius's BPI bank accounts, as evidenced by the deposit slips as proof of payments, to wit:

(1) February 15, 2001 – Forty Thousand Pesos (₱40,000.00);[2]
(2) May 8, 2001 – Thirty Thousand Pesos (₱30,000.00);[3]

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

[2] Annex "A", *id.* at 4.

[3] Annex "A-1", *id.*

(3) May 15, 2001 – Twenty Thousand Pesos (₱20,000.00);[4]
(4) June 1, 2001 – Fifty Thousand Pesos (₱50,000.00);
(5) August 1, 2001 – Ninety Thousand Pesos (₱90,000.00);[6]
(6) Undated deposit of Forty-Five Thousand Pesos (₱45,000.00);[7]
(7) April 5, 2002 – Five Hundred Thousand Pesos (₱500,000.00);[8]
(8) October 7, 2010 – Seventy-Five Thousand Pesos (₱75,000.00);[9]
(9) October 14, 2010 - Seventy-Five Thousand Pesos (₱75,000.00);[10]
(10) August 5, 2011 – Two Hundred Two Thousand Pesos (₱202,000.00)[11]

However, Sanidad lamented that respondent took advantage of his legal knowledge as a lawyer and employed several tactics to defraud her. She claimed that respondent, after receiving the total amount of ₱1,152,000.00 from her, sent her demand letters and threatened her with eviction.[12] She added that after she deposited her payments in respondent's bank account, the latter also avoided meeting her and became unreachable. Sanidad averred that she would receive telephone calls from him pressuring her to immediately vacate the property or she will be evicted.

Feeling aggrieved, Sanidad filed the instant disbarment complaint against respondent.

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[4] Annex "A-2", *id.* at 5.

[5] Annex "A-3", *id.*

[6] Annex "A-4", *id.* at 6.

[7] Complainant alleged that she made the deposit amounting to ₱45,000.00 on Atty. Aguas' BPI account albeit the deposit slip was misplaced.

[8] Annex "A-5", *rollo,* p. 6.

[9] Annex "A-6", *id.* at 7.

[10] Annex "A-7", *id.*

[11] Annex "A-8", *id.* at 8.

[12] *Rollo,* pp. 9, 43, 44.

In a Resolution[13] dated June 19, 2013, the Court required respondent to comment on the allegations against him.

In his Comment[14] dated August 13, 2013, respondent alleged that Sanidad's allegations are bereft of factual basis. He averred that Sanidad has been a tenant of the subject property since 1980 whose lease had long lapsed and is facing eviction for non-payment of rentals. He further asserted that Sanidad's occupation of the subject property was by mere tolerance, and because her eviction from the subject property was imminent, she allegedly fabricated lies against him.

Respondent also claimed that the instant disbarment case, along with a civil and criminal complaint against him and his brother, to wit: (1) Action for Specific Performance and Damages, docketed as Civil Case No. Q-1271807, entitled *Paz C. Sanidad v. Atty. Joseph M. Aguas and Julius Aguas,* filed on August 17, 2012 before the Regional Trial Court of Quezon City, Branch 224; and (2) Complaint for Estafa docketed as XV-03-13B-01953 filed on February 14, 2013 before the City Prosecutor of Quezon City, were all meant to merely harass him.

Respondent further explained that from 2001 until October 2010, Sanidad merely paid ₱5,468.75 as rentals. He claimed that it was only in 2010 that they agreed on the sale of the subject property for an amount of One Million Five Hundred Thousand Pesos (₱1,500,000.00) but Sanidad failed to pay the said amount, thus, she was given an eviction notice. Respondent maintained that all of Sanidad's payments made between 2001 to 2010 were just payment for the rental of the subject property.

On December 11, 2013, the Court resolved to refer the instant case to the Integrated Bar of the Philippines for investigation, report and recommendation.[15]

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[13] *Id.* at 10.

[14] *Id.* at 11-15.

[15] *Id.* at 59.

In compliance, the Integrated Bar of the Philippines-Commission on Bar Discipline *(IBP-CBD)* issued a Notice of Mandatory Conference[16] dated May 19, 2014 which required the parties to appear on June 23, 2014 and submit their respective mandatory conference briefs.

On June 23, 2014, the mandatory conference was conducted but only Atty. Manuel N. Camacho who is representing Sanidad appeared.

In his Conference Brief dated July 18, 2014, respondent, however, manifested that he and Sanidad mutually agreed to amicably settle which resulted to the dismissal of the civil case which the latter filed against him. He added that he had already turned over the title of the subject property to Sanidad even without receiving a single centavo as payment. He submitted a photocopy of the acknowledgment receipt signed by Sanidad's counsel which showed that the latter already received the (1) absolute deed of sale of the subject real property; (2) motion to withdraw IBP case *(Aguas v. Camacho);* (3) Compromise Agreement with Joint Motion to Dismiss (Br. 224, RTC QC) and (4) the Owner's Duplicate Certificate of Transfer Certificate of Title No. 48029. However, respondent lamented that while he agreed to amicably settle because he was of the understanding that all the cases filed against him would be dismissed, only the civil case was dismissed. Finally, respondent maintained that he did not abuse or took advantage of his position as a lawyer in his dealings with complainant.

In its Report and Recommendation dated June 15, 2015, the IBP-CBD found respondent to have indeed used his legal knowledge to defraud and mislead Sanidad by sending her demand letters to vacate the subject property despite the sale of the same and payments made to him. The IBP-CBD recommended that respondent be given a warning that any repetition of the same will be dealt with severely.

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[16] *Id.* at 61.

In a Resolution[17] dated June 20, 2015, the Board of Governors of the IBP, however, reversed and set aside the report and recommendation of the IBP-CBD and instead, recommended that respondent be admonished with a warning that repetition of similar act shall be dealt with more severely.

RULING

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. For the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.[18]

In the instant case, We find that the charges of Sanidad against respondent to be worthy of belief based on the following:

First, we find substantial evidence that Sanidad indeed entered into a contract of sale, *albeit* verbal, with respondent by showing proof of payments made to the latter. She presented copies of bank deposit slips as evidence that she has been depositing her payments for the sale of the subject property under the BPI bank accounts of respondent and Julius;

Second, as observed by the IBP, respondent's allegations that the payments were for rentals and his denial of the existence of the contract of sale between him and Sanidad fail to convince considering that the amounts of deposits made by Sanidad in respondent's and Julius's bank account were too substantial to be regarded as payments of rentals.

Third, respondent's allegation that it was only on August 17, 2010 when he entered into a contract of sale of the subject real property with Sanidad which allegedly the latter was not able to pay for, is hard to believe considering that the deposit of substantial amounts in his account and Julius's began as early as 2001;

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[17] *Id.* at 81-82.

[18] *Ferancullo v. Ferancullo,* 538 Phil. 501, 511 (2006).

Fourth, despite the receipt of payments from Sanidad, respondent apparently used his legal knowledge when he sent a demand letter dated April 10, 2012 to vacate the subject property;

Finally, but equally important, we note that while respondent denied that he entered into a contract of sale with Sanidad, records show that he eventually decided to turn over the title of the subject property to Sanidad based on a settlement agreement that the cases filed against him will be withdrawn. Clearly, this act of respondent is inconsistent with his claim that Sanidad's payments were for rentals, and that no payment was actually made for the sale of the property.

Rule 1.0, Canon 1 of the CPR, provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." It is well established that a lawyer's conduct is "not confined to the performance of his professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court."[19]

Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is "unlawful." "Unlawful" conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element. ***To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straight forwardness*** while conduct that is "deceitful" means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.[20]

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[19] *Navarro, et al. v. Atty. Solidum, Jr.,* 725 Phil. 358, 367 (2014), citing *Roa v. Atty. Moreno,* 633 Phil. 1, 7 (2010).

[20] *Jimenez v. Atty. Francisco,* 749 Phil. 551, 565-566 (2014). (Emphasis ours)

From the foregoing, we find respondent's conduct in dealing with Sanidad to be wanting in moral character, honesty, probity, and fairness. While we cannot conclude that respondent indeed entered into a verbal contract for the sale of a real property despite knowledge that said verbal contract is unenforceable due to lack of clear evidence, it is, however, apparent due to the fact that he eventually agreed to surrender the title of the subject property to Sanidad, that he has certainly entered into a contract of sale of the subject property with Sanidad for which he received payments. Why else would he turn over the subject property to Sanidad if there was neither an agreement to sell nor payments made therefor? Respondent's claim that he decided to turn over the title of the subject property to Sanidad without receiving a single centavo is outright outrageous to deserve any credibility.

Moreover, respondent never denied that he received the deposits made by Sanidad, but he never issued her any acknowledgment receipts. He claimed that Sanidad has been their tenant since 1983 yet no contract of lease was ever presented to support his claim. It, thus, appears that while respondent profited from receiving substantial amounts of moneys from Sanidad, the latter, however, holds no concrete proof that he has been actually receiving her payments. The interest of Sanidad, as buyer or lessee, as the case may be, was left fully unprotected. The lack of transparency due to respondent's failure to give acknowledgment receipts and the lack of written contracts is highly suspicious of deceit and fraud because it inevitably placed Sanidad in a rather disadvantageous position. Worse, respondent has utilized the lack of written contracts and acknowledgment receipts in threatening to evict respondent despite the apparent receipt of payments.

The Court cannot overstress the duty of a lawyer to at all times uphold the integrity and dignity of the legal profession. He can do this by faithfully performing his duties to society, to the bar, to the courts and to his clients. The ethics of the legal profession rightly enjoin lawyers to act with the highest standards of truthfulness, fair play and nobility in the course

of his practice of law. A lawyer may be disciplined or suspended for any misconduct, whether in his professional or private capacity. Public confidence in the law and lawyers may be eroded by the irresponsible and improper conduct of a member of the Bar. Thus, every lawyer should act and comport himself in such a manner that would promote public confidence in the integrity of the legal profession.[21]

Clearly, respondent failed to live up to the high standard of morality, honesty, integrity, and fair dealing required of him as a member of the legal profession. Instead, he employed his knowledge and skill of the law and took advantage of Sanidad to secure undue gains for himself.

In *Guillen v. Atty. Arnado,*[22] Atty. Arnado was suspended from the practice of law for a period of one (1) year for employing his knowledge and skill of the law to secure undue gains for himself and to inflict serious damage on others. We, thus, modify the recommendation of the IBP Board of Governors to merely admonish respondent as We do not find the same to be commensurate with respondent's transgressions.

WHEREFORE, premises considered, We find Atty. Joseph John Gerald M. Aguas guilty of violation of Rule 1.01 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of **ONE (1) YEAR** and **STERNLY WARNED** that a repetition of the same or similar offense will be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts of the country.

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Inting, JJ.,* concur.

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[21] *Rivera v. Atty. Corral,* 433 Phil. 331, 341-342 (2002).

[22] A.C. No. 10547, November 8, 2017, 844 SCRA 280.

FIRST DIVISION

[A.C. No. 10559. June 10, 2019]

RAJESH GAGOOMAL, *complainant, vs.* **ATTY. VON LOVEL BEDONA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; LAWYERS; DISBARMENT OR SUSPENSION PROCEEDINGS; EVIDENCE REQUIRED IS PREPONDERANCE OF EVIDENCE.**—Because of the serious consequences flowing from the imposition of severe disciplinary sanctions such as disbarment or suspension against a member of the Bar, we emphasized in *Aba v. Guzman* that: [T]he Court has consistently held that in suspension or disbarment proceedings against lawyers, the lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to prove the allegations in his complaint. The evidence required in suspension or disbarment proceedings is preponderance of evidence. In case the evidence of the parties are equally balanced, the equipoise doctrine mandates a decision in favor of the respondent. "Preponderance of evidence means that the evidence adduced by one side is x x x superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto."

2. **REMEDIAL LAW; EVIDENCE; EXPERT OPINION; GENERALLY REGARDED AS PURELY ADVISORY IN CHARACTER.**—[T]he issue now is whether Rajesh's documentary evidence supports his position that he was not in the Philippines at the time and place mentioned in the disputed Deed of Assignment/Transfer. In their respective attempts to prove the falsification or forgery (as Rajesh averred) or the genuineness of the subject signature in the Deed (as respondent lawyer claimed), the parties submitted conflicting written reports of the professional findings of (1) the PNP and the Truth Verifier Systems, Inc. and (2) the NBI. Jurisprudence however teaches us that: Expert opinions are not ordinarily conclusive. They are generally regarded as purely advisory in character. The courts may place whatever weight they choose upon and may reject

them, if they find them inconsistent with the facts in the case or otherwise unreasonable. **When faced with conflicting expert opinions, as in this case, courts give more weight and credence to that which is more complete, thorough, and scientific.** The value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer.

APPEARANCES OF COUNSEL

Marietta L. Sobredilla for complainant.

Bedona Bedona Cabado & Endonila Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Complainant Rajesh Gagoomal (Rajesh) seeks the suspension from the practice of law or disbarment of respondent lawyer Atty. Von Lovel Bedona for notarizing a November 27, 2000 Deed of Assignment/Transfer (Deed).[1] Rajesh claims that it was made to appear in the Deed that he personally appeared and executed and signed the document before respondent lawyer even though he was out of the Philippines at that time.

The Facts

According to Rajesh, sometime in the year 2000, he and his company, the Sonite Limited (Sonite) subscribed to the shares of stock of Beam Realty, Inc. (Beam); and that for identification and documentation purposes, he provided Robert Fields (Robert), one of Beam's stockholders, a copy of his (Rajesh's) Philippine Passport No. ZZ035516.[2] As of January 2002, he claims to be

[1] *Rollo*, Vol. I, p. 120.

[2] *Id*. at 69.

the owner of 41.48%[3] of Beam's subscribed capital stock, while his company, the Sonite, owned 32.53%[4] of Beam's subscribed capital stock; that, in the latter part of 2006, Rajesh claimed that he and Sonite had been deleted as stockholders of Beam, and this prompted him to file with the Regional Trial Court of San Jose, Antique "Corporate Case No. 07-01,"[5] a case for Accounting and Reversion of Shares against the stockholders; that among the defendants named in this case were Robert and the siblings Prelu and Primrose Autajay (Autajays).

The Autajays in their answer in said corporate case countered that Rajesh had never been a stockholder of Beam, and that his company, Sonite, was no longer a stockholder because Sonite had already sold all of its shares to Beam, resulting in the increase of subscribed and fully-paid shares of stock of Robert to 51% in Beam, with the remaining 49% belonging to the Autajays and their relatives. To prove their claim, the Autajays attached to their Answer[6] a notarized deed, registered as Doc. No. 146, Page No. 32, Book No. XVI, Series of 2000, wherein it was stated that Rajesh, acting for Sonite, deeded or transferred Sonite's shares to Beam.[7] This notarized deed is now the questioned document in this administrative case.

As stated, it was respondent lawyer who notarized the Deed of Assignment/Transfer dated November 27, 2000. In the notarial portion under "Acknowledgment," respondent lawyer indicated Philippine Passport No. ZZ035516 as proof of Rajesh's identity and as a signatory to the subject deed.

Rajesh claimed that he came across this Deed only when the Autajays attached the same to their Answer in the corporate case. He insisted that he could not have possibly appeared in

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[3] 104,139 shares.

[4] 91,620 shares.

[5] *Rollo*, Vol. 1, pp. 73-100.

[6] *Id*. at 101-119.

[7] *Id*. at 120-123. Other signatories are Robert Allan Fields, Primrose, Prelu, and Presentacion Autajay, Corazon Montaño, and Soledad Hernaez.

person before the respondent lawyer in Iloilo City on November 27, 2000, because he was in Malaysia from November 25, 2000 to December 3, 2000, as evidenced by the stamped entries on page 8[8] of his Philippine Passport No. ZZ035516.

The record disclosed that Rajesh filed a criminal complaint[9] against Robert, the Autajays, and respondent lawyer for Falsification of Public Document, Forgery, and Use of Falsified Document before the City Prosecutor of Iloilo City. However, except for Robert and for the Autajays, the city prosecutor found no probable cause to indict respondent lawyer for falsification under Article 171 in relation to Article 172 of the Revised Penal Code,[10] because his only participation was the notarization of

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[8] *Id*. at 124.

[9] *Id*. at 10-15.

[10] Falsification under Article 171 of the Revised Penal Code states:

Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prision mayor* and a fine not to exceed ₱5,000.00 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
4. Making untruthful statements in a narration of facts;
5. Altering true dates;
6. Making any alteration or intercalation in a genuine document which changes its meaning;
7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or
8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

the document.[11] The criminal case against Robert and the Autajays eventually found its way into Branch 6 of the Municipal Trial Court in Cities (MTCC) in Iloilo City.[12]

Thus, Rajesh lodged a Complaint-Affidavit[13] with the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) for the purpose of holding respondent lawyer administratively liable for malpractice of law and for disbarment. This is the case at bar.

In his Answer[14] and Supplemental Answer and/or Manifestation,[15] respondent lawyer claimed that he never violated his oath as a lawyer; that in notarizing the Deed, he complied with his duties as a notary public; that all the signatories in the questioned deed did, in fact, personally appear before him at the time and date in question; and that he signed the document after he had explained to them all its contents. Respondent lawyer stressed that he did not personally know Rajesh and the rest of the parties to the Deed and that it was beyond his power or authority to obtain the details of Rajesh's passport prior to the Deed's notarization.

Respondent lawyer described as "mere afterthought" Rajesh's allegation that he (Rajesh) provided Robert a copy of his Philippine Passport No. ZZ035516 in the year 2000 for identification and documentation purposes. According to the respondent lawyer, Rajesh only averred this for the first time

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[11] *Rollo*, Vol. 1, pp. 133-137.

[12] N.B. Docketed as R218-09. Based on the records of this administrative case, the Municipal Trial Court in Cities rendered a Decision dated July 1, 2013 which found the Autajays criminally liable, *rollo*, vol. 2, pp. 553-571. As of the writing of this *ponencia*, it remains to be the subject of an ongoing litigation.

[13] *Rollo*, Vol. 1, pp. 2-4.

[14] *Id*. at 21-27.

[15] *Id*. at 32-37.

in his Position Paper,[16] and never mentioned this during the IBP mandatory conferences that were held thrice.[17] To prove that Rajesh's signatures on the Deed were not falsified or forged, respondent lawyer attached the Questioned Document Examination Report of the Philippine National Police (PNP) Regional Crime Laboratory Office 6,[18] and the Final Report of Truth Verifier Systems, Inc.,[19] both of which found that Rajesh's signature on the Deed were genuine.

With respect to the so-called entry and exit stamps in Malaysia on page 8 of the passport, respondent lawyer posited that they were not credible evidence as these "chops" can be easily fabricated. Respondent lawyer argued that the relevant or material evidence should be the record itself of Rajesh's exit from the Philippines prior to November 27, 2000 and his entry to the Philippines after such date.

In his Comment/Rejoinder,[20] Rajesh asserted that he has no proof to show by way of any immigration stamping or "chopping" that he left for Malaysia on November 25, 2000. He explained that he was then a Hong Kong resident and that he was not required to pass immigration procedure for the stamping or "chopping" in Hong Kong of his passport, and that he was simply required to present his Hong Kong ID to the immigration officer there.

Ruling of the Integrated Bar of the Philippines

In his Report and Recommendation[21] dated August 19, 2011, Investigating Commissioner Hector B. Almeyda (Commissioner Almeyda) recommended the dismissal of this administrative complaint for lack of sufficient evidence to sustain the charge.

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[16] *Id*. at 60-67.

[17] *Id*. at 188-190.

[18] *Id*. at 168.

[19] *Id*. at 169-181.

[20] *Id*. at 220-223.

[21] *Rollo*, Vol. 2, pp. 244-251.

Commissioner Almeyda found that Rajesh failed to adduce clear and convincing proof that his signature in the questioned Deed of Assignment/Transfer of November 27, 2000 was forged or falsified, given that the handwriting experts from the PNP and from a private company found that the questioned signature was indeed that of Rajesh. Commissioner Almeyda likewise opined that the evidence relative to the so-called "passport chops" or stamping which was submitted by Rajesh to prove his absence in the Philippines, did not comply with the requirements for admissibility of entries in official records, and that these so-called "passport chops" or stamps, at most, only indicated that they were mere stamped entries.

In Resolution No. XX-2013-385,[22] dated March 22, 2013, the Board of Governors of the IBP sustained Commissioner Almeyda's report and recommendation.

In his Motion for Reconsideration,[23] Rajesh, to fortify his claim that he was a non-participant in the Deed, submitted additional documents: 1) a copy of the Questioned Documents Report No. 28-109[24] of the National Bureau of Investigation dated March 9, 2009 that concluded forgery in Rajesh's signature and; 2) a July 9, 2013 Certification by the Bureau of Immigration[25] with the attached list[26] of Rajesh's travel record from January 1999 to December 31, 2001. Rajesh averred that on the basis of this 2-page Bureau of Immigration document, he was out of the Philippines from November 18, 2000 and only returned to the Philippines on June 6, 2001.

But, in its March 22, 2014 Resolution No. XXI-2014-132,[27] the IBP denied the Motion for Reconsideration.

Hence, this Petition for Review.

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[22] *Id*. at 243.

[23] *Id*. at 252-258.

[24] *Id*. at 259-260.

[25] *Id*. at 261.

[26] *Id*. at 262.

[27] *Id*. at 298.

The Court's Ruling

Because of the serious consequences flowing from the imposition of severe disciplinary sanctions such as disbarment or suspension against a member of the Bar, we emphasized in *Aba v. Guzman*[28] that:

> [T]he Court has consistently held that in suspension or disbarment proceedings against lawyers, the lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to prove the allegations in his complaint. The evidence required in suspension or disbarment proceedings is preponderance of evidence. In case the evidence of the parties are equally balanced, the equipoise doctrine mandates a decision in favor of the respondent.[29]

"Preponderance of evidence means that the evidence adduced by one side is x x x superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto."[30]

Section 1 of Public Act No. 2103 states:

x x x x x x x x x

(a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.

x x x x x x x x x

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[28] 678 Phil. 588 (2011).

[29] *Id.* at 601.

[30] *Castro v. Bigay, Jr.*, A.C. No. 7824, July 19, 2017, 831 SCRA 274, 280.

In addition, Section 2(b)(l) of Rule IV of the 2004 Rules of Notarial Practice provides, *viz.*:

> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —
>
> (1) is not in the notary's presence personally at the time of the notarization;

It goes without saying that the burden of proof in the present administrative proceeding rests upon the complainant. Thus, the issue now is whether Rajesh's documentary evidence supports his position that he was not in the Philippines at the time and place mentioned in the disputed Deed of Assignment/Transfer.

In their respective attempts to prove the falsification or forgery (as Rajesh averred) or the genuineness of the subject signature in the Deed (as respondent lawyer claimed), the parties submitted conflicting written reports of the professional findings of (1) the PNP and the Truth Verifier Systems, Inc. and (2) the NBI. Jurisprudence however teaches us that:

> Expert opinions are not ordinarily conclusive. They are generally regarded as purely advisory in character. The courts may place whatever weight they choose upon and may reject them, if they find them inconsistent with the facts in the case or otherwise unreasonable. **When faced with conflicting expert opinions, as in this case, courts give more weight and credence to that which is more complete, thorough, and scientific.** The value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but upon the assistance he may afford in pointing out distinguishing marks, characteristics and discrepancies in and between genuine and false specimens of writing which would ordinarily escape notice or detection from an unpracticed observer.[31] (Emphasis ours)

Based on the records, a visual comparison of complainant's questioned signature vis-à-vis his authentic signatures does not conspicuously indicate material or significant differences. With

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[31] *Obando v. People*, 638 Phil. 296, 309-310 (2010).

only these written reports of the experts' summary of findings without their testimonies/explanations as to how they arrived at different conclusions as to their findings of similarities or dissimilarities, (which testimonies/explanations unfortunately have not been tested by cross-examination) we find it extremely difficult to assess the probative weight or value of these documents; for that reason, there is neither warrant nor justification to declare Rajesh's questioned signature a falsification or forgery.

To be sure, it devolves upon complainant to prove that he was not in the Philippines prior to November 25, 2000 because of his trip to Malaysia; this he failed to do, however. For, a perusal of his submitted copy of page 8 of his passport shows that there was no exit stamp or "chopping" from the Philippines on or prior to November 25, 2000. His explanation in his Comment/Rejoinder about the procedure of the "non-chopping" of his passport in Hong Kong which, according to him meant or indicated that he was a resident there, in no wise proved that he was not in the Philippines.

Nor did the July 9, 2013 Certification[32] by the Bureau of Immigration prove that complainant in fact left the Philippines prior to November 25, 2000. Said Certification merely stated:

x x x x x x x x x

THIS IS TO CERTIFY THAT the name GAGOOMAL, RAJESH NARAINDAS appears [in our available Computer Database File] with the following travel record/s from January 1999 to 31 December 2001 as shown in the attached list.

FURTHER, THIS IS TO CERTIFY THAT the name GAGOOMAL/ RAJESH/MR appears in our available Passenger Manifest File with the following travel record/s:

x x x x x x x x x

Departed from Philippines for Hongkong on 18 Nov. 2000 on board PR 310

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[32] *Rollo*, Vol. 2, p. 261.

x x x x x x x x x (Underscoring ours)

And, complainant's case is not at all helped by the fact that his travel record (page 2 of the computer database file of the Bureau of Immigration), which in the nature of things ought to have presented an accurate information of his arrivals and departures between January 1999 to December 2001, never reflected his alleged departure from the Philippines on November 18, 2000. Neither was there any Philippine exit stamp on Rajesh's passport on that date. Upon the other hand, the same certification stated that Rajesh left the country on November 18, 2000 "as appearing on the Bureau of Immigration's manifest file." And we all know that a passenger manifest is a document issued by an airline containing the passenger's list for inbound and outbound flights. Notably, the passenger manifest referred to was not attached to the certification at all.

WHEREFORE, we **ADOPT** the findings and recommendation of the Integrated Bar of the Philippines, and **DISMISS** the charges against respondent lawyer Atty. Von Lovel Bedona, for lack of merit.

SO ORDERED.

Bersamin, C.J., Jardeleza, and *Gesmundo, JJ.*, concur.

Carandang, J., on leave.

THIRD DIVISION

[A.C. No. 10994. June 10, 2019]

ELISA ZARA, *complainant, vs.* **ATTY. VICENTE JOYAS,** *respondent.*

SYLLABUS

LEGAL ETHICS; LAWYERS; DISBARMENT OR SUSPENSION; EVIDENCE REQUIRED IS SUBSTANTIAL EVIDENCE.— In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. For the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on. After all, basic is the rule that mere allegation is not equivalent to proof and charges based on mere suspicion, speculation or conclusion cannot be given credence. Thus, in the present case, complainant's failure to present sufficient and concrete evidence to substantiate her accusations against Atty. Joyas is fatal to her case. Moreso, when Atty. Joyas was able to refute the allegations against him by showing proof that he has exerted efforts in handling complainant's petition, and that he was not remiss in the performance of his duties as counsel. It must be stressed anew that lawyers enjoy the legal presumption that they are innocent of the charges against them until proven otherwise — as officers of the court, they are presumed to have performed their duties in accordance with their oath. It is only when such presumption is overcome by convincing proof of the lawyer's misconduct that the serious consequences of disbarment or suspension should follow.

R E S O L U T I O N

PERALTA, *J.*:

Before Us is an administrative complaint[1] filed by complainant Elisa Zara against respondent Atty. Vicente Joyas for his negligence in fulfilling his duties as counsel of complainant in violation of the Code of Professional Responsibility.

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[1] *Rollo*, pp. 24-26.

Complainant alleges that she contracted the legal services of Atty. Joyas on May 2, 2012 for the recognition and execution of the foreign judgment regarding the divorce procured by the husband of complainant in the United States. However, complainant posits that Atty. Joyas failed to carry out his duty in handling the case with utmost fidelity.

Complainant advances the idea that Atty. Joyas, upon receiving the payment for legal services, did not inform her of the requirements of the case, moreover, the importance of the citizenship at the time the divorce decree was secured. In this case, however, Atty. Joyas did not, to the detriment of the cause of complainant. Complainant allegedly had exerted efforts to communicate with Atty. Joyas despite her living in Thailand. However, to her dismay and utter frustration, her efforts to reach out to Atty. Joyas for updates regarding her case remained futile. Hence, complainant filed the instant complaint.

For his part, Atty. Joyas contended that whatever caused the delay in the case was beyond his control since he has complied with his duty as complainant's counsel and had exerted utmost efforts in order to secure an outcome favorable to complainant. Atty. Joyas asserted that the court is interested with the actual date of the naturalization of the husband of complainant, as elucidated under the prevailing jurisprudence, *Republic v. Orbecido III*,[2] where the reckoning point is the naturalization of the spouse who secured the divorce should the former citizenship of the latter be Filipino. He added that if he will continue to pursue with the resolution of the case without submitting the naturalization paper, the petition will be denied.

To bolster his defense, Atty. Joyas claimed that he made several representations with the U.S. Embassy to secure the naturalization paper of Edilberto only to be informed that the matter is confidential and the conformity of Edilberto was needed. Subsequently, he wrote letters to Edilberto seeking permission or conformity on his request on the naturalization papers of Edilberto, but to no avail. Atty. Joyas argues that he had faithfully

[2] 509 Phil. 108, 114-115 (2005).

complied with his duty as counsel for the complainant. As a matter of fact, his experience and service with the Integrated Bar of the Philippines as a former officer is proof that he will not taint his good reputation.[3]

The Integrated Bar of the Philippines (*IBP*) Investigating Commissioner recommended the dismissal of the instant case for lack of merit. It found that complainant failed to meet the required evidentiary standard. Complainant's allegation that it was only after she filed the present complaint when respondent started communicating and providing her with information is totally improbable as the Letter[4] dated December 15, 2014 addressed to Edilberto Zara by respondent, as well as the Acknowledgment Letter[5] dated April 30, 2016, speaks that on random periods respondent exerted efforts in finding progress of complainant's petition.

The IBP Commission on Bar Discipline (*IBP-CBD*) Board of Governors issued Resolution No. XXII-2017-1070[6] dated May 27, 2017, which adopted the findings of fact and the recommendation of the Investigating Commissioner dismissing the case.

RULING

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. For the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.[7]

Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on.

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[3] *Rollo*, pp. 59-60.

[4] *Id*. at 179.

[5] *Id*. at 181.

[6] *Id*. at 268.

[7] *Ferancullo v. Ferancullo*, 538 Phil. 501, 511 (2006).

After all, basic is the rule that mere allegation is not equivalent to proof and charges based on mere suspicion, speculation or conclusion cannot be given credence.[8]

Thus, in the present case, complainant's failure to present sufficient and concrete evidence to substantiate her accusations against Atty. Joyas is fatal to her case. Moreso, when Atty. Joyas was able to refute the allegations against him by showing proof that he has exerted efforts in handling complainant's petition, and that he was not remiss in the performance of his duties as counsel.

It must be stressed anew that lawyers enjoy the legal presumption that they are innocent of the charges against them until proven otherwise — as officers of the court, they are presumed to have performed their duties in accordance with their oath.[9] It is only when such presumption is overcome by convincing proof of the lawyer's misconduct that the serious consequences of disbarment or suspension should follow.

WHEREFORE, finding the recommendation of the IBP to be fully supported by the evidence on record and applicable laws, the Court **RESOLVES** to **DISMISS** the case against Atty. Vicente Joyas for lack of merit, and consider the same as **CLOSED** and **TERMINATED.**

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Inting, JJ.*, concur.

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[8] *De Jesus v. Guerrero III,* 614 Phil. 520, 529 (2009).

[9] *Castro, et al. v. Atty. Bigay, et al.*, A.C. No. 7824, July 19, 2017, 831 SCRA 274, 283-284.

SECOND DIVISION

[A.C. No. 12476. June 10, 2019]

EDGARDO M. MORALES, *complainant, vs.* **ATTY. RAMIRO B. BORRES, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; LAWYERS; A DISBARMENT COMPLAINT IS NOT THE APPROPRIATE REMEDY TO BE BROUGHT AGAINST A LAWYER SIMPLY BECAUSE HE LOST A CASE HE HANDLED FOR HIS CLIENT.— [A] disbarment complaint is not an appropriate remedy to be brought against a lawyer simply because he lost a case he handled for his client. A lawyer's acceptance of a client or case is not a guarantee of victory. When a lawyer agrees to act as counsel, what is guaranteed is the observance and exercise of reasonable degree of care and skill to protect the client's interests and to do all acts necessary therefor. But once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. Thus, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable. As stated, respondent here was not shown to have neglected his duty to complainant in the cases for which he was engaged as counsel. Respondent may not have won these cases, but to reiterate, this fact alone does not equate to neglect of duty as counsel.

2. ID.; IN DISBARMENT PROCEEDINGS, COMPLAINANT BEARS THE BURDEN OF PROOF BY SUBSTANTIAL EVIDENCE.— In disbarment proceedings, complainant bears the burden of proof by substantial evidence. This means complainant must satisfactorily establish the facts upon which the charges against respondent are based. To repeat, complainant failed to discharge this burden. Consequently, respondent's right to be presumed innocent and to have regularly performed his duty as officer of the court must remain in place. As the Court has invariably pronounced, it will not hesitate to mete out proper disciplinary punishment upon a lawyer who is shown to have

failed to live up to his or her sworn duties. But the Court will not hesitate either to extend its protective arm to a lawyer unjustly accused by a dissatisfied litigant relative to a case lost without any fault on the part of the lawyer.

APPEARANCES OF COUNSEL

Joseph Ferdinand M. Dechavez for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case and The Proceedings Below

Respondent Atty. Ramiro B. Borres, Jr. is charged with violations of Canons 17[1] and 18[2] of the Code of Professional Responsibility (CPR).

Complainant essentially alleged:[3] Respondent agreed to assist him in filing complaints for trespass to property and malicious mischief against Perla Borja, Spouses Edmundo and Marilyn Bonto, and Erlinda Brines. He paid respondent ₱25,000 as acceptance fee. Respondent only prepared three complaints for malicious mischief which were all filed before the Office of the City Prosecutor-Tabaco City (OCP-Tabaco City).

In the Investigation Data Forms submitted to the OCP-Tabaco City, he indicated the residence of his brother-in-law in Tabaco City as his postal address although he was actually residing in Quezon City.

Subsequently, respondent informed him that the cases were dismissed. He asked for copies of the resolutions of dismissal, but the latter did not give him any. He and respondent then

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[1] Canon 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

[2] Canon 18 — A lawyer shall serve his client with competence and diligence.

[3] As stated in the Complaint-Affidavit dated March 31, 2016; *rollo*, pp. 2-6.

went together to the OCP-Tabaco City to obtain copies of these resolutions. There, they were informed that the notices sent to his brother-in-law's residence in Tabaco City were returned unserved.

The OCP-Tabaco City, nonetheless, directed him to submit the necessary information on the ages of the parties sought to be charged, the date of case referral for *barangay* conciliation, and copies of police/*barangay* blotters of the purported acts of malicious mischief on his property.

For the purpose of filing his motion for reconsideration, he gave respondent copy of his title to the subject property. It turned out, however, that respondent did not attach this title to the motion for reconsideration eventually filed before the OCP-Tabaco City.

His motion for reconsideration was denied on the ground that he allegedly failed to sufficiently prove his ownership of the property.

In his defense, respondent countered, in the main:[4] Although he moved his law office from Tabaco City to Makati City, he still managed to follow-up the status of the cases with the OCP-Tabaco City whenever he had a hearing in the area. It was unfortunate, however, that the personnel assigned to the cases were always not around each time he went there to inquire.

He did not know that complainant indicated as the latter's postal address the Tabaco City residence of his brother-in-law in the records of the OCP-Tabaco City. He never suppressed any information from complainant regarding the status of the cases. In fact, as soon as he learned that the cases got dismissed, he wasted no time and called complainant for the required information on the ages of the parties sought to be charged. He even accompanied complainant to the OCP-Tabaco City to secure copies of its orders and resolutions.

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[4] As stated in the Answer dated May 2, 2016; *rollo*, pp. 29-33.

He did not prepare the motion for reconsideration with haste. It bore the required ages of the parties sought to be charged. As for the police and *barangay* blotters pertaining to the acts of malicious mischief complained of, he was unable to submit them to the OCP-Tabaco City as the same got destroyed when Albay was hit by typhoons and other calamities. Regarding complainant's title to the property, there was no need to attach the same to the motion for reconsideration since the parties themselves had already acknowledged in their *Kasunduan* executed before the barangay that complainant did own the property.

When he learned that the motion for reconsideration was denied, he promptly advised complainant to file a petition for review with the Office of the Regional State Prosecutor. Complainant, however, did not heed his advice.

In compliance with the directive of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), both parties attended the mandatory conference[5] and thereafter filed their position papers.[6]

IBP-CBD's Report and Recommendation

In its Report and Recommendation dated October 5, 2016,[7] the IBP-CBD found respondent guilty of violations of Canons 17 and 18 of the CPR and recommended his suspension from the practice of law for three months.

IBP Board of Governors' Resolution and Extended Resolution

By Resolution dated March 1, 2017,[8] the IBP Board of Governors reversed. An exhaustive discussion of its findings

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[5] Notice of Mandatory Conference/Hearing dated May 27, 2016; *rollo*, p. 42.

[6] *Rollo*, pp. 51-63.

[7] Penned by Investigating Commissioner Juan Orendain P. Buted; *rollo*, pp. 99-108.

[8] As stated in the Notice of Resolution; *rollo*, pp. 97-98.

and recommendation is contained in its Extended Resolution dated February 2, 2018,[9] *viz*:

The Board's Findings

The Board agrees with and rules for the respondent.

As to complainant's address, it must be emphasized that respondent had no personal knowledge that complainant used the address of his brother-in-law at Tabaco City as his postal address for purposes of receiving notices from the Office of the City Prosecutor of Tabaco City. Furthermore, when respondent visited the Office the City Prosecutor of Tabaco City every time he went to the said city, he was not advised by the personnel in the said office of the situation of the case because according to them, the assigned employee over the case was absent. Every time he visited the said office, he would text or call the complainant and the latter even invited him to Hotel Fina to eat and drink or to have coffee at Graceland, Tabaco City.

It was the respondent who voluntarily went to the city prosecutor's office to inquire about the status of the cases. Respondent found out the dismissal of the cases only on 04 February 2016 when he attended the hearing of one of his cases before the Regional Trial Court. He then called complainant and asked him to go to Tabaco City to secure documents showing the age of the respondents in these cases as required by the prosecutor. Moreover, while complainant wanted respondent to submit titles to the land and subdivision plan as evidence of ownership, respondent was of the opinion that there was no need to present said documents considering that the other parties had already acknowledged complainant's ownership in the *Kasunduan* (Annex "4", Answer). Clearly, respondent's decision not to present the titles were grounded on reason and evidence already on file before the city prosecutor's office. As to the motion for reconsideration, the Board finds that the same was not hastily prepared by respondent because there was a statement of the approximate age of the persons sued by the complainant. It must be stressed that the copies in the barangay were no longer available due to the calamities in the province. Finally, the situation could have been remedied by filing a petition for review as suggested by respondent. Unfortunately, complainant never made known his intentions to respondent.

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[9] Penned by Assistant Director for Bar Discipline Leo B. Malagar; *rollo*, pp. 109-113.

The Recommendation of the Board

WHEREFORE, premises considered, the Board resolves to reverse and set aside the Report and Recommendation dated 05 October 2016 and to dismiss the complaint.

SO ORDERED.[10]

Issue

Did respondent violate Canons 17 and 18 of the CPR?

Ruling

We affirm both Resolution dated March 1, 2017[11] and Extended Resolution dated February 2, 2018[12] of the IBP Board of Governors.

Complainant charged respondent with violations of Canons 17 and 18 of the CPR, *viz.*:

> Canon 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.
>
> Canon 18 — A lawyer shall serve his client with competence and diligence.

Canons 17 and 18 impose an exacting standard and require lawyers to serve their clients with competence, fidelity, and diligence.[13]

On this score, complainant faults respondent for the latter's alleged lack of zeal in protecting his interest in the cases which respondent handled on his behalf. Complainant points out that respondent was not even aware of the developments in these cases; deliberately withheld from him copies of the orders and resolutions of the OCP-Tabaco City therein; failed to furnish the OCP-Tabaco City with the police and *barangay* blotters of

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[10] *Rollo*, pp. 112-113.

[11] *Supra* note 8.

[12] *Supra* note 9.

[13] *Angeles v. Atty. Lina-ac*, A.C. No. 12063, January 8, 2019.

the acts of malicious mischief complained of; and failed to attach his title to the motion for reconsideration.

We are not persuaded.

For one, respondent does not appear to have been engaged as complainant's counsel of record in subject cases. This precisely was the reason why respondent himself did not receive copies of the orders or resolutions issued in said cases. It was, therefore, unfair for complainant to even suspect that respondent withheld these orders or resolutions from him.

For another, complainant admitted that copies of the orders or resolutions supposedly intended for him were returned unserved because he indicated in the records of OCP-Tabaco City not his correct address but the residence of his brother-in-law in Tabaco City.

Still another, complainant did not refute respondent's assertion that the latter did follow-up the cases whenever he had a hearing in Tabaco City, Albay. Each time he was there though the personnel assigned to the cases were not around.

Neither did complainant deny respondent's two other averments: **ONE**, there was no need to attach complainant's title to the motion for reconsideration since the parties themselves in their "*Kasunduan*" before the barangay had already agreed that complainant, indeed, owned the property; and **TWO**, the police and *barangay* blotters pertaining to the incidents complained of could no longer be produced as the same got destroyed during the typhoons and other calamities which struck Albay.

Nor did complainant contradict that following the denial of his motion for reconsideration, respondent promptly advised him to elevate the matter to the Office of the Regional State Prosecutor. But complainant did not heed respondent's advice. For complainant's own failure to avail of this appropriate remedy, he cannot resort to a disbarment suit against respondent as an alternative remedy.

Indeed, a disbarment complaint is not an appropriate remedy to be brought against a lawyer simply because he lost a case he

handled for his client. A lawyer's acceptance of a client or case is not a guarantee of victory. When a lawyer agrees to act as counsel, what is guaranteed is the observance and exercise of reasonable degree of care and skill to protect the client's interests and to do all acts necessary therefor.[14]

But once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. Thus, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable.[15]

As stated, respondent here was not shown to have neglected his duty to complainant in the cases for which he was engaged as counsel. Respondent may not have won these cases, but to reiterate, this fact alone does not equate to neglect of duty as counsel.

In disbarment proceedings, complainant bears the burden of proof by substantial evidence.[16] This means complainant must satisfactorily establish the facts upon which the charges against respondent are based.[17] To repeat, complainant failed to discharge this burden. Consequently, respondent's right to be presumed innocent and to have regularly performed his duty as officer of the court must remain in place.

As the Court has invariably pronounced, it will not hesitate to mete out proper disciplinary punishment upon a lawyer who is shown to have failed to live up to his or her sworn duties.[18] But the Court will not hesitate either to extend its protective arm to a lawyer unjustly accused by a dissatisfied litigant relative to a case lost without any fault on the part of the lawyer.

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[14] *Spouses Gimena v. Atty. Vijiga*, A.C. No. 11828, November 22, 2017.

[15] *Go v. Atty. Buri*, A.C. No. 12296, December 4, 2018.

[16] *Arsenio v. Atty. Tabuzo*, 809 Phil. 206, 210 (2017).

[17] *Alag v. Atty. Sanupe, Jr.*, A.C. No. 12115, October 15, 2018.

[18] *Guanzon v. Dojillo*, A.C. No. 9850, August 6, 2018.

ACCORDINGLY, the Complaint against Atty. Ramiro B. Borres, Jr. is **DISMISSED**.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

THIRD DIVISION

[A.M. No. P-18-3864. June 10, 2019]
(Formerly OCA IPI No. 15-4469-P)

BEATRIZ B. NADALA, *complainant, vs.* **REMCY J. DENILA, Sheriff IV, Regional Trial Court, Branch 68, Dumangas, Iloilo,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICIALS; THERE IS GROSS NEGLECT OF DUTY WHEN A BREACH OF DUTY IS FLAGRANT AND PALPABLE.— As defined, gross neglect of duty refers to negligence that is characterized by a glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.

2. ID.; ID.; COURT EMPLOYEES; SHERIFF; FAILURE TO PERFORM HIS MINISTERIAL FUNCTIONS IN THE IMPLEMENTATION OF THE WRIT OF EXECUTION ISSUED IN FAVOR OF THE COMPLAINANT; CASE AT BAR.— In this case, the respondent is charged for failing to perform his ministerial functions in the implementation of the writ of execution issued in favor of the complainant. The records of the case reveal that the respondent deliberately disregarded the standard procedure for implementing a writ of execution. The Court notes, at the outset, that the complainant's case was covered by the Rule of Procedure for Small Claims Cases. Considering that the Rule contains no specific provisions as regards the duties of the sheriff in implementing the writs of execution, the Rules of Civil Procedure (Rules) shall apply in accordance with Section 27 thereof. The provisions of the Rules clearly state how the execution of money judgments should be made, which leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriff's compliance therewith is not merely directory but mandatory. He ought to know the rules of procedure pertaining to his functions as an officer of the court. x x x It is worth stressing that a sheriffs duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. He is mandated to uphold the majesty of the law as embodied in the decision. Accordingly, a sheriff must comply with his mandated ministerial duty as speedily as possible.

3. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; RETURN OF WRIT OF EXECUTION; FAILURE TO MAKE PERIODIC REPORTS ON THE IMPLEMENTATION OF THE WRIT.— Section 14, Rule 39 of the Rules explicitly provides the manner by which a writ of execution is to be returned to court, as well as the requisite reports to be made by the sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied. In any case, every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the writ. Periodic reporting is required in order that the court, as well as the litigants, may be apprised of the proceedings undertaken in connection therewith. It also

provides the court insights on the efficiency of court processes after promulgation of judgment. Overall, the purpose of periodic reporting is to ensure the speedy execution of decisions. Evidently, the respondent deviated from the directive of the court by failing to make periodic reports on the implementation of the writ. His non-compliance with the Rules constitutes badge of bad faith and evident intent to deprive the complainant of the fruits of her victory.

4. ID.; RULE OF PROCEDURE FOR SMALL CLAIMS CASES; PURPOSE DEFEATED WHEN SHERIFF FAILED TO OBSERVE THE STANDARD OF EFFECTIVELY AND EFFICIENTLY PERFORMING HIS DUTIES.–– [T]he respondent's conduct defeats the very purpose for which the Rule of Procedure for Small Claims Cases was promulgated. Primarily, the said Rule was crafted to provide an inexpensive and expeditious means to settle disputes over small amounts. x x x The Court has further elucidated that the theory behind the small claims system is that ordinary litigation fails to bring practical justice to the parties when the disputed claim is small, because the time and expense required by the ordinary litigation process are so disproportionate to the amount involved that it discourages a just resolution of the dispute. The small claims process is designed to function quickly and informally. There are no lawyers, no formal pleadings and no strict legal rules of evidence. The Court, in recognition of the intent of the law in providing the period to hear and decide cases falling under the Rule of Procedure for Small Claims Cases, has stressed that the exigency of prompt rendition of judgment in small claims cases is a matter of public policy. Thus, strict adherence to the Rule is a matter that the Court demands from judges when they decide small claims cases. Correspondingly, a sheriff ought to contribute in carrying out the judicial reforms adopted by the Court to facilitate the effective and efficient administration of justice. Hence, the Court imposes similar burden upon him in the performance of his duties. He is equally duty-bound to observe the same standards in undertaking the execution of final judgments rendered by the judge. Inarguably, sheriffs must exert every effort to see to it that the final stage in the litigation process, the execution of a judgment, is carried out in order to ensure a speedy and efficient administration of justice.

APPEARANCES OF COUNSEL

Go Silla & Associates Law Office for complainant.

D E C I S I O N

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

In a verified Complaint[1] dated June 26, 2015, Beatriz B. Nadala (complainant), through counsel, charged Remcy J. Denila[2] (respondent), Sheriff IV, Regional Trial Court (RTC) of Dumangas, Iloilo, Branch 68, with grave misconduct, gross neglect of duty, abuse of authority, conduct prejudicial to the best interest of the service, and gross inefficiency, in connection with the respondent's unjustified refusal to implement the writ of execution issued in a small claims case docketed as Civil Case No. 2012-024, entitled *Beatriz B. Nadala v. Emma Maxima Declines*.

Complainant[3] is the plaintiff in Civil Case No. 2012-024, for Sum of Money,[4] filed before the Municipal Trial Court (MTC) of Barotac Nuevo, Iloilo. On November 30, 2012, the MTC rendered a Decision[5] ordering defendant Emma Declines (Declines) to pay the complainant the amount of ₱100,000.00.

On June 28, 2013, the complainant moved to implement the final and executory decision in Civil Case No. 2012-024. As a matter of course, the MTC granted the motion and issued the writ of execution on October 9, 2013.[6] The writ specifically directed the respondent, being the Deputy Sheriff of the RTC, to implement it.[7]

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

[2] "Remcy K. Denila" in some parts of the *rollo*.

[3] Per complainant's representation, she was 84 years of age when she filed the present administrative complaint.

[4] Filed under the Rule of Procedure for Small Claims Cases.

[5] *Rollo*, pp. 7-8.

[6] *Id*. at 11-12.

[7] *Id*. at 12.

Meanwhile, Declines filed a petition for *certiorari* before the RTC. On May 23, 2014, she was able to secure a Temporary Restraining Order (TRO) effective for twenty (20) days which enjoined the implementation of the writ.[8]

On June 25, 2014, the complainant filed a Manifestation,[9] seeking for the immediate implementation of the writ considering that the TRO issued by the RTC had already expired.[10] On September 15, 2014, the respondent filed a Manifestation,[11] requesting that he be relieved from implementing the writ of execution as he had to attend to the needs of his wife, who was then diagnosed with breast cancer (Stage IIIA).[12]

Complainant then filed, on November 5, 2014, an *Ex-Parte* Motion to Direct Sheriff of the RTC, Iloilo, to Implement Writ of Execution.[13] The motion was left unresolved. Thereafter, upon learning that the respondent reported back to work, the complainant filed, on February 23, 2015, a Motion to Withdraw *Ex-Parte* Motion, *etc*. and to Direct the Branch Sheriff to Implement Writ of Execution.[14] Interestingly, Declines opposed the motion.[15]

On July 23, 2015, the complainant filed an Omnibus Motion,[16] praying that all pending incidents be resolved and that the Clerk of Court or the *Ex-Officio* Sheriff of the RTC of Iloilo City be directed to implement the writ. The MTC granted the complainant's motion in its Order[17] dated August 3, 2015 and specifically ordered the respondent to implement the writ.

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[8] *Id*. at 13.

[9] *Id*. at 14.

[10] *Id.*

[11] Dated September 8, 2014. *Id*. at 15.

[12] *Id.*

[13] *Id.* at 16-17.

[14] *Id*. at 18-20.

[15] *Id*. at 56-57.

[16] *Id*. at 62-63.

[17] *Id*. at 64.

In his Comment,[18] the respondent invoked his previous request for relief from the implementation of the writ which was left unresolved by the MTC. He claimed that he expected that the MTC would grant his prayer and, like the complainant, he was also waiting for the court's action on the motions.[19] He further averred that no representations were made by the complainant or her counsel for him to implement the writ.[20]

Complainant, in her Reply,[21] maintained that the respondent miserably failed to implement the writ. She pointed out that the TRO was issued on May 23, 2014. Thus, more than seven (7) months had elapsed from the time the writ was issued on October 9, 2013 until the issuance of the TRO on May 23, 2014. She contended that after the TRO's expiration, the respondent was duty bound to implement the writ in the absence of a permanent injunction against it. Complainant added that the respondent's failure to implement the writ of execution was because Declines is a long-time family friend of the respondent, as stated in the latter's Manifestation[22] dated August 11, 2015.

In his Rejoinder[23] dated December 8, 2015, the respondent asserted that the reason behind the filing of the petition for *certiorari* by Declines before the RTC was that he went on to do his job. The subsequent issuance of the TRO, however, prevented him from implementing the writ.[24] He further manifested that he has been already relieved by the MTC from the implementation of the writ of execution, and therefore, this should not be taken to have caused delay in the implementation of the writ but an occasion where the complainant may proceed with finding suitable remedy for her purposes.[25]

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[18] *Id*. at 42-46.

[19] *Id*. at 44.

[20] Dated November 5, 2015. *Id*. at 45.

[21] *Id*. at 48-55.

[22] *Id*. at 65.

[23] *Id*. at 68-70.

[24] *Id*. at 70.

[25] *Id*.

Report and Recommendations of the Office of the Court Administrator

After the parties' submission and exchange of the foregoing pleadings, the Office of the Court Administrator (OCA) submitted its Report[26] dated January 5, 2018, with the following recommendations:

1. the instant administrative complaint be **RE-DOCKETED** as a regular administrative matter against Sheriff IV Remcy J. Denila, Branch 68, [RTC], Dumangas, Iloilo; and

2. respondent Sheriff Denila be found **GUILTY** of **GRAVE MISCONDUCT** in the performance of his duties, and be **FINED** in the amount of Twenty[-]Five Thousand Pesos (₱25,000.00), to be paid to the Court within thirty (30) days from notice, with a **STERN WARNING** that the commission of the same or similar offense in the future shall be dealt with more severely.[27] (Emphases in the original)

The pertinent portion of the findings of the OCA reads:

Evaluating the circumstances surrounding the instant matter, it would not be amiss to assert that [respondent's] liability has evolved from being a mere neglect of duty into a misconduct which is so gross in character. It is grave misconduct since there is substantial evidence showing that the act complained of was corrupt or inspired by an intention to violate the law, or constituted flagrant disregard of well-known legal rules. [Respondent's] deliberate inaction to enforce a writ of execution for two (2) long years in order to favor the losing litigant who is a long-time close family friend of his is plainly a corrupt act which shows an intent to flagrantly disregard the law. It constitutes grave misconduct that corrodes respect for the courts.[28] (Citation omitted)

The OCA, in imposing a ₱25,000.00 fine as penalty, noted that it is the first time that the respondent may be held administratively liable. It added that this will also prevent any

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[26] Signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Raul Bautista Villanueva. *Id*. at 78-83.

[27] *Id*. at 82-83.

[28] *Id*. at 82.

undue adverse effect on the public service should his office be left vacant even for a short period of time.[29]

On August 29, 2018, the Court resolved to re-docket the complaint as a regular administrative matter.[30]

Ruling of the Court

The Court agrees with the findings of the OCA that the respondent is administratively liable, but We find that his omissions qualify as gross neglect of duty. The Court, likewise, modifies the recommended penalty imposed upon him.

As defined, gross neglect of duty refers to negligence that is characterized by a glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[31]

In this case, the respondent is charged for failing to perform his ministerial functions in the implementation of the writ of execution issued in favor of the complainant. The records of the case reveal that the respondent deliberately disregarded the standard procedure for implementing a writ of execution.

The Court notes, at the outset, that the complainant's case was covered by the Rule of Procedure for Small Claims Cases.[32] Considering that the Rule contains no specific provisions as regards the duties of the sheriff in implementing the writs of

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[29] *Id.*

[30] *Id*. at 85.

[31] *Lucas v. Dizon*, 747 Phil. 88, 97 (2014).

[32] Considering that the case was decided prior to the effectivity of the 2016 Rules of Procedure for Small Claims Cases, reference herein is taken from the former Rule.

execution, the Rules of Civil Procedure (Rules) shall apply in accordance with Section 27[33] thereof.

The provisions[34] of the Rules clearly state how the execution of money judgments should be made, which leave no room for any exercise of discretion on the part of the sheriff on how to perform his or her duties in implementing the writ. A sheriffs compliance therewith is not merely directory but mandatory. He ought to know the rules of procedure pertaining to his functions as an officer of the court.[35]

Respondent, however, attributed his omission to the inaction of the MTC on his request to be relieved from the implementation of the writ of execution and assumed that his request would be favorably acted upon by the latter. He claimed that the complainant never made representations for him to implement the writ. He likewise asserted that he actually proceeded with the implementation of the writ, which was the reason why Declines filed a petition for *certiorari* before the RTC. The subsequent issuance of the TRO, however, prevented him from further implementing the writ.

The Court is not convinced.

Notably, the respondent filed his Manifestation to be relieved from implementing the writ only on September 4, 2014, or almost a year after the issuance of the writ and almost four (4) months after the expiration of the TRO. Verily, the respondent had adequate time to implement the writ, but because of his indifference and inattentiveness to the rights of the complainant and the obligations of his office, he did not do anything. Respondent's excuse merely demonstrates his insincere stance towards his mandatory and ministerial functions considering the lapse of time without the writ being implemented.

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[33] **SEC. 27**.– *Applicability of the Rules of Civil Procedure* — The Rules of Civil Procedure shall apply suppletorily insofar as they are not inconsistent with this rule.

[34] *See* Section 9, Rule 39 of the Revised Rules of Court.

[35] *Guerrero-Boylon v. Boyles*, 674 Phil. 565, 573 (2011).

The Court is not unaware of the petition for *certiorari* filed by Declines before the RTC, but this is not a sufficient excuse that would justify the non-implementation of the writ. In the absence of any instruction to the contrary, it is the duty of the sheriff to proceed with reasonable celerity and promptness to execute a judgment according to its mandate.[36]

It is worth stressing that a sheriffs duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. He is mandated to uphold the majesty of the law as embodied in the decision. Accordingly, a sheriff must comply with his mandated ministerial duty as speedily as possible.[37]

Granting, therefore, that the complainant did not personally approach the respondent for the implementation of the writ, the latter had no discretion or authority to withhold its implementation, thus, compromising his duty as sheriff who is responsible for the speedy and efficient service of all court processes. At this point, it is important to emphasize that litigants are neither obliged to file any manifestation or motion before the court just to plead, for the implementation of the writ of execution nor required to constantly follow up its implementation.

Respondent's obstinate refusal to comply with his duties became more apparent when he filed another manifestation after the MTC issued an order directing him to implement the writ. Surprisingly, he reasoned out that Declines is a long-time family friend of his. This circumstance gives rise to the presumption that the respondent, indeed, deliberately withheld the implementation of the writ to the prejudice of the complainant as the prevailing party.

Respondent also failed to present any proof to show that he actually proceeded with the implementation of the writ aside from his bare allegations. If these were true, he would have

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[36] *Anico v. Pilipiña*, 670 Phil. 460, 470 (2011).

[37] *Id.*

at the very least filed a corresponding report thereon and stated his reasons for failure to implement the writ.

Section 14,[38] Rule 39 of the Rules explicitly provides the manner by which a writ of execution is to be returned to court, as well as the requisite reports to be made by the sheriff or officer, should the judgment be returned unsatisfied or only partially satisfied. In any case, every 30 days until the full satisfaction of a judgment, the sheriff or officer must make a periodic report to the court on the proceedings taken in connection with the writ. Periodic reporting is required in order that the court, as well as the litigants, may be apprised of the proceedings undertaken in connection therewith.[39] It also provides the court insights on the efficiency of court processes after promulgation of judgment.[40] Overall, the purpose of periodic reporting is to ensure the speedy execution of decisions.[41]

Evidently, the respondent deviated from the directive of the court by failing to make periodic reports on the implementation of the writ. His non-compliance with the Rules constitutes badge of bad faith and evident intent to deprive the complainant of the fruits of her victory.

Moreover, the respondent's conduct defeats the very purpose for which the Rule of Procedure for Small Claims Cases was promulgated. Primarily, the said Rule was crafted to provide

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[38] **Sec. 14.** *Return of writ of execution.* — The writ of execution **shall** be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, **the officer shall report to the court and state the reason therefor.** Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. **The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.** (Emphasis Ours)

[39] *Anico v. Pilipiña*, *supra* note 36, at 469 (2011).

[40] *Id.*

[41] *Id.*

an inexpensive and expeditious means to settle disputes over small amounts. In the case of *Orbe v. Judge Gumarang*,[42] the Court has emphasized the objectives sought to be accomplished in creating the Rule of Procedure for Small Claims Cases, to wit:

> Thus, pursuant to its rule-making power, the Court, under the present Constitution, can adopt a special rule of procedure to govern small claims cases and select pilot courts that would empower the people to bring suits before them pro se to resolve legal disputes involving simple issues of law and procedure without the need for legal representation and extensive judicial intervention. **This system will enhance access to justice, especially by those who cannot afford the high costs of litigation even in cases of relatively small value. It is envisioned that by facilitating the traffic of cases through simple and expeditious rules and means, our Court can improve the perception of justice in this country,** thus, giving citizens a renewed "stake" in preserving peace in the land. x x x.[43] (Emphasis Ours)

The Court has further elucidated that the theory behind the small claims system is that ordinary litigation fails to bring practical justice to the parties when the disputed claim is small, because the time and expense required by the ordinary litigation process are so disproportionate to the amount involved that it discourages a just resolution of the dispute. The small claims process is designed to function quickly and informally. There are no lawyers, no formal pleadings and no strict legal rules of evidence.[44]

The Court, in recognition of the intent of the law in providing the period to hear and decide cases falling under the Rule of Procedure for Small Claims Cases, has stressed that the exigency of prompt rendition of judgment in small claims cases is a matter of public policy.[45] Thus, strict adherence to the Rule is a matter that the Court demands from judges when they decide small claims cases.

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[42] 674 Phil. 21 (2011).

[43] *Id*. at 25, citing A.M. No. 08-8-7-SC, RULE OF PROCEDURE FOR SMALL CLAIMS CASES, effective October 1, 2008.

[44] *Id*. at 26.

[45] *Id.*

Correspondingly, a sheriff ought to contribute in carrying out the judicial reforms adopted by the Court to facilitate the effective and efficient administration of justice. Hence, the Court imposes similar burden upon him in the performance of his duties. He is equally duty-bound to observe the same standards in undertaking the execution of final judgments rendered by the judge.

Inarguably, sheriffs must exert every effort to see to it that the final stage in the litigation process, the execution of a judgment, is carried out in order to ensure a speedy and efficient administration of justice.[46] In *Lucas v. Dizon*,[47] the Court held:

> The last standing frontier that the victorious litigant must face is often another difficult process — the execution stage. In this stage, a litigant who has won the battle might lose the war. Thus, the sheriffs, being agents of the court, play an important role, particularly in the matter of implementing the writ of execution. Indeed, [sheriffs] "are tasked to execute final judgments of courts. If not enforced, such decisions are empty victories of the prevailing parties. They must therefore comply with their mandated ministerial duty to implement writs promptly and expeditiously. As agents of the law, sheriffs are called upon to discharge their duties with due care and utmost diligence because in serving the court's writs and processes and implementing its order, they cannot afford to err without affecting the integrity of their office and the efficient administration of justice."[48] (Citation omitted)

Being the frontline representative of the justice system, a sheriff must always exert every effort and, indeed, consider it his bounden duty to perform his duties in order to maintain public trust. He must see to it that the final stage in the litigation process — the execution of the judgment — is carried out with no unnecessary delay, in order to ensure a speedy and efficient administration of justice. A decision left unexecuted or indefinitely

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[46] *Aquino v. Martin*, 458 Phil. 76, 82 (2003).

[47] 747 Phil. 88 (2014).

[48] *Id.* at 95-96.

delayed due to his neglect of duty renders it inutile; and worse, the parties who are prejudiced thereby tend to condemn the entire judicial system.[49]

Lamentably, the complainant was constrained to engage into an unnecessary prolonged battle due to the respondent's actuations. The filing of her case pursuant to the Rule of Procedure for Small Claims Cases could have been a simplified, speedy and inexpensive recourse for her to assert her claim and to attain its full satisfaction had the respondent diligently complied with what was incumbent upon him. Respondent has not only caused anguish and damage to the complainant for the unwarranted delay in the execution of the writ, but more importantly, he has placed not only his office but the entire Judiciary in a bad light, thus undermining the faith of a party-litigant, and of the public in general, in the court's administration of justice.

In a last attempt to justify his infractions, the respondent claimed that he was already relieved by the MTC from implementing the writ. This, nonetheless, cannot exculpate him from his omissions. The circumstances prevailing in this case demonstrate the respondent's gross and palpable neglect of his sheriff duties — a grave offense according to Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS),[50] which is punishable with dismissal from the service.

However, in several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Considering that this is the respondent's first offense, the Court is inclined to grant the respondent a certain leniency without being unmindful of the fact that he had breached

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[49] *Judge Calo v. Dizon*, 583 Phil. 510, 526-527 (2008).

[50] Promulgated by the Civil Service Commission through Resolution No. 1101502 dated November 8, 2011. Under Section 124 of the 2017 Rules on Administrative Cases in the Civil Service, the existing RRACCS shall continue to be applied to all pending cases which were filed prior to the effectivity of the Rules, provided that it will not unduly prejudice substantive rights.

the provisions of the Rules of Court. The Court, however, finds that the penalty imposed by the OCA was too light. Instead, the Court deems that suspension for one (1) year without pay is warranted under the circumstances.

On a final note, the Court has made clear that while it is its duty to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy. When an officer or employee is disciplined, the object sought is not his/her punishment, but the improvement of the public service, and the preservation of the public's faith and confidence in the government.[51]

WHEREFORE, respondent Remcy J. Denila, Sheriff IV, Regional Trial Court of Dumangas, Iloilo, Branch 68, is found **GUILTY** of gross neglect of duty. He is **SUSPENDED** from office for a period of one (1) year without pay, effective immediately upon his receipt of this Decision. He is **STERNLY WARNED** that a repetition of the same or similar offense shall be dealt with even more severely.

Let a copy of this Decision be attached to the personal records of respondent Remcy J. Denila in the Office of Administrative Services, Office of the Court Administrator.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Hernando*, and *Inting, JJ.*, concur.

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[51] *Exec. Judge Roman v. Fortaleza*, 650 Phil. 1, 8 (2010).

SECOND DIVISION

[G.R. No. 201193. June 10, 2019]

TRANQUILINO AGBAYANI, *petitioner, vs.* **LUPA REALTY HOLDING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS; WHEN THERE IS CONFLICT IN THE FINDINGS OF FACT OF THE TRIAL COURT AND THE CA.— Rule 45 of the Rules of Court on Appeal by *Certiorari* to the Supreme Court mandates that: the petition shall raise only questions of law; this mode of review is not a matter of right, but of sound judicial discretion; and it will be granted only when there are special and important reasons therefor. A Rule 45 review is warranted when there is finding by the Court that the court *a quo* has decided a question of substance in a way probably not in accord with law or with the applicable decisions of the Court. While only questions of law may be raised in a Rule 45 *certiorari* petition, there are admitted exceptions, which includes the instance when there is conflict in the findings of fact of the trial court and the CA.

2. ID.; EVIDENCE; POSSESSION AND USE OF A FALSIFIED DOCUMENT; CONCEPT AND REQUISITES OF SIMULATION.— In *People v. Sendaydiego*, the Court stated the rule that if a person had in his possession a falsified document and he made use of it (uttered it), taking advantage of it and profiting therefrom, the presumption is that he is the material author of the falsification. Pursuant to *Re: Fake Decision Allegedly in G.R. No. 75242*, the simulation of a public or official document, done in a manner as to easily lead to error as to its authenticity, constitutes the crime of falsification. Under Rule 132, Section 19(b), documents acknowledged before a notary public except last wills and testaments are public documents. Further, it is presumed that "evidence willfully suppressed would be adverse if produced." Article 1409(2) of the Civil Code provides that contracts "which are absolutely simulated or

fictitious" are inexistent and void from the beginning. It is also provided in Article 1346 that "[a]n absolutely simulated or fictitious contract is void." Justice Eduardo P. Caguioa discusses the concept and requisites of simulation in the following manner: x x x Simulation is the declaration of a fictitious intent manifested deliberately and in accordance with the agreement of the parties in order to produce for the purpose of deceiving others the appearance of a transaction which does not exist or which is different from their true agreement. Simulation involves a defect in the declaration of the will. x x x Simulation requires the following: (1) A deliberate declaration contrary to the will of the parties; (2) Agreement of the parties to the apparently valid act; and (3) The purpose is to deceive or to hide from third persons although it is not necessary that the purpose be illicit or for purposes of fraud. The above three requisites must concur in order that simulation may exist. x x x

3. CIVIL LAW; LAND TITLES; REGISTRATION IN THE REGISTER OF DEEDS; IT IS A MERE DECLARATION THAT THE RECORD OF THE TITLE IS REGULAR; THE FACT THAT THE DEED OF SALE WAS NOT REGULAR ON ITS FACE, THE TITLE ISSUED THEREFOR WAS NULL AND VOID.— While the Court has held that registration is a mere ministerial act by which a deed, contract or instrument is sought to be inscribed in the records of the Office of the Register of Deeds and annotated at the back of the certificate of title covering the land subject of the deed, contract or instrument and is not a declaration by the state that such an instrument is a valid and subsisting interest in land; it is merely a declaration that the record of the title appears to be burdened with such instrument, according to the priority set forth in the certificate, and that no valid objection can be interposed to the registration of a document by the Register of Deeds who finds nothing defective or irregular on its face upon an examination thereof, the fact of the matter is that **the [subject] 1997 DAS is <u>not</u> regular on its face.** x x x With the declaration by the Court that the 1997 DAS is sham or spurious and the TCT in the name of Lupa Realty is null and void. x x x [T]he CA committed egregious error when it made the finding that the 1992 DAS is valid. Given that Tranquilino did not sell the subject land to Nonito, it could not have been sold by Nonito to Moriel and Moriel could not, in turn, have sold it to Lupa Realty.

4. ID.; ID.; JUDICIAL ADMISSION; THE ADMISSION OF A PARTY'S COUNSEL DURING THE PRE-TRIAL PROCEEDINGS QUALIFIES AS A JUDICIAL ADMISSION THAT DOES NOT REQUIRE PROOF; CASE AT BAR.— The admission by Nonito's counsel during the pre-trial proceedings before the RTC that there was no sale between Tranquilino and Nonito qualifies as a judicial admission because the statement is a deliberate, clear, unequivocal statement of a party's attorney during judicial proceedings in open court about a concrete or essential fact within that party's peculiar knowledge. Since such statement is a judicial admission, it does not require proof according to Section 4, Rule 129 of the Rules of Court.

APPEARANCES OF COUNSEL

Martinez-Tria Law Offices for petitioner.
Law Firm of Diaz Del Rosario & Associates for respondent.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated September 14, 2011 (CA Decision) and the Resolution[3] dated March 9, 2012 (CA Resolution) of the Court of Appeals[4] (CA) in CA-G.R. CV No. 93912. The CA Decision reversed and set aside the Decision[5] dated June 15, 2009 rendered by the Regional Trial Court, Branch 7, Aparri, Cagayan (RTC) in Civil Case No. 07-532. The CA Decision also dismissed the

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[1] *Rollo*, pp. 9-34, excluding Annexes.

[2] *Id*. at 36-52. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Hakim S. Abdulwahid and Danton Q. Bueser concurring.

[3] *Id*. at 55-56.

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

[5] *Rollo*, pp. 86-95. Penned by Judge Oscar T. Zaldivar.

complaint of petitioner Tranquilino Agbayani (Tranquilino) as well as the third-party complaint of respondent Lupa Realty Holding Corporation (Lupa Realty), fourth-party complaint of Moriel Urdas (Moriel) and the counterclaims. The CA Resolution denied the motion for reconsideration filed by Tranquilino.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

> The property subject of the instant case is a 91,899-square meter parcel of land, situated in Barrio Sinungan, Sta. Ana, Cagayan, originally registered under OCT No. P-46041 in the name of x x x Tranquilino Agbayani (**Tranquilino**), pursuant to Free Patent No. 587747 on 7 June 1979.
>
> On 11 October 1999, Tranquilino, who was by then already residing in America, filed a *Complaint* for Reivindicacion, Cancellation of Title and Document with Damages against Lupa Realty Holding Corporation (**Lupa Realty**), through his brother, Kennedy Agbayani, and his nephew, Vernold Malapira (**Vernold**). We note that Vernold is also written as "Bernold" in other parts of the record, and is admitted to be the same "Bernard" referred to in the *Complaint* and in the *Special Power of Attorney* as having been authorized by Tranquilino to file the instant case.
>
> The *Complaint* alleged that sometime in April 1999, [Vernold] went to the Office of the Municipal Treasurer of Sta. Ana, Cagayan to pay the real estate taxes on the subject property, but was told that Lupa Realty was already the new owner thereof and that the tax declaration had already been transferred to its name. Tranquilino further alleged that upon verifying with the Registry of Deeds for Cagayan, [Vernold] discovered that the subject property was already registered in the name of Lupa Realty under TCT No. T-109129 pursuant to a *Deed of Absolute Sal*e purportedly executed by Tranquilino on 29 October 1997 in favor of Lupa Realty, in consideration of the sum of ₱425,500.00.
>
> In his complaint, Tranquilino denied having executed said *Deed of Absolute Sale*, insisting that his signature thereon must be a forgery because he was in America on 29 October 1997. Accordingly, [he] prayed for the cancellation of Lupa Realty's TCT No. T-109129 and the reinstatement of OCT No. P-46041 in his name, plus damages.

In its *Answer*, Lupa Realty countered that contrary to the allegation of Tranquilino that he never sold the subject property, he sold the same to his brother, Nonito Agbayani (**Nonito**), as shown by a notarized *Deed of Absolute Sale* executed on 21 January 1992. In turn, Nonito sold the subject property to Moriel Urdas (**Moriel**) in a notarized *Deed of Absolute Sale*, dated 30 May 1997. According to Lupa Realty, it acquired the subject property not from Tranquilino but from Moriel by way of a notarized *Deed of Absolute Sale*, dated 29 October 1997.

Lupa Realty further insisted that it was an innocent purchaser for value and in good faith. Lupa Realty explained that it was Moriel and his mother who registered the sale in the Registry of Deeds, as shown by the *Affidavit* executed by Moriel's mother. According to Lupa Realty, it had no idea that Moriel and his mother had used a falsified deed of sale with Tranquilino's forged signature in registering the sale. Thus, Lupa Realty filed a third-party complaint against Moriel to enforce the latter's warranty of a valid title and peaceful possession against the claims of third persons.

In his *Answer to the Third-Party Complaint*, Moriel denied having caused the registration of the sale to Lupa Realty, and denied having prepared the falsified deed of sale that was used in transferring the title to Lupa Realty. Moriel insisted that contrary to Lupa Realty's assertions, it was actually the latter's personnel who registered the sale.

Moriel laid the blame squarely on Tranquilino for having entrusted his original certificate of title to his brother Nonito, thereby making it possible for the latter to fraudulently transfer the property to an innocent third person like Moriel. Thus, Moriel filed a *Fourth-Party Complaint* against Nonito, praying that if it turns out that Tranquilino really did not sell the subject property to Nonito, the latter should be made liable for whatever liability may be adjudged against [Moriel].

In his *Answer (to the Fourth-Party Complaint)*, Nonito admitted to having signed the *Deed of Absolute Sale* in favor of Moriel, but qualified that the execution of the same was "attended by undue pressure considering that at that time, [Nonito] was of confused state of mind brought about by the numerous unfortunate events that beset his family." According to Nonito, it was Moriel who prepared the *Deed of Absolute Sale*, which [Nonito] mistakenly believed to be merely one of mortgage to secure a loan that he had obtained from Moriel. Accordingly, Nonito prayed that the fourth-party complaint

against him be dismissed and that the *Deed of Absolute Sale* in favor of Moriel be nullified.

Curiously, during trial, despite Tranquilino's insistence that his signature on the deed of sale in favor of Lupa Realty was forged, he did not present a handwriting expert to prove the alleged forgery. Neither did Tranquilino present any evidence controverting Lupa Realty's allegations that he had sold the property to his brother Nonito, who, in turn, transferred the property to Moriel, and the latter eventually transferred the same to Lupa Realty.

Instead, Tranquilino presented only his nephew, Vernold, and his tenants, Felino Rizaldo (**Felino**) and Florante Ruiz (**Florante**). [Vernold] testified on the matters contained in the *Complaint*; i.e., about how he discovered that the land is now registered in the name of Lupa Realty. While Felino and Florante both testified that they were instituted as tenants in the property by the family of Tranquilino since 1992 and no one has ever disturbed them in their possession thereof.

On the other hand, Lupa Realty presented its former employee, Demetria Balisi [(Demetria)], who testified that she was one of the two witnesses to the deed of sale between Lupa Realty and Moriel.

Demetria further testified that because the OCT was in the name of Tranquilino and not Moriel, Lupa Realty had asked for proof of Moriel's ownership thereof, and the latter submitted to them the deed of sale between Tranquilino and Nonito, and the deed of sale between Nonito and Moriel. We note that Tranquilino's counsel admitted in open court the existence of the deed of sale between Tranquilino and Nonito.

Demetria acknowledged that none of the deeds of conveyances– between Tranquilino and Nonito; between Nonito and Moriel; and between Moriel and Lupa Realty – was used in registering the transfer of the subject property to Lupa Realty. According to Demetria, it was Moriel's mother who processed the registration, and this was further confirmed by Moriel's mother in an affidavit stating that they "were able to secure at (their) own ways and means a new Title of the subject property in favor of [Lupa Realty]."

To prove that Nonito really sold the subject property to him, Moriel presented Onorio Rumbaoa [(Onorio)], who testified that he was the agent of the sale between Nonito and Moriel. Onorio testified that both Nonito and Moriel are his townmates and he arranged for the

two to meet when Nonito wanted to sell the subject property. According to Onorio, when he remarked to Nonito that the OCT was not in his name, Nonito showed him the deed of sale executed by Tranquilino to prove that he (Nonito) already own[ed] the subject property. Onorio testified that after Moriel agreed to purchase the property, the three of them (Nonito, Moriel and Onorio) went to the notary public where they signed the deed of sale, with Onorio as witness. Moriel corroborated the testimony of Onorio with regard to the details of the sale to him of the subject property by Nonito.

Finally, Nonito testified that he only borrowed money from Moriel and denied having sold the subject property to him. According to Nonito, he gave Moriel a collateral for the purported loan but it was not the subject property. When asked on cross-examination what the collateral was, Nonito could not say. When asked how Moriel came into possession of the OCT in Tranquilino's name, Nonito also could not say.

After due proceedings, the trial court rendered a decision with the following disposition:

> "WHEREFORE, premises considered, the Court declares and Orders that:
>
> 1. OCT (*sic*) No. P-109129 in the name of Lupa Realty is null and void, hence, the Register of Deeds, Tuguegarao, Cagayan is ordered to immediately cancel the same;
>
> 2. TCT (*sic*) No. T-46041 in the name of the plaintiff is reinstated and the property subject of the same is reconveyed to the plaintiff;
>
> 3. Defendant shall pay plaintiff attorney's fees in the amount of ₱30,000.00;
>
> 4. Third Party Defendant Moriel Urdas shall pay Defendant/Third Party Plaintiff Lupa Realty the amount of ₱551,394 plus legal interest from the time the Third Party complaint was filed until full satisfaction of this judgment;
>
> 5. Fourth Party Defendant Nonito Agbayani pays Third Party Defendant/Fourth Party Plaintiff Moriel Urdas the amount of ₱286,698.32 plus legal interest from the time the Fourth Party complaint was filed up to full satisfaction of this judgment;

> 6. For the same reason that the Court allows the plaintiff to collect attorney's fees from the Defendant, the 3rd party defendant is likewise adjudged to pay the Third Party plaintiff reasonable attorney's fees in the amount of ₱30,000.00. Likewise 4th party plaintiff is entitled to collect from the 4th party defendant the amount of ₱30,000.00 by way of attorney's fees.
>
> The other damages sought in the 3rd party and 4th party complaints as well as the parties' respective counter claims are denied for lack of merit.
>
> SO ORDERED."

Hence, [the] appeal by [Lupa Realty to the CA.][6]

Ruling of the CA

The CA in its Decision dated September 14, 2011 granted the appeal. The CA held that the conclusions reached by the RTC are not in accord with law and the evidence on record; therefore, the reversal of the trial court's decision is warranted.[7]

The CA ruled that Tranquilino failed to discharge his burden to present clear and convincing evidence to overthrow the presumption of regularity in the execution on January 21, 1992 of the *Deed of Absolute Sale* (1992 DAS) in favor of his brother Nonito and to prove his allegation of forgery regarding his signature.[8] According to the CA, Tranquilino's insistence that he could not have signed the 1992 DAS because he was in America at that time[9] was insufficient.[10] Further, the CA stated that the fact that there is a *Deed of Absolute Sale* (1997 DAS) purportedly executed by Tranquilino on October 29, 1997 in

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[6] *Id*. at 37-44.

[7] *Id*. at 46.

[8] *Id*. at 48.

[9] The RTC Decision states that as testified upon by Vernold, his uncle Tranquilino left for California, U.S.A. in April, 1989. *Id*. at 89.

[10] *Rollo*, pp. 48-49.

favor of Lupa Realty, which Moriel and his mother used in registering the sale to Lupa Realty, is not sufficient in itself to invalidate Transfer Certificate of Title (TCT) No. T-109129 in the name of Lupa Realty.[11]

In fine, the CA ruled in favor of the dismissal of Tranquilino's complaint based on the lack of evidence regarding his forgery allegation and its postulation that his action for declaration of nullity of the 1997 DAS is not the direct proceeding required by law to attack a Torrens certificate of title since it cannot be collaterally attacked.[12]

The dispositive portion of the CA Decision states:

> ***WHEREFORE***, the ***Decision***, dated 15 June 2009, of the Regional Trial Court, Branch 7, Aparri, Cagayan, in Civil Case No. 07-532 is **REVERSED** and **SET ASIDE**. Tranquilino Agbayani's complaint, as well as Lupa Realty's third-party complaint, Moriel Urdas' fourth-party complaint, and all parties' counterclaims, are **DISMISSED**.
>
> ***SO ORDERED.***[13]

Tranquilino filed a motion for reconsideration, which was denied by the CA in its Resolution[14] dated March 9, 2012.

Hence, the instant Rule 45 Petition. Lupa Realty filed its Comment[15] dated October 8, 2012. Tranquilino filed a Reply[16] dated June 28, 2013.

The Issues

The Petition raises the following issues:

1. whether the CA erred in reversing the RTC Decision that declared the nullity of TCT No. T-109129 in the name of Lupa Realty;

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[11] *Id.* at 50.

[12] *Id.* at 50-51.

[13] *Id.* at 51.

[14] *Id.* at 55-56.

[15] *Id.* at 108-137.

[16] *Id.* at 144-149.

2. whether the CA erred in reversing the RTC Decision on the ground that the RTC erred in ordering the cancellation of the TCT under Lupa Realty's name because the action filed by Tranquilino constitutes a collateral attack on a Torrens title; and

3. whether the CA erred in recognizing and protecting Lupa Realty's right as an innocent purchaser for value (IPV).

The Court's Ruling

The Petition is meritorious.

Rule 45 of the Rules of Court on Appeal by *Certiorari* to the Supreme Court mandates that: the petition shall raise only questions of law;[17] this mode of review is not a matter of right, but of sound judicial discretion; and it will be granted only when there are special and important reasons therefor.[18] A Rule 45 review is warranted when there is finding by the Court that the court *a quo* has decided a question of substance in a way probably not in accord with law or with the applicable decisions of the Court.[19]

While only questions of law may be raised in a Rule 45 *certiorari* petition, there are admitted exceptions, which includes the instance when there is conflict in the findings of fact of the trial court and the CA. The instant case falls under this exception.

The RTC found that the 1992 DAS between Tranquilino and Nonito was established by preponderance of evidence to be a falsified document;[20] the 1997 DAS between Tranquilino and Lupa Realty was also falsified;[21] and Lupa Realty was not an IPV.[22] On the other hand, the CA ruled that the 1992 DAS was

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[17] RULES OF COURT, Rule 45, Sec. 1.

[18] *Id.*, Rule 45, Sec. 6.

[19] *Id.*, Rule 45, Sec. 6(a).

[20] *Rollo*, pp. 92-93.

[21] *Id.* at 93.

[22] *Id.*

valid because Tranquilino was unable to prove that his signature therein was forged.[23] The CA did not, however, rule squarely on whether the 1997 DAS was falsified[24] and whether Lupa Realty was an IPV.[25]

Given the conflict in the findings of the RTC and the CA, a review of the facts is justified.

Tranquilino posits that both the 1992 DAS in favor of Nonito and the 1997 DAS in favor of Lupa Realty, which Tranquilino purportedly executed, are spurious and false.

As to the 1997 DAS (Exh. "F")[26], which is purportedly a unilateral sale in favor of Lupa Realty and signed only by Tranquilino, he reproduces the following portion of the RTC Decision in support of his argument regarding its falsity:

"What really boggles the mind of the court is the existence of the Deed of Sale (Exh. "F") dated Oct. 29, 1997 allegedly executed between Tranquilino Agbayani and Lupa Relaty (*sic*) and which was registered and instrumental for the cancellation of OCT No. P-4601 [*sic*] and the issuance of TCT No. T-109129. Worst, a careful study of said deed of sale and the Deed of Sale executed by and between Moriel Urdas and Lupa Realty would reveal that the two deeds, although allegedly executed and notarized on different dates, have the same Doc. No., Book No., Page No., and series. The defendant [Lupa Realty] cannot feign ignorance and innocence on the existence of the Deed of Sale (Exh. "F"). It is a corporation whose business is, as apparent in its business name, mainly concerns real estate, thus, it is incredible that it would entirely leave the transfer of the title into the hands of

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[23] See *id*. at 48.

[24] The CA merely stated: "The fact that there is a *Deed of Sale* between Tranquilino and Lupa Realty that Moriel and his mother used in registering the sale is not sufficient in itself to invalidate TCT No. T-109129 in the name of Lupa Realty." *Id.* at 50.

[25] The CA merely stated: "Lupa Realty presented sufficient proof of its lawful acquisition of the subject property" and "Tranquilino's action for declaration of nullity of said *Deed of Sale* is not the direct proceeding required by law to attack a Torrens certificate of title." *Id*.

[26] Records, pp. 239-240.

Moriel Urdas and his mother. It is expected that it would exert due diligence in its transactions, it being in the realty business. Defendant having uttered a Deed of Sale (Exh. "F"), which plaintiff has established by preponderance of evidence to have been falsified and which Defendant impliedly admitted in its Answer and Third Party Complaint as indeed falsified when it claimed that its title was derived from the Deed of Sale executed in its favor by Third Party Defendant Moriel Urdas, Defendant cannot [n]ow claim it was an innocent purchaser for value.

The operative act in the cancellation of TCT [*sic*] No. 4604 [*sic*] and the issuance of the TCT No. 109129 in favor of the defendant was the presentation with the Register of Deeds of falsified Deed of Sale allegedly executed by Tranquilino Agbayani in favor of Lupa Realty."[27]

The CA justified the validity of the sale to Lupa Realty and its TCT in this wise:

On the other hand, Lupa Realty presented sufficient proof of its lawful acquisition of the subject property. The deeds of sale between Tranquilino and Nonito; between Nonito and Moriel; and between Moriel and Lupa Realty show the legal tie that bind the parties and legally conveyed the subject property to Lupa Realty.

The fact that there is a *Deed of Sale* between Tranquilino and Lupa Realty that Moriel and his mother used in registering the sale is not sufficient in itself to invalidate TCT No. T-109129 in the name of Lupa Realty.[28]

The "DEED ABSOLUTE SALE" (DAS Moriel-Lupa Realty; Exh. 2 Lupa)[29] by and between Moriel and Lupa Realty with "*29* day of *Oct* 1997" as date of execution, which bears both the signatures of "Roberto P. Alingog" with "CTC No. 7968352, Issued at Cauayan, Isa[bela], Issued on 01/22/97" and "Moriel C. Urdas" (but the acknowledgment does not reflect Moriel's name but the name of "Luzviminda Urdas" (Moriel's spouse) without the specifics of her CTC information) bears the following

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[27] *Rollo*, pp. 25-26 and 92-93.

[28] *Id*. at 50.

[29] Records, pp. 331-332.

notarial information: "Doc. No. 47; Page No. 10, Book No. 11; Series of 1997."[30]

On the other hand, the "DEED ABSOLUTE SALE" (1997 DAS; Exh. "F")[31] also bears "*29* day of *Oct* 1997" as date of execution; the name of "Roberto P. Alingog" with "CTC No. 7968352, Issued at Cauayan, Isa[bela], Issued on 01/22/97" in the acknowledgment portion, together with Tranquilino Agbayani and the specifics of his CTC, but Roberto P. Alingog is not a signatory thereto; and the following notarial information: "Doc. No. 47; Page No. 10, Book No. 11; Series of 1997."[32]

The Court notes that the 1997 DAS contains this recital: "Their right thereto being duly registered in accordance with the Land Registration Act and evidenced by **Original Certificate of Title No. P-26619 with Homestead Patent No. 119163**."[33] It must be noted that Tranquilino's title is Original Certificate of Title (OCT) No. P-46041 with Free Patent No. 587747.[34]

In both documents, the Notary Public's name is illegible. However, the following entries below the signature of the Notary Public are almost identical:

DAS Moriel-Lupa Realty:[35]	1997 DAS[36]
Notary Public	Notary Public
Until Dec. 31. 1997	Until Dec. **31, 1997**
PTR No. 5445937 S	PTR No. **5445937- S**
Issued at Ilagan, Isabela	Issued at **ILAGAN, ISABELA**
Issued on January 8, 1997	Issued on **JAN. 8, 1997**

The Court agrees with the RTC that it is indeed mind boggling how two distinct documents which were supposedly notarized

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[30] *Id.* at 332.

[31] *Id.* at 239-240.

[32] *Id.* at 239.

[33] *Rollo*, p. 152. Emphasis supplied.

[34] *Id.* at 57.

[35] *Id.* at 151. Entries below appear to be computer generated.

[36] *Id.* at 153. Entries in bold appear to be handwritten.

on the same date by one Notary Public have identical notarial details, *i.e.*, document number, page number, book number and year series. Indeed, one of them must be fake or false.

Based on all the facts narrated, it is the 1997 DAS which is sham or spurious. As noted above, these are: (1) the similarity of its notarial details with those of the DAS Moriel-Lupa Realty; (2) the recital that it pertained to the land covered by "Original Certificate of Title No. P-26619 with Homestead Patent No. 119163" and not to Tranquilino's OCT No. P-46041 with Free Patent No. 587747; (3) the inclusion of Lupa Realty, represented by its President, Roberto P. Alingog, as a party and the CTC details of Roberto P. Alingog, but who is not made a signatory thereto; (4) the identity of its date of execution with that of the DAS Moriel-Lupa Realty; and (5) the identity of the notary public's details in both 1997 DAS and the DAS Moriel-Lupa Realty.

In addition, the Court does not lose sight of the fact that there is uncontested evidence that Tranquilino could not have signed the 1997 DAS because he had left for California, U.S.A. in April, 1989.[37]

It is likewise significant to note the fact that Lupa Realty did not even have the 1997 DAS marked and offered as its evidence is a very strong indication of its falsity. In the Formal Offer of Documentary Exhibits of Lupa Realty, the 1997 DAS was not marked and offered as one of its exhibits.[38] If the 1997 DAS was truly executed by Tranquilino and is genuine, why did not Lupa Realty have it marked and offered as its documentary exhibit? The answer is obvious: because Lupa Realty wanted to distance itself therefrom because it might be accused as being complicit with Moriel and/or his mother in falsifying the 1997 DAS.

In *People v. Sendaydiego*,[39] the Court stated the rule that if a person had in his possession a falsified document and he made

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[37] This was noted in the RTC Decision. *Id.* at 89.

[38] Records, pp. 326-344.

[39] 171 Phil. 114 (1978).

use of it (uttered it), taking advantage of it and profiting therefrom, the presumption is that he is the material author of the falsification.[40] Pursuant to *Re: Fake Decision Allegedly in G.R. No. 75242*,[41] the simulation of a public or official document, done in a manner as to easily lead to error as to its authenticity, constitutes the crime of falsification.[42] Under Rule 132, Section 19(b), documents acknowledged before a notary public except last wills and testaments are public documents. Further, it is presumed that "evidence willfully suppressed would be adverse if produced."[43]

Article 1409(2) of the Civil Code provides that contracts "which are absolutely simulated or fictitious" are inexistent and void from the beginning. It is also provided in Article 1346 that "[a]n absolutely simulated or fictitious contract is void."

Justice Eduardo P. Caguioa discusses the concept and requisites of simulation in the following manner:

> x x x Simulation is the declaration of a fictitious intent manifested deliberately and in accordance with the agreement of the parties in order to produce for the purpose of deceiving others the appearance of a transaction which does not exist or which is different from their true agreement.[44] Simulation involves a defect in the declaration of the will. x x x Simulation requires the following: (1) A deliberate declaration contrary to the will of the parties; (2) Agreement of the parties to the apparently valid act; and (3) The purpose is to deceive or to hide from third persons although it is not necessary that the purpose be illicit or for purposes of fraud. The above three requisites must concur in order that simulation may exist. x x x[45]

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[40] *Id.* at 134.

[41] 491 Phil. 539 (2005).

[42] *Id.* at 567.

[43] RULES OF COURT, Rule 131, Sec. 3(e).

[44] IV Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES*, 1983 Rev. Second Ed., p. 549, citing 1 Castan, 8th Ed., Part II, p. 504.

[45] *Id.*, citing 1 Castan, 8th Ed., Part II, p. 504, citing Ferrara.

The three requisites are present in the 1997 DAS. There is a deliberate declaration that Tranquilino sold the subject land to Lupa Realty, which is contrary to their will. The agreement appears on its face to be a valid act. The purpose is to deceive third persons into believing that there was such a sale between Tranquilino and Lupa Realty. The purpose, in this case, is evidently tainted with fraud.

Since the 1997 DAS is void, its registration is likewise void pursuant to Section 53 of Presidential Decree No. (PD) 1529 (the Property Registration Decree), which provides that "any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void." The registration of the 1997 DAS being null and void, it follows that TCT T-109129 in the name of Lupa Realty is also null and void. Being null and void, it should be cancelled.

Moreover, the Court is perplexed why the Registry of Deeds for the Province of Cagayan allowed the registration of the 1997 DAS.

While the Court has held that registration is a mere ministerial act by which a deed, contract or instrument is sought to be inscribed in the records of the Office of the Register of Deeds and annotated at the back of the certificate of title covering the land subject of the deed, contract or instrument and is not a declaration by the state that such an instrument is a valid and subsisting interest in land; it is merely a declaration that the record of the title appears to be burdened with such instrument, according to the priority set forth in the certificate,[46] and that no valid objection can be interposed to the registration of a document by the Register of Deeds who finds nothing defective or irregular on its face upon an examination thereof,[47] the fact

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[46] *Agricultural Credit Cooperative Association of Hinigaran v. Yusay*, 107 Phil. 791, 793-794 (1960).

[47] Antonio H. Noblejas and Edilberto H. Noblejas, *REGISTRATION OF LAND TITLES AND DEEDS*, p. 349 (2007 rev. ed.); see also Narciso Peña, *REGISTRATION OF LAND TITLES AND DEEDS*, p. 166 (1980 rev. ed.).

of the matter is that **the 1997 DAS is <u>not</u> regular on its face** because, as duly noted above, it pertained to the land covered by OCT No. P-26619 with Homestead Patent No. 119163. Presented with the 1997 DAS that has reference to an OCT different from that of Tranquilino's title and to a Homestead Patent instead of a Free Patent, the Register of Deeds concerned should not have allowed its registration because of the obvious or patent irregularity appearing on the face of the 1997 DAS.

From the foregoing, the CA erred when it ruled that the TCT of Lupa Realty is valid.

With the declaration by the Court that the 1997 DAS is sham or spurious and the TCT in the name of Lupa Realty is null and void, does it follow that the sale of the subject land to Lupa Realty is also null and void? In other words, can Lupa Realty be nonetheless declared as the lawful owner of the subject land despite the finding that the TCT issued in his favor is void?

The resolution of this issue hinges on the validity of the 1992 DAS. If the 1992 DAS between Tranquilino and Nonito is valid, then Nonito could have validly sold the subject land to Moriel and Moriel could have thereafter validly sold it to Lupa Realty. The invalidity of Lupa Realty's TCT does not necessarily render invalid its right of ownership over the subject land if the sales preceding the sale to it by Moriel are valid.

As to the 1992 DAS, Tranquilino argues that the unqualified admission made during the pre-trial proceedings in the RTC by Nonito, through his counsel on record, Atty. Frederick Aquino, that there was no such sale between Tranquilino and Nonito is a judicial admission that it is spurious, which dispenses with the need to present proof of the matter of fact already admitted.[48] The Pre-Trial Order dated April 22, 2003 states: "Atty. Aquino denied that Tranquilino Agbayani executed a Deed of Absolute Sale in favor of Nonito Agbayani. According to Atty. Aquino there was no such sale."[49]

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[48] See *rollo*, p. 23.

[49] Records, p. 167.

Regarding admissions by counsel of a party during the preliminary conference, *Camitan v. Fidelity Investment Corporation*[50] is instructive:

> x x x Unfortunately for petitioners, their counsel admitted the genuineness of the owner's duplicate copy of the TCT presented by Fidelity during the preliminary conference at the CA. The following exchange is revealing:
>
> J. MARTIN:
>
> **Counsel for the private respondent, will you go over the owner's copy and manifest to the court whether that is a genuine owner's copy?**
>
> ATTY. MENDOZA:
>
> **Yes, Your Honor.**
>
> J. MARTIN:
>
> Alright. **Make it of record that after examining the owner's copy of TCT NO. (T-12110) T-4342, counsel for the private respondent admitted that the same appears to be a genuine owner's copy of the transfer certificate of title.** x x x
>
> x x x x x x x x x
>
> The foregoing transcript of the preliminary conference indubitably shows that counsel for petitioners made a judicial admission and failed to refute that admission during the said proceedings despite the opportunity to do so. A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, which dispenses with the need for proof with respect to the matter or fact admitted. It may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made.[51]

On the other hand, American jurisprudence sets the following parameters on judicial admissions:

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[50] 574 Phil. 672 (2008).

[51] *Id.* at 680-682, citing RULES OF COURT, Rule 129, Sec. 4.

A judicial admission is a formal statement, either by party or his or her attorney, in course of judicial proceeding which removes an admitted fact from field of controversy. It is a voluntary concession of fact by a party or a party's attorney during judicial proceedings.

Judicial admissions are used as a substitute for legal evidence at trial. Admissions made in the course of judicial proceedings or judicial admissions waive or dispense with, the production of evidence, and the actual proof of facts by conceding for the purpose of litigation that the proposition of the fact alleged by the opponent is true. x x x

A judicial admission is a deliberate, clear, unequivocal statement of a party about a concrete fact within that party's peculiar knowledge, not a matter of law. x x x In order to constitute a judicial admission, the statement must be one of fact, not opinion. To be a judicial admission, a statement must be contrary to an essential fact or defense asserted by the person giving the testimony; it must be deliberate, clear and unequivocal x x x.

Judicial admissions are evidence against the party who made them, and are considered conclusive and binding as to the party making the judicial admission. A judicial admission bars the admitting party from disputing it. x x x

A judicial admission of fact may carry with it an admission of other facts necessarily implied from it.

x x x x x x x x x

Judicial admissions may occur at any point during the litigation process. An admission in open court is a judicial admission. x x x[52]

The admission by Nonito's counsel during the pre-trial proceedings before the RTC that there was no sale between Tranquilino and Nonito qualifies as a judicial admission because the statement is a deliberate, clear, unequivocal statement of a party's attorney during judicial proceedings in open court about a concrete or essential fact within that party's peculiar knowledge. Since such statement is a judicial admission, it does not require proof according to Section 4, Rule 129 of the Rules of Court, which provides:

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[52] 29A Am. Jur. 2d, Evidence §§ 770-771, pp. 136-138. Citations omitted.

SEC. 4. *Judicial admissions*. — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

Moreover, there was no palpable mistake on the part of Nonito's counsel in making the admission because in the offer of Nonito's testimony on December 2, 2008, he stated that "the land was the property in suit was never sold to him [Nonito] by his brother Tranquilino Agbayani."[53] That is not all. The admission by Nonito himself, on cross-examination by Tranquilino's counsel, that Tranquilino was in the United States at the time of the purported transaction[54] supports the statement of the counsel of Nonito that there was no sale between Tranquilino and Nonito.

Since there is judicial admission that there was no sale of the subject land between Tranquilino and Nonito, affirmed anew during oral testimony by Nonito himself, then there is no question that the 1992 DAS is void. The three requisites of a simulated contract are existent. There is a deliberate declaration that Tranquilino sold the subject land to Nonito, which is contrary to their will because there was no sale between them. The agreement appears on its face to be a valid act. The purpose is to deceive third persons into believing that there was such a sale between them.

Consequently, the CA committed egregious error when it made the finding that the 1992 DAS is valid. Given that Tranquilino did not sell the subject land to Nonito, it could not have been sold by Nonito to Moriel and Moriel could not, in turn, have sold it to Lupa Realty.

Lupa Realty's argument that Tranquilino's action for declaration of nullity of the 1997 DAS is not the direct proceeding required by law to attack a Torrens certificate of title since it cannot be collaterally attacked, upheld by the CA, is untenable.

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[53] TSN, December 2, 2008, p. 3.

[54] *Id*. at 8.

In deference to the conclusiveness and indefeasibility of Torrens titles, a certificate of title shall not be subject to collateral attack pursuant to Section 48 of PD 1529.

As to what constitutes a direct attack on a Torrens title, the Court observed in *Firaza, Sr. v. Spouses Ugay*:[55]

> The attack is considered direct when the object of an action is to annul or set aside such proceeding, or enjoin its enforcement. Conversely, an attack is indirect or collateral when, in an action to obtain a different relief an attack on the proceeding is nevertheless made as an incident thereof. **Such action to attack a certificate of title may be an original action or a counterclaim, in which a certificate of title is assailed as void.** x x x[56]

Here, there is a direct attack on Lupa Realty's TCT.

Firstly, the Complaint filed by Tranquilino before the RTC is captioned: "For: Reivindicacion, Cancellation of Title and Document with Damages."[57]

Secondly, the Complaint alleged:

> 7. That the "Deed Absolute Sale" [or 1997 DAS] (Annex "B") is a falsified document and the signature purporting to be that of the plaintiff in said document is a forgery for the reason that he never sold the land in suit to anybody; that he never signed said document; that he never received ₱425,500.00 from the defendant; that he never appeared before Notary Public Agustin Ladera in Cauayan, Isabela on October 29, 1997 because on that date he was in the United States of America.
>
> 8. That as a consequence, the "Deed Absolute Sale" (Annex "B") should be declared null and void and that Transfer Certificate of Title No. T-109129 (in the name of the defendant) should also be declared null and void, and cancelled and that Original Certificate of Title No. P-46041 in the name of the plaintiff should be revived and reinstated.[58]

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[55] 708 Phil. 24 (2013).

[56] *Id*. at 29. Citations omitted.

[57] *Rollo*, p. 63.

[58] *Id*. at 64-65.

Thirdly, the Complaint prayed that judgment be rendered for Tranquilino declaring, among others, the nullity and ordering the cancellation of TCT No. T-109129 (in the name of Lupa Realty) and ordering the revival and reinstatement of OCT No. P-46041 in the name of Tranquilino.[59]

The foregoing clearly show that the Complaint purposefully sought the cancellation of Lupa Realty's TCT, which is a direct attack thereon.

With the pronouncement that there could not have been a valid sale of the subject land to Lupa Realty, the latter cannot qualify as an IPV. Also, the Court totally agrees with the RTC that:

> x x x [Lupa Realty] is a corporation whose business is, as apparent in its business name, mainly concern[ed with] real estate, thus, it is incredible that it would entirely leave the transfer of the title into the hands of Moriel x x x and his mother. It is expected that it would exert due diligence in its transactions, it being in the realty business. x x x[60]

Evidently, in allowing the falsified 1997 DAS to cause the cancellation of Tranquilino's OCT and the issuance of a TCT in its name, Lupa Realty acted in bad faith.

WHEREFORE, the Petition is hereby **GRANTED**. The Decision dated September 14, 2011 and the Resolution dated March 9, 2012 of the Court of Appeals in CA-G.R. CV No. 93912 are **REVERSED** and **SET ASIDE**. The Decision dated June 15, 2009 rendered by the Regional Trial Court, Branch 7, Aparri, Cagayan in Civil Case No. 07-532 is **REINSTATED** with **modifications**: with respect to no. 1: "OCT No. P-109129 in the name of Lupa Realty ..." should instead read "**TCT** No. **T**-109129 in the name of Lupa Realty ..." and no. 2: "TCT No. T-46041 in the name of the plaintiff ..." should instead read "**OCT** No. **P**-46041 in the name of the plaintiff ..."

SO ORDERED.

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[59] *Id.* at 65.

[60] *Id*. at 92.

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

Reyes, J. Jr., J., on leave.

THIRD DIVISION

[G.R. No. 211353. June 10, 2019]

WILLIAM G. KWONG MANAGEMENT, INC. and WILLIAM G. KWONG, *petitioners, vs.* **DIAMOND HOMEOWNERS & RESIDENTS ASSOCIATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS; FACTUAL FINDINGS OF THE HOUSE AND LAND USE REGULATORY BOARD ARBITER AND THE BOARD OF COMMISSIONERS ARE CONFLICTING; CASE AT BAR.— [T]he proper procedure was followed. The matter was brought before the Housing and Land Use Regulatory Board, which exercised jurisdiction and ruled on the merits of the case. The appellate process then took place from the Housing and Land Use Regulatory Board Arbiter to the Board of Commissioners, to the Office of the President, to the Court of Appeals, and now, to this Court. However, because the factual findings of the Housing and Land Use Regulatory Board Arbiter and the Board of Commissioners are conflicting, they cannot be deemed conclusive as to preclude any examination on appeal. x x x As such, this Court may determine what is more consistent with the evidence on record. While only questions of law may be raised in Rule 45 petitions, this rule is not without exceptions.

2. ID.; EVIDENCE; PUBLIC DOCUMENTS AS EVIDENCE; THE GOVERNMENT'S WRITTEN OFFICIAL ACTS LIKE

ORDINANCE NO. 132 IN CASE AT BAR ARE PUBLIC DOCUMENTS; PUBLIC DOCUMENTS ARE *PRIMA FACIE* EVIDENCE OF THE FACTS STATED IN THEM. — In Ordinance No. 132, the Angeles City Council acknowledged that Diamond Subdivision had been having security problems that seriously affected the homeowners and residents. x x x Ordinance No. 132 explicitly states that "with the present classification of Diamond Subdivision [as exclusively residential], constant problems of peace and order have confronted the homeowners and residents affecting their lives, property[,] and security." Ordinance No. 132 is a public document. Under Rule 132, Section 19(a) of the Rules of Court, written official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines are public documents. x x x Public documents are *prima facie* evidence of the facts stated in them [as provided under] Rule 132, Section 23 of the Rules of Court x x x Thus, there is *prima facie* evidence of the security and safety issues within Diamond Subdivision.

3. POLITICAL LAW; ADMINISTRATIVE LAW; THE SUBDIVISION AND CONDOMINIUM BUYERS' PROTECTION DECREE (PD NO. 957); SECTION 31 RECOGNIZES THE NEED FOR A HOMEOWNERS' ASSOCIATION TO PROMOTE AND PROTECT THEIR MUTUAL INTEREST; POLICY OF "NO STICKER, NO ID, NO ENTRY" IS VALID.— There is no question that the subject subdivision roads have been donated to the City of Angeles [in compliance with P.D. No. 957 as amended by P.D. No. 1216.] Therefore, they are public property, for public use x x x [and] belongs to the Angeles City government. However, both Presidential Decree Nos. 957 and 1216 are silent on the right of homeowners' associations to issue regulations on using the roads to ensure the residents' safety and security. x x x [Nonetheless] Section 31 of Presidential Decree No. 957 recognizes the need for a homeowners' association to promote and protect their mutual interest and assist in community development: x x x Moreover, the Housing and Land Use Regulatory Board issued Resolutions that provided the powers and rights of homeowners' associations. x x x Housing and Land Use Regulatory Board Resolution No. 770-04, or the Framework for Governance of Homeowners Associations, states that associations are expected to promote the security of residents in their living environment: x x x This Court has also acknowledged the right of homeowners'

associations to set goals for the promotion of safety and security, peace, comfort, and the general welfare of their residents. x x x In *Spouses Anonuevo v. Court of Appeals,* this Court, quoting the Court of Appeals Decision, affirmed that ownership of public spaces is with the local government, while enjoyment, possession, and control are with the residents and homeowners: x x x From all these, we hold that the Policy "No Sticker, No ID, No Entry" is valid. x x x The Policy maintains the public nature of the subdivision roads. It neither prohibits nor impairs the use of the roads. It does not prevent the public from using the roads, as all are entitled to enter, exit, and pass through them. One must only surrender an identification card to ensure the security of the residents. x x x The Policy, likewise, neither denies nor impairs any of the local government's rights of ownership. Respondent does not assert that it owns the subdivision roads or claims any private right over them. Even with the Policy, the State still has the *jus possidendi* (right to possess), *jus utendi* (right to use), *jus fruendi* (right to its fruits), *jus abutendi* (right to consume), and *jus disponendi* (right to dispose) of the subdivision roads. It still has the power to temporarily close, permanently open, or generally regulate the subdivision roads.

4. ID.; 1987 PHILIPPINE CONSTITUTION; SECTION 1 OF ARTICLE XIII THEREOF; RIGHT OF THE STATE TO REGULATE THE USE OF PROPERTY AND ITS INCREMENTS FOR THE COMMON GOOD; CASE AT BAR.— It is established that he who alleges a fact has the burden of proving it. x x x Since petitioner Kwong presented no evidence of the damage caused to him, this Court cannot rule in his favor. In any case, the community's welfare should prevail over the convenience of subdivision visitors who seek to patronize petitioners' businesses. Article XII, Section 6 of the Constitution provides that the use of property bears a social function, and economic enterprises of persons are still subject to the promotion of distributive justice and state intervention for the common good: x x x Article XIII, Section 1 of the Constitution states that the State may regulate the use of property and its increments for the common good: x x x These provisions reveal that the property ownership and the rights that come with it are not without restrictions, but rather come with the consideration and mindfulness for the welfare of others in society. The Constitution still emphasizes and prioritizes the

people's needs as a whole. Such is the case here: even if petitioner Kwong's rights are subordinated to the rights of the many, the Policy improves his own wellbeing and quality of life.

APPEARANCES OF COUNSEL

A.C. Benoza Law Office for petitioners.
Medina Libatique and Associates for respondent.

D E C I S I O N

LEONEN, *J.*:

A homeowners' association may regulate passage into a subdivision for the safety and security of its residents, even if its roads have already been donated to the local government. It has the right to set goals for the promotion of safety and security, peace, comfort, and the general welfare of its residents.[1]

This Court resolves the Petition for Review on *Certiorari*[2] assailing the Court of Appeals' July 5, 2013 Decision[3] and February 12, 2014 Resolution[4] in CA-G.R. SP No. 115198. The Court of Appeals set aside the Office of the President's March 24, 2010 Decision[5] and found the "No Sticker, No ID, No Entry" Policy valid and issued within the authority of the homeowners' association.

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[1] *Bel Air Village Association, Inc. v. Dionisio*, 256 Phil. 343 (1989) [Per *J.* Gutierrez, Jr., Third Division].

[2] *Rollo*, pp. 38-54.

[3] *Id.* at 12-27. The Decision was penned by Associate Justice Agnes Reyes-Carpio, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Priscilla J. Baltazar-Padilla of the Special Eighth Division, Court of Appeals, Manila.

[4] *Id.* at 29-32. The Resolution was penned by Associate Justice Agnes Reyes-Carpio, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Priscilla J. Baltazar-Padilla of the Former Special Eighth Division, Court of Appeals, Manila.

[5] *Id.* at 110-115. The Decision, in O.P. Case No. 09-D-151, was signed by Deputy Executive Secretary for Legal Affairs Natividad G. Dizon, by authority of the Executive Secretary of the Office of the President.

Diamond Subdivision is a residential subdivision in Balibago, Angeles City, Pampanga with several commercial establishments operating within it. These establishments include beer houses, karaoke bars, night clubs, and other drinking joints.[6]

Because of these, patrons, customers, and many other people freely come in and out of Diamond Subdivision. Such unrestricted access to the subdivision, however, also exposed its residents to incidents of robbery, *akyat-bahay*, prostitution, rape, loud music, and noise that would last until the wee hours of the morning.[7]

Diamond Homeowners & Resident Association (Diamond Homeowners), the legitimate homeowners' association of Diamond Subdivision, sought to address the residents' peace and security issues by raising their concerns to the City Council of Angeles City (Angeles City Council).[8]

On February 24, 2003, the Angeles City Council issued Ordinance No. 132,[9] series of 2003, reclassifying Diamond Subdivision as exclusively residential and prohibited the further establishment and operation of any business except for those already existing.[10] The Ordinance states:

> Whereas, legitimate homeowners of the Diamond Subdivision have presented to the City Council their serious concern on what is presently occurring in their subdivision;
>
> Whereas, with the present classification of Diamond Subdivision constant problems of peace and order have confronted the homeowners and residents affecting their lives, property and security;
>
> Whereas, the introduction of business establishments in an uncontrolled manner have likewise proliferated due to the current classification of the subdivision;
>
> Whereas, due to the R-2 classification of Diamond Subdivision the value of property have not increase[d], despite its strategic location;

[6] *Id.* at 13.

[7] *Id.*

[8] *Id.*

[9] *Id.* at 81.

[10] *Id.* at 13.

Whereas, there is an urgent need to address all the concern[s] of the homeowners and residents of Diamond Subdivision;

Whereas, the appropriate and immediate solution to the present concerns is the reclassification of Diamond Subdivision from Residential 2 to Residential 1 Classification.

Now therefore foregoing considered, the City Council of Angeles City in session assembled hereby resolved to ordain:

Section 1. An Ordinance reclassifying Diamond Subdivision located in Balibago, Angeles City from Residential 2 to Residential 1 Classification status, be as it is hereby, approved.

Section 2. Arayat and S.L. Orosa Streets and the service road of Diamond Subdivision are exempted from this new classification.

Section 3. That existing and legitimate business establishments operating within the territorial boundaries of the said Diamond Subdivision as of approval of the ordinance shall remain and continue to operate and no commercial establishment of any kind shall be allowed thereafter.

Section 4. Unless by hereditary succession no business establishment rights shall be transferred to any individual or entity after approval of this ordinance.

Section 5. This Ordinance shall take effect upon its approval.[11]

However, this Ordinance was not complied with as more beer gardens and nightclubs were still put up. The peace, order, and security situation in the subdivision did not improve.[12]

Among those affected was William G. Kwong (Kwong). A resident of Diamond Subdivision for more than 38 years, he runs three (3) motels[13] in the subdivision under his company, William G. Kwong Management, Inc.[14]

Seeking to address his security concerns, Kwong proposed to his neighbors that guard posts with telephone lines be set up

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[11] *Id*. at 81.

[12] *Id*. at 13.

[13] *Id*. These are the Diamond Lodge, Rainbow Apartelle, and Balibago Village Hotel.

[14] *Id*.

at the entry and exit points on the street where he resides to screen all incoming and outgoing visitors.[15] In an August 3, 2006 Letter, Kwong wrote:

TO THE RESIDENTS OF EMMANUEL STREET
Diamond Subdivision, Balibago
Angeles City

Dear MR/MS _____,

In direct response to a sharp increase in criminal activities in our subdivision, a number of which have remained unreported, I would like to ask your approval and cooperation on a number of proposals, which I outlined below, for our own protection and safety:

1. To put up security gates on both entry/exit points of Emmanuel Street.

2. To permanently seal off the proposed gate at Emmanuel Street corner V.Y. Orosa Street.

3. To engage the services of two security guards to man the gate 24 hours a day at Emmanuel Street corner Marlim Avenue.

4. To install a telephone line at the guard's booth to screen all incoming and outgoing visitors and outsiders. The guard will have to call the residents for approval before he lets anyone in.

With regard to the costs of this project, I am willing to shoulder the cost of the two security gates and one-half (1/2) of the monthly security and telephone fees, which amounts to approximately Nine Thousand Pesos (PhP9,000.00). In support of this project, I would like to request the residents to shoulder the remaining one-half (1/2) of the monthly costs of security and telephone fees, which also amounts to approximately Nine Thousand Pesos (PhP9,000.0[0]) for 15 household or Six Hundred Pesos (PhP600.00) a month per household.

It is with the sense of cooperation and solidarity that I ask you to consider this project for the security and safety of our family.

Thank you for most (*sic*) kind attention and understanding.[16]

However, the other residents of Diamond Subdivision also wanted their security concerns addressed. Thus, to safeguard

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[15] *Id*.

[16] *Id.* at 164.

the whole subdivision, Diamond Homeowners proposed the "No Sticker, No ID, No Entry" Policy (the Policy).[17]

Under the Policy, visitors on vehicles who sought to enter the premises must leave with the subdivision guards their identification cards, which they may reclaim upon leaving the subdivision. Visitors on foot were not required to surrender theirs. Meanwhile, residents with vehicles may obtain stickers to identify themselves so that they did not need to surrender any identification card.[18]

After consultations and meetings, the Policy was approved in December 2006. Diamond Homeowners later issued a Memorandum to inform residents that the Policy would be implemented by March 15, 2007.[19]

Kwong, however, contested the Policy.

When Diamond Homeowners did not heed his objection, Kwong filed before the Housing and Land Use Regulatory Board Regional Office a Complaint for the issuance of a cease and desist order with application for a temporary restraining order. He argued that the Policy was invalid because the subdivision roads have been donated to the City of Angeles in 1974 and were, thus, public roads that must be open for public use. Likewise, he contended that the screening of visitors would be cumbersome for his customers, affecting his businesses.[20]

Ruling in Kwong's favor, the Housing and Land Use Regulatory Board Regional Office issued a Cease and Desist Order and a Temporary Restraining Order. The records were later forwarded to the Housing and Land Use Regulatory Board Arbiter for final disposition.[21]

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[17] *Id.* at 13.

[18] *Id.* at 14.

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

[20] *Id.* at 14.

[21] *Id.* at 15.

In his August 10, 2007 Decision,[22] the Housing and Land Use Regulatory Board Arbiter lifted the Cease and Desist Order and dismissed Kwong's Complaint. He ruled that the Policy's alleged damage to Kwong's business was "imaginary, unsubstantiated[,] and hypothetical[.]"[23]

The Arbiter further held that the protection and security of Diamond Subdivision's residents were the primary and utmost concern, and must be prioritized over the convenience of motel patrons.[24] He ruled that the Policy's objective to protect the community at large was far greater than Kwong's business concerns.[25]

Upholding the Policy's validity, the Arbiter found that it neither prohibited nor impaired the use of the roads. Neither did it change the classification of the roads nor usurp the government's authority. Moreover, the roads were still for public use, and the public was still allowed to pass as long as they presented identification cards. The Arbiter noted that there was no evidence showing that persons were being refused access or asked to pay for its use.[26]

On appeal before the Board of Commissioners of the Housing and Land Use Regulatory Board, the Arbiter's ruling was reversed. In its September 12, 2008 Decision,[27] the Board of Commissioners found merit in Kwong's appeal and declared the Policy void for being "unjustifiable and without legal basis."[28]

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[22] *Id.* at 96-101. The Decision was penned by Housing and Land Use Arbiter Pher Gedd B. de Vera, and approved by Regional Officer, RFO-III Editha U. Barrameda.

[23] *Id.* at 100.

[24] *Id.*

[25] *Id.* at 101.

[26] *Id.*

[27] *Id.* at 102-107. The Decision was signed by *Ex-Officio* Commissioners Austere A. Panadero and Pamela B. Felizarta, and Commissioner Arturo M. Dublado of the First Division, Housing and Land Use Regulatory Board, Quezon City.

[28] *Id.* at 106-107.

In subjecting the subdivision roads to the Policy, the Board of Commissioners found that they were turned into private roads—inaccessible, not open to the public, and under the control of Diamond Homeowners. It also ruled that Kwong and William G. Kwong Management, Inc. have already acquired a vested right to unrestricted passage through the subdivision roads since 1974 because they owned the subdivision lots and because the public use of the roads is guaranteed by law. It found that to limit or impose pecuniary conditions for their enjoyment over the roads violates the roads' public character.[29]

The Board of Commissioners also ruled that the Policy must be justified by an issue so serious and overwhelming that it is prioritized over the lot owners' rights. Diamond Homeowners, it found, failed to present evidence of peace and security issues within the subdivision.[30]

The Office of the President, in its March 24, 2010 Decision,[31] affirmed the Board of Commissioners' Decision *in toto*. It noted that the factual findings of the Housing and Land Use Regulatory Board, as the administrative agency with the technical expertise on the matter, were entitled to great respect.[32]

Hence, Diamond Homeowners elevated the case to the Court of Appeals *via* a Petition for Review.[33]

In its July 5, 2013 Decision,[34] the Court of Appeals granted Diamond Homeowners' Petition and set aside the Office of the President's Decision.[35] It found that Diamond Homeowners was authorized in enacting the Policy.[36]

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[29] *Id*. at 105-106.

[30] *Id*.

[31] *Id*. at 110-115.

[32] *Id*. at 114.

[33] *Id*. at 12.

[34] *Id*. at 12-27.

[35] *Id*. at 26.

[36] *Id*. at 22.

The Court of Appeals ruled that while the local government acquires ownership rights, these rights should be harmonized with the interests of homeowners who invested life savings in exchange for special amenities, comfort, and tighter security, which non-subdivisions did not offer.[37]

The Court of Appeals found that the State recognized this interest in Presidential Decree No. 957, as amended by Presidential Decree No. 1216, and recently in Republic Act No. 9904, or the *Magna Carta* for Homeowners and Homeowners' Associations.[38]

The Court of Appeals noted that Presidential Decree No. 957, as amended by Presidential Decree No. 1216, required the donation of subdivision roads to the local government. While the issuance was silent on regulating access to subdivision roads, it found that the requirement was imposed to benefit homeowners, amid subdivision developers who tended to fail in maintaining the upkeep of subdivision roads, alleys, and sidewalks.[39] It cited *Albon v. Fernando*,[40] which explained that subdivision owners or developers were relieved of maintaining roads and open spaces once they have been donated to the local government.[41]

Likewise, the Court of Appeals noted the *Magna Carta* for Homeowners and Homeowners' Associations, under which homeowners were given the right to organize to protect and promote their mutual benefits and the power to create rules necessary to regulate and operate the subdivision facilities.[42] Section 10(d) provided homeowners' associations the right to regulate access to and passage through the subdivision roads to preserve privacy, tranquility, internal security, safety, and traffic order.[43]

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[37] *Id.* at 21.

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

[39] *Id.* at 19 and 22.

[40] 526 Phil. 630 (2006) [Per J. Corona, Second Division].

[41] *Rollo*, pp. 20-21.

[42] *Id.* at 21.

[43] *Id.* at 22 citing Republic Act No. 9904 (2010), Sec. 10(d).

The Court of Appeals further noted that the law did not distinguish between roads donated to the local government and those retained by the subdivision owners or developers. This showed that while the local government had ownership of subdivision roads, homeowners' associations maintained their enjoyment, possession, and management.[44]

Likewise, the Court of Appeals held that the Policy was reasonably exercised.[45] It ruled that Ordinance No. 132 was sufficient to show that Diamond Subdivision was encountering peace, order, and security problems, as it explicitly stated that the subdivision was confronted with such issues affecting the residents and homeowners. As a public document, it is *prima facie* evidence of facts stated in it.[46] The Court of Appeals further found that the City of Angeles would not have approved Ordinance No. 132 had it not been substantiated by these facts.[47]

Moreover, the Court of Appeals held the Policy reasonable because its purpose was to secure and ensure the peace, safety, and security of homeowners and residents. It found that not only was the Policy supported by 314 Diamond Homeowners members, but that only Kwong opposed it, and he himself recognized the security concerns when he had proposed to set up gates at the entry and exit points on the street where he resides.[48]

The Court of Appeals further found that even if Kwong's proprietary rights may be affected, it is still his duty as a Diamond Homeowners member to support and participate in the association's projects. Likewise, it held that his personal interests may be limited for the promotion of the association's goals for the community at large.[49]

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[44] *Id*.

[45] *Id*. at 23.

[46] *Id*. at 24.

[47] *Id*. at 25.

[48] *Id*. at 26.

[49] *Id*.

The dispositive portion of the Decision read:

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision of the Office of the President dated March 24, 2010 and its Order dated June 10, 2010 are hereby **SET ASIDE**. Accordingly, the complaint for the issuance of a cease and desist order plus damages with application for temporary restraining order filed before the House (*sic*) and Land Use Regulatory Board Region III is hereby **DISMISSED**.

SO ORDERED.[50] (Emphasis in the original)

The Court of Appeals denied Kwong's Motion for Reconsideration in its February 12, 2014 Resolution.[51]

Hence, Kwong and William G. Kwong Management, Inc. filed this Petition.[52]

Diamond Homeowners filed a Comment[53] and, in turn, petitioners filed their Reply.[54]

The parties later submitted their respective Memoranda.[55]

Petitioners insist that the Policy is invalid.

They assert that the subdivision roads are public roads for public use, and outside the commerce of man, having been donated to the Angeles City government since 1974.[56] They maintain that access to and use of Diamond Subdivision roads should be open to the general public, not limited to privileged individuals.[57] They point out that these roads cannot be alienated,

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[50] *Id*.

[51] *Id*. at 29-32.

[52] *Id*. at 38-54.

[53] *Id*. at 158-162.

[54] *Id*. at 170-182.

[55] *Id*. at 226-246, petitioners' Memorandum, and 189-206, Diamond Homeowners' Memorandum.

[56] *Id*. at 233.

[57] *Id*. at 241-242.

leased, be the subject of contracts, be acquired by prescription, be subjected to attachment and execution, be burdened by any voluntary easement, or be under the control of private persons or entities, including homeowners' associations.[58]

Petitioners further argue that the Policy is an unauthorized restriction on the use of public roads as it unduly converts them to private roads, hinders their accessibility from the public, and subjects them under the exclusive control of Diamond Homeowners.[59]

Petitioners insist that it is the City of Angeles that has the power to control and regulate the use of roads.[60] As such, they argue that Diamond Homeowners should have had the city government address its concerns.[61]

Petitioners contend that the Local Government Code has conferred local government units with the authority to regulate the use of public roads and ensure protection and promotion of public welfare,[62] well before the *Magna Carta* for Homeowners and Homeowners' Associations was enacted.[63]

Petitioners claim that the local governments' power to regulate roads cannot be exercised by a private entity. To do so would be a usurpation of the local government's authority, and an illegal abdication of power on the part of the latter. Thus, they posit that, to their and the public's prejudice, the Policy disregards the primary right, power, and authority of the City of Angeles to regulate the use of the public roads.[64]

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[58] *Id*. at 236.

[59] *Id*. at 241-242.

[60] *Id*. at 233. Petitioners cite LOCAL GOVT. CODE, Secs. 16, 21 and 458(a)(5)(v).

[61] *Id*. at 241.

[62] *Id*. at 236.

[63] *Id*. at 235.

[64] *Id*. at 236.

Petitioners further insist that nothing in Presidential Decree Nos. 957 and 1216 or in *Albon*, which the Court of Appeals relied on, gives homeowners' associations the authority to regulate the use of subdivision roads that have already been donated to the local government.[65]

Petitioners also contend that since the Policy was issued before the *Magna Carta* for Homeowners and Homeowners' Associations, it should not apply retroactively.[66] In any case, they assert that the law did not give homeowners' associations absolute and unbridled power to regulate the use of subdivision roads. They cite Section 10(d), which lists the requisites that limit a homeowners' association's rights and powers,[67] showing that its power is merely delegated and conditional. A homeowners' association cannot arrogate unto itself the power to issue the Policy or limit or prevent the free use of public roads without complying with the law's requisites, as it would be *ultra vires*.[68]

Petitioners point out that because respondent failed to comply with the requisites under Section 10(d),[69] it violated the law.[70] They claim that the required public consultations must include the general public who use the public road, and should not be limited to the subdivision residents or the homeowners' association members. They argue that it should be done the same way public hearings are conducted by the *Sangguniang Panlungsod* before the enactment of an ordinance or resolution.[71]

Petitioners further allege that no authority from or memorandum of agreement with the City of Angeles was obtained. They maintain that Ordinance No. 132 cannot be treated as the required memorandum of agreement because it made no mention of the

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[65] *Id.* at 232 and 235.

[66] *Id.* at 237.

[67] *Id.*

[68] *Id.* at 238.

[69] *Id.* at 237.

[70] *Id.* at 238.

[71] *Id.* at 237-238.

Policy. They argue that a separate ordinance is necessary to comply with the requirements.[72]

Petitioners further allege that while Ordinance No. 132 reclassified Diamond Subdivision as exclusively residential, it still expressly exempted Arayat and S.L. Orosa Streets and the service road from the classification. The ordinance, they point out, also recognized that the existing businesses have acquired a vested right to operate within the subdivision as it allowed them to continue their operations.[73]

Petitioners also cite Sections 2 and 18 of the *Magna Carta* for Homeowners and Homeowners' Associations, which provide that homeowners' associations are encouraged to actively cooperate with the local government unit to pursue common goals and provide vital and basic services. They claim that to perform this mandate, the homeowners' association should not disregard the law that gives them the power to regulate roads.[74]

Petitioners contend that if the provisions of the Local Government Code and the *Magna Carta* for Homeowners and Homeowners' Associations were to be harmonized, it is the local government unit that has the primary right and power to regulate the use of the public roads. Homeowners' associations only have limited, delegated power, which may only be exercised upon compliance with the conditions in the law.[75]

Moreover, petitioners deny that there are security concerns within the subdivision. They claim that the Policy was enacted based on a speculative, conjectural, and negative exaggeration of the actual situation, as there is no single evidence of an actual crime committed.[76] Likewise, they submit that Ordinance No. 132 cannot be considered as competent evidence of the alleged criminality in the subdivision.[77]

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[72] *Id.* at 47 and 238.

[73] *Id.* at 228.

[74] *Id.* at 238-239.

[75] *Id.* at 241.

[76] *Id.* at 242.

[77] *Id.* at 47.

Finally, petitioners argue that the Housing and Land Use Regulatory Board has the technical expertise and special competence on matters involving the business of developing subdivisions and condominiums. Thus, its factual findings should be respected.[78]

On the other hand, respondent insists that the Policy is valid.

In its Memorandum, respondent asserts it has the right and authority to issue the Policy under Section 10(d) of the *Magna Carta* for Homeowners and Homeowners' Associations. It insists that it issued the Policy to preserve "privacy, tranqui[l]ity, internal security[,] safety[,] and traffic order."[79]

Respondent further cites Section 30 of Presidential Decree No. 957, which mandates subdivision associations to promote and protect the mutual interests of homeowners, and Section 5 of the Rules on Registration and Supervision of Homeowners Association, which empowers homeowners' associations to adopt rules and regulations, and to exercise other powers necessary to govern and operate the association. It argues that this right and authority applies even if the subdivision roads have been donated to the local government.[80]

Respondent points out that it issued the Policy to only regulate the use of roads and streets inside Diamond Subdivision. It neither recategorized them as private property nor exercised acts of private ownership over them. It emphasizes that the roads are still public roads, open for public use.[81]

Respondent claims that subdivision owners were required to donate their roads to the local government primarily to protect and benefit the residents themselves, as some developers would lose interest in maintaining the subdivision's upkeep.[82] They claim that no law puts the exclusive authority to control, dispose,

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[78] *Id*. at 242-243.

[79] *Id*. at 198.

[80] *Id*. at 198 and 202.

[81] *Id*. at 198.

[82] *Id*.

and enjoy the roads to local government units, to the exclusion of the homeowners, especially since the donation was intended for the latter's benefit. Moreover, no law denies associations their right to regulate open spaces and roads within their subdivisions.[83]

Respondent argues that the Court of Appeals correctly ruled that while the local government units own the lots, their enjoyment, possession, and management are retained by the homeowners and their association.[84]

Respondent further asserts that there was a valid reason for the Policy's adoption.[85] It was not a whimsical exercise of authority to exclude the public from using the roads, but an effort to attain peace and order within the subdivision.[86]

Respondent emphasizes that the Policy was applied because the public's uncontrolled and unrestricted passage into the subdivision has made crimes rampant within it. It asserts that the situation has caused its residents fear, discomfort, and disquiet.[87]

Respondent argues that while the Angeles City Council recognized issues of peace and order in Ordinance No. 132,[88] its intervention was not sufficient to abate the recurring crimes.[89]

Respondent narrates that after the residents of the subdivision clamored for action, it studied and sought advice from other subdivisions in Angeles City that implemented the same Policy, as they had minimal security problems within their subdivision. Respondent alleges that when the Policy was approved by 314

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[83] *Id.* at 199.

[84] *Id.*

[85] *Id.*

[86] *Id.* at 199-200.

[87] *Id.* at 196.

[88] *Id.* at 200.

[89] *Id.* at 196.

legitimate residents[90] and implemented, the crimes decreased as it was able to deter lawless elements.[91] Thus, the Policy has improved the peace and order of the subdivision.[92]

Respondent points out that only petitioner Kwong questioned the policy, even if he recognized the crime and disorder issue himself. It points out that prior to the Policy, he was willing to shoulder the cost of putting up security gates on both the entry and exit points of the street where he resides to prohibit by-passers.[93] He even sought to block those who do not live on his street, whether or not the person was a Diamond Subdivision resident.[94] It is, therefore, contradictory for him to oppose the more reasonable solution of implementing the Policy in the entire subdivision.[95]

Respondent further argues that under the *Magna Carta* for Homeowners and Homeowners' Associations, subdivision residents are duty bound to support and participate in the association's projects and activities, especially if the project is supported by 314 members, with petitioner Kwong as the only opposition.[96]

Respondent further maintains that every person's right to life, property, and security is constitutionally protected. The Policy, thus, is a reasonable means to ensure that these rights are guarded, especially since the local police were unable to stop the threats to it.[97]

Respondent further posits that petitioner Kwong's ownership and personal or business interests may be limited for the interests

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[90] *Id.* at 193.

[91] *Id.* at 194.

[92] *Id.* at 203.

[93] *Id.* at 201.

[94] *Id.* at 203.

[95] *Id.*

[96] *Id.*

[97] *Id.*

of the community at large. Such interests cannot defeat the association's right to regulate and administer the use of the roads inside the subdivision, in accordance with existing laws and regulations, and for the welfare of the homeowners and residents of Diamond Subdivision.[98]

Respondent asserts that entry to the subdivision was not confined to privileged individuals, and that it exercised no discrimination in the Policy's implementation.[99] The regulations, it alleges, were not so rigid as to make it difficult for the riding public to comply with.[100] It further points out that the roads within Diamond Subdivision are not the main entry and exit points to the highway or main roads of Angeles City.[101]

Respondent, thus, claims that it is actually working hand in hand with the City of Angeles in protecting the lives, property, and security of its residents from lawless elements.[102]

Lastly, respondent denies that the Court of Appeals disregarded the special competence of the lower administrative bodies. It points out that the Housing and Land Use Regulatory Board Arbiter even ruled in its favor and found the Policy to be justified.[103]

This Court resolves the following issues:

First, whether or not the factual findings of the Housing and Land Use Regulatory Board are entitled to respect;

Second, whether or not the security concerns within Diamond Subdivision were established; and

Finally, whether or not respondent Diamond Homeowners & Residents Association was authorized in issuing the "No

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[98] *Id*.

[99] *Id*. at 201.

[100] *Id*. at 202.

[101] *Id*. at 201.

[102] *Id*. at 202.

[103] *Id*. at 204.

Sticker, No ID, No Entry" Policy despite the roads having been donated to the local government.

This Court denies the Petition.

I

Petitioners argue that the factual findings of the Housing and Land Use Regulatory Board should be respected as it is the agency with the technical know-how on matters involving the development of subdivisions.[104] Respondent, however, denies that the agency's special competence was disregarded, pointing out that even the Housing and Land Use Regulatory Board Regional Office found that the Policy was justified.[105]

Petitioners are correct that the factual findings of administrative agencies with special competence should be respected if supported by substantial evidence.[106] However, this Court finds that the Housing and Land Use Regulatory Board's findings were not disregarded.

To begin with, the proper procedure was followed. The matter was brought before the Housing and Land Use Regulatory Board, which exercised jurisdiction and ruled on the merits of the case. The appellate process then took place from the Housing and Land Use Regulatory Board Arbiter to the Board of Commissioners, to the Office of the President, to the Court of Appeals, and now, to this Court.

However, because the factual findings of the Housing and Land Use Regulatory Board Arbiter and the Board of Commissioners are conflicting, they cannot be deemed conclusive as to preclude any examination on appeal.

On one hand, the Arbiter found that the Policy did not prohibit or impair the use of the roads.[107] He noted that there was no

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[104] *Id*. at 242-243.

[105] *Id*. at 204.

[106] *Villaflor v. Court of Appeals*, 345 Phil. 524, 559 (1997) [Per *J*. Panganiban, Third Division].

[107] *Rollo*, p. 15.

evidence showing that persons were being refused access or asked to pay for its use.[108] He also found no evidence of any damage to petitioners' business. He lent credence to respondent's allegation that there was a need for the protection and security of its residents, which must be prioritized over the convenience of motel patrons.[109] These findings were affirmed by the Court of Appeals.

On the other hand, the Board of Commissioners and the Office of the President ruled that there was no evidence of peace and security issues within Diamond Subdivision. It held that subjecting the subdivision roads to the Policy converts them to private roads, which are inaccessible, not open to the public, and under respondent's control.[110]

Since the factual findings are conflicting, they cannot be deemed conclusive as to preclude any examination on appeal and, therefore, cannot bind this Court. As such, this Court may determine what is more consistent with the evidence on record. While only questions of law may be raised in Rule 45 petitions, this rule is not without exceptions. In *Spouses Miano v. Manila Electric Company*:[111]

> The Rules of Court states that a review of appeals filed before this Court is "not a matter of right, but of sound judicial discretion." The Rules of Court further requires that only questions of law should be raised in petitions filed under Rule 45 since factual questions are not the proper subject of an appeal by *certiorari*. It is not this Court's function to once again analyze or weigh evidence that has already been considered in the lower courts.
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> . . . . . .
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> However, the general rule for petitions filed under Rule 45 admits exceptions. *Medina v. Mayor Asistio, Jr.* lists down the recognized exceptions:

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[108] *Id*. at 101.

[109] *Id*. at 100.

[110] *Id*. at 16.

[111] 800 Phil. 118 (2016) [Per J. Leonen, Second Division].

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) *When the findings of fact are conflicting*; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.
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> These exceptions similarly apply in petitions for review filed before this Court involving civil, labor, tax, or criminal cases.[112] (Emphasis supplied, citations omitted)

Since the findings of the lower tribunals are conflicting as to whether there were security concerns within Diamond Subdivision that would warrant the issuance of the Policy, this Court may exercise its discretion to resolve this factual issue.

II

The case records reveal that Diamond Subdivision was experiencing security concerns.

In Ordinance No. 132, the Angeles City Council acknowledged that Diamond Subdivision had been having security problems that seriously affected the homeowners and residents. The whereas clauses state:

> Whereas, legitimate homeowners of the Diamond Subdivision have presented to the City Council their *serious concern* on what is presently occurring in their subdivision;
>
> Whereas, with the present classification of Diamond Subdivision *constant problems of peace and order have confronted the*

[112] *Id*. at 122-123.

homeowners and residents affecting their lives, property and security;

Whereas, the introduction of business establishments in an uncontrolled manner have likewise proliferated due to the current classification of the subdivision;

Whereas, due to the R-2 classification of Diamond Subdivision the value of property have not increase[d], despite its strategic location;

Whereas, there is an *urgent need* to address all the concern[s] of the homeowners and residents of Diamond Subdivision[.][113] (Emphasis supplied)

Ordinance No. 132 explicitly states that "with the present classification of Diamond Subdivision[,] constant problems of peace and order have confronted the homeowners and residents affecting their lives, property[,] and security."[114]

Ordinance No. 132 is a public document. Under Rule 132, Section 19(a) of the Rules of Court, written official acts of the sovereign authority, official bodies and tribunals, and public officers of the Philippines are public documents. The provision states:

SECTION 19. *Classes of documents*. — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments; and

(c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

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[113] *Rollo*, p. 81.

[114] *Id*.

Public documents are *prima facie* evidence of the facts stated in them.[115] Rule 132, Section 23 of the Rules of Court provides:

> SECTION 23. *Public documents as evidence. — Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

Thus, there is *prima facie* evidence of the security and safety issues within Diamond Subdivision.

Besides, these security concerns were affirmed by petitioner Kwong himself. In his August 3, 2006 Letter, he acknowledged that there was a "sharp increase in criminal activities" in Diamond Subdivision, "a number of which remain[ed] unreported."[116] He also proposed to shoulder the costs of putting up security gates on both entry and exit points of the street where he resides, and the hiring of security guards to screen incoming and outgoing visitors.[117] These constitute admissions, or declarations "as to a relevant fact that may be given in evidence against him."[118]

Petitioner Kwong presented no evidence to counter these documents. Thus, this Court affirms that Diamond Subdivision was experiencing security concerns.

III

Diamond Subdivision was, likewise, authorized in enacting the Policy.

There is no question that the subdivision roads have been donated to the City of Angeles.[119] Therefore, they are public property, for public use.

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[115] See *Miralles v. Go*, 402 Phil. 638, 648-649 (2001) [Per *J*. Panganiban, Third Division].

[116] *Rollo*, p. 164.

[117] *Id.*

[118] RULES OF COURT, Rule 130, Sec. 26.

[119] *Rollo*, pp. 78-80.

According to the Deed of Donation,[120] the donation was done in compliance with Resolution No. 162, series of 1974, of the Municipal Board of Angeles City.[121]

This donation is consistent with Section 31 of Presidential Decree No. 957, or the Subdivision and Condominium Buyers' Protection Decree. The provision states:

> SECTION 31. *Donation of Roads and Open Spaces to Local Government*. —The registered owner or developer of the subdivision or condominium project, upon completion of the development of said project may, at his option, convey by way of donation the roads and open spaces found within the project to the city or municipality wherein the project is located. Upon acceptance of the donation by the city or municipality concerned, no portion of the area donated shall thereafter be converted to any other purpose or purposes unless after hearing, the proposed conversion is approved by the Authority.

On October 14, 1977, Presidential Decree No. 957 was amended by Presidential Decree No. 1216, which made the donation to the local government unit mandatory:

> SECTION 2. Section 31 of Presidential Decree No. 957 is hereby amended to read as follows:
>
> SEC. 31. *Roads, Alleys, Sidewalks and Open Spaces*. — The owner as developer of a subdivision shall provide adequate roads, alleys and sidewalks. For subdivision projects one (1) hectare or more, the owner or developer shall reserve thirty percent (30%) of the gross area for open space. . . .
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> . . . . . .
>
> Upon their completion as certified to by the Authority, *the roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality and it shall be mandatory for the local governments to accept; provided, however*, that the parks and playgrounds may be donated to the Homeowners Association of the project with

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[120] *Id*.

[121] *Id*. at 78.

> the consent of the city or municipality concerned. No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes. (Emphasis supplied)

The whereas clauses of Presidential Decree No. 1216 explicitly state that roads, alleys, and sidewalks in subdivisions are for public use, and are beyond the commerce of men:

> WHEREAS, there is a compelling need to create and maintain a healthy environment in human settlements by providing open spaces, roads, alleys and sidewalks as may be deemed suitable to enhance the quality of life of the residents therein;
>
> WHEREAS, *such open spaces, roads, alleys and sidewalks in residential subdivision are for public use and are, therefore, beyond the commerce of men*[.] (Emphasis supplied)

Moreover, both parties admit that the subdivision roads are public. Thus, there is no issue on the roads' ownership: it belongs to the Angeles City government.

However, both Presidential Decree Nos. 957 and 1216 are silent on the right of homeowners' associations to issue regulations on using the roads to ensure the residents' safety and security.

This silence was addressed in 2010 when Republic Act No. 9904, or the *Magna Carta* for Homeowners and Homeowners' Associations, was enacted. Section 10(d) states:

> SECTION 10. *Rights and Powers of the Association*. — An association shall have the following rights and shall exercise the following powers:
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> . . . . . .
>
> (d) Regulate access to, or passage through the subdivision/village roads for purposes of preserving privacy, tranquility, internal security, safety and traffic order: Provided, That: (1) public consultations are held; (2) existing laws and regulations are met; (3) the authority of the concerned government agencies or units are obtained; and (4) the appropriate and necessary memoranda of agreement are executed among the concerned parties[.]

Section 10(d) gives homeowners' associations the right to "[r]egulate access to, or passage through the subdivision/village roads for purposes of preserving privacy, tranquility, internal security, safety[,] and traffic order" as long as they complied with the requisites. The law does not distinguish whether the roads have been donated to the local government or not.[122]

Petitioners argue that the *Magna Carta* for Homeowners and Homeowners' Associations does not apply because it was not yet in effect when the Policy was issued. Assuming that it applies, they assert that respondent failed to comply with the stated requisites.[123]

Petitioners are correct. The Policy was approved in 2006, way before the law was enacted in 2010. Diamond Homeowners, then, could not have yet complied with the conditions provided. It would, thus, be unjustified if the Policy were to be invalidated on the ground that these conditions were not followed.

Laws are not retroactive. Article 4 of the Civil Code states that "laws shall have no retroactive effect, unless the contrary is provided." *Lex prospicit, non respicit*; the law looks forward, not backward. This is due to the unconstitutional result of retroacting a law's application: it divests rights that have already become vested or impairs obligations of contract.[124] In *Espiritu v. Cipriano*:[125]

Likewise the claim of private respondent that the act is remedial and may, therefore, be given retroactive effect is untenable. A close

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[122] "*Ubi lex non distinguit, nec nos distinguere debemus*. When the law does not distinguish, we must not distinguish." *Amores v. House of Representatives*, 636 Phil. 600, 609 (2010) [*J*. Carpio Morales, *En Banc*] citing *Vide Adasa v. Abalos*, 545 Phil. 168 (2007) [Per *J*. Chico-Nazario, Third Division] and *Philippine Free Press, Inc. v. Court of Appeals*, 510 Phil. 411 (2005) [Per *J*. Garcia, Third Division].

[123] *Rollo*, p. 237.

[124] *Gauvain v. Court of Appeals*, 282 Phil. 530, 544 (1992) [Per *J*. Gutierrez, Jr., Third Division].

[125] 154 Phil. 483 (1974) [Per *J*. Esguerra, First Division].

study of the provisions discloses that far from being remedial, the statute affects substantive rights and hence a strict and prospective construction thereof is in order. Article 4 of the New Civil Code ordains that laws shall have no retroactive effect unless the contrary is provided and that where the law is clear, Our duty is equally plain. We must apply it to the facts as found. . . . The said law did not, by its express terms, purport to give a retroactive operation. It is a well-established rule of statutory construction that "*Expressium facit cessare tacitum*" and, therefore, no reasonable implication that the Legislature ever intended to give the law in question a retroactive effect may be accorded to the same. . . .

. . . . . .

. . . Well-settled is the principle that while the Legislature has the power to pass retroactive laws which do not impair the obligation of contracts, or affect injuriously vested rights, it is equally true that statutes are not to be construed as intended to have a retroactive effect so as to affect pending proceedings, unless such intent is expressly declared or clearly and necessarily implied from the language of the enactment.[126] (Citations. omitted)

The *Magna Carta* for Homeowners and Homeowners' Associations does not state that it has a retroactive effect. Thus, it cannot be applied to the Policy. This Court must rule on the Policy's validity based on the laws, rules, and court doctrines in force at the time of its issuance.

Under Section 16 of the Local Government Code, local governments have the power to govern the welfare of those within its territorial jurisdiction:

SECTION 16. *General Welfare*. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of

[126] *Id.* at 488-490.

appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

This includes the power to close and open roads, whether permanently or temporarily:

SECTION 21. *Closure and Opening of Roads*. — (a) A local government unit may, pursuant to an ordinance, permanently or temporarily close or open any local road, alley, park, or square falling within its jurisdiction: *Provided, however*, That in case of permanent closure, such ordinance must be approved by at least two-thirds (2/3) of all the members of the *sanggunian*, and when necessary, an adequate substitute for the public facility that is subject to closure is provided.

(b) No such way or place or any part thereof shall be permanently closed without making provisions for the maintenance of public safety therein. A property thus permanently withdrawn from public use may be used or conveyed for any purpose for which other real property belonging to the local government unit concerned may be lawfully used or conveyed: *Provided, however*, That no freedom park shall be closed permanently without provision for its transfer or relocation to a new site.

(c) Any national or local road, alley, park, or square may be temporarily closed during an actual emergency, or fiesta celebrations, public rallies, agricultural or industrial fairs, or an undertaking of public works and highways, telecommunications, and waterworks projects, the duration of which shall be specified by the local chief executive concerned in a written order: *Provided, however*, That no national or local road, alley, park, or square shall be temporarily closed for athletic, cultural, or civic activities not officially sponsored, recognized, or approved by the local government unit concerned.

(d) Any city, municipality, or barangay may, by a duly enacted ordinance, temporarily close and regulate the use of any local street, road, thoroughfare, or any other public place where shopping malls, Sunday, flea or night markets, or shopping areas may be established and where goods, merchandise, foodstuffs, commodities, or articles of commerce may be sold and dispensed to the general public.

More relevantly, local governments may also enact ordinances to regulate and control the use of the roads:

> SECTION 458. *Powers, Duties, Functions and Compensation*. — (a) The *sangguniang panlungsod*, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:
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> . . . . . .
>
> (5) Approve ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities, shall:
>
> . . . . . .
>
> (v) Regulate the use of streets, avenues, alleys, sidewalks, bridges, parks and other public places and approve the construction, improvement, repair and maintenance of the same[.]

In *Albon*, this Court upheld the City of Marikina's right to enact an ordinance to widen, clear, and repair the existing sidewalks of Marikina Greenheights Subdivision that have been donated to it:

> Like all LGUs, the City of Marikina is empowered to enact ordinances for the purposes set forth in the Local Government Code (RA 7160). It is expressly vested with police powers delegated to LGUs under the general welfare clause of R.A. 7160. With this power, LGUs may prescribe reasonable regulations to protect the lives, health, and property of their constituents and maintain peace and order within their respective territorial jurisdictions.
>
> Cities and municipalities also have the power to exercise such powers and discharge such functions and responsibilities as may be necessary, appropriate or incidental to efficient and effective provisions of the basic services and facilities, including infrastructure facilities intended primarily to service the needs of their residents and which are financed by their own funds. These infrastructure

facilities include municipal or city roads and bridges and similar facilities.

There is no question about the public nature and use of the sidewalks in the Marikina Greenheights Subdivision. One of the "whereas clauses" of P.D. 1216 (which amended P.D. 957) declares that open spaces, roads, alleys and sidewalks in a residential subdivision are for public use and beyond the commerce of man. In conjunction herewith, P.D. 957, as amended by P.D. 1216, mandates subdivision owners to set aside open spaces which shall be devoted exclusively for the use of the general public.

. . . . . .

Moreover, the implementing rules of P.D. 957, as amended by P.D. 1216, provide that it is the registered owner or developer of a subdivision who has the responsibility for the maintenance, repair and improvement of road lots and open spaces of the subdivision prior to their donation to the concerned LGU. The owner or developer shall be deemed relieved of the responsibility of maintaining the road lots and open space only upon securing a certificate of completion and executing a deed of donation of these road lots and open spaces to the LGU.[127] (Citations omitted)

Nonetheless, homeowners' associations are not entirely powerless in protecting the interests of homeowners and residents. Section 31 of Presidential Decree No. 957 recognizes the need for a homeowners' association to promote and protect their mutual interest and assist in community development:

SECTION 30. *Organization of Homeowners Association*. — The owner or developer of a subdivision project or condominium project shall initiate the organization of a homeowners association among the buyers and residents of the projects for the purpose of *promoting and protecting their mutual interest and assist in their community development*.

Moreover, the Housing and Land Use Regulatory Board issued Resolutions that provided the powers and rights of homeowners' associations. Its Resolution No. R-771-04, or the Rules on the

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[127] *Albon v. Fernando*, 526 Phil. 630, 635-639 (2006) [Per *J.* Corona, Second Division].

Registration and Supervision of Homeowners Associations, states:

> SECTION 5. *Powers and Attributes of a Homeowners Association*. — The powers and attributes of the Homeowners Association are those stated in its by-laws, which shall include the following:
>
> a. To adopt and amend by-laws, rules and regulations;
>
> b. To adopt an annual program of activities and the corresponding budget therefor, subject to the limitations and conditions imposed under the by-laws;
>
> c. To impose and collect reasonable fees on members and non-member residents who avail of or benefit from the facilities and services of the association, to defray necessary operational expenses, subject to the limitations and conditions imposed under the law, regulations of the Board and the association by-laws;
>
> d. To sue and be sued in its name;
>
> e. To enter into contracts for basic and necessary services for the general welfare of the association and its members;
>
> f. To acquire, hold, encumber and convey in its own name any right, title or interest to any property;
>
> g. To impose reasonable sanctions upon its members for violations and/or non-compliance with the association by laws; and upon non-member residents by reason of any act and/or omission prejudicial to the interest of the association or its members; and
>
> h. To exercise other powers necessary for the governance and operation of the association.

Housing and Land Use Regulatory Board Resolution No. 770-04, or the Framework for Governance of Homeowners Associations, states that associations are expected to promote the security of residents in their living environment:

> WHEREAS, there is a need to highlight the basic roles, powers and responsibilities of a homeowners association and its officers and members under existing laws and regulations;

WHEREAS, there is also a need to promote and operationalize the best practices and norms of good governance in the management of a homeowners association:

WHEREAS, the active and enlightened management of the affairs of a homeowners association will *enhance the delivery of basic services to and promote the general welfare of its members*;

. . . . . .

SECTION 3. *General Principles*. — An Association should—

a. *endeavor to serve the interest of its members* through equity of access in the decision-making process, transparency and accountability, and *the promotion of security in their living environment*;

b. establish its vision, define and periodically assess its mission, policies, and objectives and the means to attain the same; and

c. without abandoning its non-partisan character:

i. actively cooperate with local government units and national government agencies, in furtherance of its common goals and activities for the benefit of the residents inside and outside of the subdivision; and

ii. complement, support and strengthen local government units and national government agencies in *providing vital services to its members* and in helping implement local government policies, programs, ordinances, and rules.

This Court has also acknowledged the right of homeowners' associations to set goals for the promotion of safety and security, peace, comfort, and the general welfare of their residents.[128] In *Bel Air Village Association, Inc. v. Dionisio*:[129]

The petitioner also objects to the assessment on the ground that it is unreasonable, arbitrary, discriminatory, oppressive and confiscatory. According to him the assessment is oppressive because the amount assessed is not based on benefits but on the size of the

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[128] *Bel Air Village Association, Inc. v. Dionisio*, 256 Phil. 343 (1989) [Per J. Gutierrez, Jr., Third Division].

[129] *Id*.

area of the lot, discriminatory and unreasonable because only the owners of the lots are required to pay the questioned assessment and not the residents who are only renting inside the village; and confiscatory because under the by–laws of the respondent association, the latter holds a lien on the property assessed if the amount is not paid.

We agree with the lower court's findings, to wit:

. . . . . .

> The second question has reference to the reasonableness of the resolution assessing the monthly dues in question upon the defendant. The exhibits annexed to the stipulation of facts describe the purpose or goals for which these monthly dues assessed upon the members of the plaintiff including the defendant are to be disbursed. They are intended for garbage collection, salary of security guards, cleaning and maintenance of streets, establishment of parks, etc. *Living in this modern, complex society has raised complex problems of security, sanitation, communitarian comfort and convenience and it is now a recognized necessity that members of the community must organize themselves for the successful solution of these problems. Goals intended for the promotion of their safety and security, peace, comfort, and general welfare cannot be categorized as unreasonable. Indeed, the essence of community life is association and cooperation for without these such broader welfare goals cannot be attained.* It is for these reasons that modern subdivisions are imposing encumbrance upon titles of prospective lot buyers a limitation upon ownership of the said buyers that they automatically become members of homeowners' association living within the community of the subdivision.[130] (Emphasis supplied)

In *Spouses Anonuevo v. Court of Appeals*,[131] this Court, quoting the Court of Appeals Decision, affirmed that ownership of public spaces is with the local government, while enjoyment, possession, and control are with the residents and homeowners:

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[130] *Id*. at 351-352.

[131] 313 Phil. 709 (1995) [Per *J*. Melo, Third Division].

It appears that reliance was placed by the lower court upon the fact that TCT No. 37527 covering Lot II, Block 6 did not contain an annotation as to the open space character of said piece of land. But the argument does not find justification with applicable jurisprudence. When the lot in question had been allotted as an open space by Carmel Corporation, *it had become the property of the Quezon City government and/or the Republic of the Philippines held under the management, control and enjoyment of the residents and homeowners of Carmel II-A Subdivision*. . . .

. . . . . .

Therefore, with the approval of the subdivision plan of Carmel II-A followed with it the exclusion of the land from the commerce of man. It would not be too presumptuous to conclude that the sale by Carmel Corporation which resulted in the subsequent private dealings involving this *public property* is void *ab initio*. And the mere fact that Carmel Corporation did not consider Lot II, Block 6 as the designated open space would not give it licentious freedom to sell such public property "under the nose", so to speak, *of the Quezon City government, the Republic of the Philippines, and the homeowners who are the direct beneficiaries thereof*. While the afore-enumerated entities do not hold the owners' duplicate title over the open space, hence, could not properly forewarned of any prejudicial act of conveyance or encumbrance perpetrated by the subdivision owner/developer, they should not be faulted for taking a belated attempt to question these conveyances affecting the open space which are made manifest only during the actual disruptions accompanying the exercise of ownership and possession by the ultimate vendee.[132] (Emphasis in the original, citation omitted)

From all these, we hold that the Policy is valid. In *De Guzman v. Commission on Audit*:[133]

It is a basic principle in statutory construction that when faced with apparently irreconcilable inconsistencies between two laws, the first step is to attempt to harmonize the seemingly inconsistent laws. In other words, courts must first exhaust all efforts to harmonize

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[132] *Id*. at 720-721.

[133] 791 Phil. 376 (2016) [Per *J*. Velasco, *En Banc*].

seemingly conflicting laws and only resort to choosing which law to apply when harmonization is impossible.[134] (Citations omitted)

The Policy maintains the public nature of the subdivision roads. It neither prohibits nor impairs the use of the roads. It does not prevent the public from using the roads, as all are entitled to enter, exit, and pass through them. One must only surrender an identification card to ensure the security of the residents. As stated, the residents and homeowners, including petitioner Kwong, have valid security concerns amid a sharp increase in criminal activities within the subdivision.

The Policy, likewise, neither denies nor impairs any of the local government's rights of ownership. Respondent does not assert that it owns the subdivision roads or claims any private right over them. Even with the Policy, the State still has the *jus possidendi* (right to possess), *jus utendi* (right to use), *just fruendi* (right to its fruits), *jus abutendi* (right to consume), and *jus disponendi* (right to dispose) of the subdivision roads. It still has the power to temporarily close, permanently open, or generally regulate the subdivision roads.

It must be pointed out that this case is not even between a homeowners' association and the local government, but a homeowners' association and a resident who disagrees with the Policy. Respondent, therefore, is not asserting any right against any local government act on the subdivision roads. Neither is the local government claiming that its right to regulate the roads is being impinged upon.

Furthermore, Section 31 of Presidential Decree No. 957, as amended, on the donation of subdivision roads to the local government, "was [enacted] to remedy the situation prevalent at that time where owners/developers fail to keep up with their obligation of providing and maintaining the subdivision roads, alleys[,] and sidewalks."[135] The whereas clauses of Presidential Decree No. 957 reveal the legislative intent:

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[134] *Id*. at 380.

[135] *Rollo*, p. 19.

WHEREAS, it is the policy of the State to afford its inhabitants the requirements of decent human settlement and to provide them with ample opportunities for improving their quality of life;

WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers;

WHEREAS, reports of alarming magnitude also show cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value;

WHEREAS, these acts not only undermine the land and housing program of the government but also defeat the objectives of the New Society, particularly the promotion of peace and order and the enhancement of the economic, social and moral condition of the Filipino people;

WHEREAS, this state of affairs has rendered it imperative that the real estate subdivision and condominium businesses be closely supervised and regulated, and that penalties be imposed on fraudulent practices and manipulations committed in connection therewith. (Emphasis supplied)

Evidently, here, the donation was for the benefit of the subdivision's homeowners, lot buyers, and residents. This must be taken into consideration in interpreting the provision for the donation:

In the construction or interpretation of a legislative measure—a presidential decree in these cases — the primary rule is to search for and determine the intent and spirit of the law. *Legislative intent is the controlling factor*, for in the words of this Court in *Hidalgo v. Hidalgo*, per Mr. Justice Claudio Teehankee, whatever is within the spirit of a statute is within the statute, and this has to be so if strict adherence to the letter would result in absurdity, injustice and contradictions.[136] (Emphasis in the original, citation omitted)

[136] *People v. Purisima*, 176 Phil. 186, 203 (1978) [Per *J*. Munoz Palma, *En Banc*].

In *Spouses Belo v. Philippine National Bank*:[137]

> It is well settled that courts are not to give a statute a meaning that would lead to absurdities. If the words of a statute are susceptible of more than one meaning, the absurdity of the result of one construction is a strong argument against its adoption, and in favor of such sensible interpretation. We test a law by its result. A law should not be interpreted so as not to cause an injustice. There are laws which are generally valid but may seem arbitrary when applied in a particular case because of its peculiar circumstances. We are not bound to apply them in slavish obedience to their language.[138] (Citations omitted)

Thus, the donation of the roads to the local government should not be interpreted in a way contrary to the legislative intent of benefiting the residents. Conversely, residents should not be disempowered from taking measures for the proper maintenance of their residential area. Under Section 30 of Presidential Decree No. 957, they may protect their mutual interests. Here, the Policy was not inconsistent with this purpose. To rule against it would be contrary to the intention of the law to protect their rights.

This Court further notes that the Deed of Donation recognizes the Diamond Subdivision's power to monitor the security within the subdivision. The Deed of Donation between the developer of Diamond Subdivision and the City of Angeles states:

> That it is a condition of this donation, that the Severina Realty Corporation will have the exclusive right to appoint and to enter into a contract with any duly licensed security guard agency for the security guard services of the Diamond Subdivision, Angeles City.[139]

Thus, the subdivision is still empowered to determine how best to maintain the security and safety within the subdivision.

Moreover, it is common knowledge that when homeowners purchase their properties from subdivisions, they pay a more

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[137] 405 Phil. 851 (2001) [Per *J.* De Leon, Jr., Second Division].

[138] *Id*. at 874.

[139] *Rollo*, p. 79.

valuable consideration in exchange for better facilities, safer security, and a higher degree of peace, order, and privacy. Some may also have purchased their properties in contemplation of their right to organize and to take measures to protect these interests. It would be an injustice if these were not taken into consideration in determining the validity of the Policy.

Here, the Policy was enacted to ensure the safety and security of Diamond Subdivision residents who have found themselves exposed to heightened crimes and lawlessness. The Policy was approved by 314 members of the homeowners' association, with only petitioner Kwong protesting the solution. His protest is ultimately rooted in the damage that the Policy has allegedly caused to his businesses. However, he failed to present any evidence of this damage.

It is established that he who alleges a fact has the burden of proving it. In *Republic v. Estate of Hans Menzi*:[140]

> It is procedurally required for each party in a case to prove his own affirmative allegations by the degree of evidence required by law. In civil cases such as this one, the degree of evidence required of a party in order to support his claim is preponderance of evidence, or that evidence adduced by one party which is more conclusive and credible than that of the other party. It is therefore incumbent upon the plaintiff who is claiming a right to prove his case. Corollarily, the defendant must likewise prove its own allegations to buttress its claim that it is not liable.
>
> The party who alleges a fact has the burden of proving it. The burden of proof may be on the plaintiff or the defendant. It is on the defendant if he alleges an affirmative defense which is not a denial of an essential ingredient in the plaintiff's cause of action, but is one which, if established, will be a good defense — *i.e.*, an "avoidance" of the claim.[141] (Citations omitted)

Since petitioner Kwong presented no evidence of the damage caused to him, this Court cannot rule in his favor.

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[140] *Republic v. Estate of Hans Menzi*, 512 Phil. 425 (2005) [Per *J.* Tinga, *En Banc*].

[141] *Id.* at 456-457.

In any case, the community's welfare should prevail over the convenience of subdivision visitors who seek to patronize petitioners' businesses. Article XII, Section 6 of the Constitution provides that the use of property bears a social function, and economic enterprises of persons are still subject to the promotion of distributive justice and state intervention for the common good:

> SECTION 6. 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.

Article XIII, Section 1 of the Constitution states that the State may regulate the use of property and its increments for the common good:

> SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.
>
> To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

These provisions reveal that the property ownership and the rights that come with it are not without restrictions, but rather come with the consideration and mindfulness for the welfare of others in society. The Constitution still emphasizes and prioritizes the people's needs as a whole. Such is the case here: even if petitioner Kwong's rights are subordinated to the rights of the many, the Policy improves his own wellbeing and quality of life. In *Bel Air Village Association, Inc.*:

> Even assuming that defendant's ownership and enjoyment of the lot covered by TCT No. 81136 is limited because of the burden of being a member of plaintiff association *the goals and objectives of the association are far greater because they apply to and affect*

the community at large. It can be justified on legal grounds that a person's enjoyment of ownership may be restricted and limited if to do so the welfare of the community of which he is a member is promoted and attained. These benefits in which the defendant participates more than offset the burden and inconvenience that he may suffer.[142] (Emphasis supplied)

WHEREFORE, this Court **AFFIRMS** the Court of Appeals' July 5, 2013 Decision and February 12, 2014 Resolution in CA-G.R. SP No. 115198. This Court finds that Diamond Homeowners & Residents Association's "No Sticker, No ID, No Entry" Policy is valid and consistent with law and jurisprudence.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr., Hernando,* and *Inting, JJ.,* concur.

SECOND DIVISION

[G.R. No. 215344. June 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EVANGELINE GARCIA *y* SUING,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.

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[142] 256 Phil. 343, 353 (1989) [Per *J.* Gutierrez, Jr., Third Division].

2. ID.; ID.; CHAIN OF CUSTODY; PROCEDURE TO FOLLOW.— In cases involving dangerous drugs, the State bears not only the burden of proving the elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded. In all drugs cases, therefore, 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 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. In this connection, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation**; and (2) **the physical inventory and photographing must be done in the presence of** (a) **the accused or his/her representative or counsel,** (b) **an elected public official**, (c) **a representative from the media**, and (d) **a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof**.

3. ID.; ID.; ID.; REQUISITE FOR THE APPREHENDING TEAM TO CONDUCT A PHYSICAL INVENTORY OF THE SEIZED ITEMS AND THE PHOTOGRAPHING OF THE SAME *IMMEDIATELY AFTER SEIZURE AND CONFISCATION*; DISCUSSED.— Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in**

the presence of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made **immediately after, or at the place of apprehension**. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

4. **ID.; ID.; ID.; ID.; PRESENCE OF REQUIRED WITNESSES AT THE TIME OF THE INVENTORY IS MANDATORY; RULE IN CASE OF NON-COMPLIANCE.—** [U]nder the Section 21 of RA 9165, the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, **all of whom shall be required to sign the copies of the inventory and be given a copy thereof**. x x x The Court has stressed that the presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. x x x It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses. As the Court held in *People v. De Guzman*, "[t]he justifiable ground for non-compliance must be proven as a fact.

5. ID.; ID.; ID.; ID.; ID.; ID.; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED.— **The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused**. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. x x x **In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165**. x x x [W]hile the RTC and CA were correct in stating that denial is an inherently weak defense, it grievously erred in using the same principle to convict Garcia. Both courts overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent. And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases: to prove the guilt of the accused beyond reasonable doubt and to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction. It is worth emphasizing that ***this burden of proof never shifts***. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent. In this connection, the prosecution therefore, in cases involving dangerous drugs, **always** has the burden of proving compliance with the procedure outlined in Section 21.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by the accused-appellant Evangeline Garcia *y* Suing (Garcia), assailing the Decision[2] dated May 30, 2014 (assailed Decision) of the Court of Appeals[3] (CA) in CA-G.R. CR-H.C. No. 05950, which affirmed the Decision[4] dated November 26, 2012 rendered by the Regional Trial Court of San Fernando City, La Union, Branch 29 (RTC) in Criminal Case No. 8258 entitled *People of the Philippines v. Evangeline Garcia y Suing*, finding Garcia guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts and Antecedent Proceedings

On January 26, 2009, an Information[6] was filed against Garcia, the accusatory potion of which reads as follows:

That on or about the 8th day of January 2009 in the City of San Fernando, Province of La Union, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, **for and in consideration of the sum of ₱500.00** did then and there wilfully, unlawfully and feloniously, sell and deliver **one (1) plastic sachet containing ZERO POINT ZERO ONE HUNDRED FORTY NINE (0.0149) gram of Methamphetamine hydrochloride**, a dangerous drug,

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[1] See Notice of Appeal dated June 23, 2014, *rollo*, pp. 19-21.

[2] *Id*. at 2-18. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring.

[3] Eleventh Division.

[4] CA *rollo*, pp. 44-50. Penned by Presiding Judge Asuncion F. Mandia.

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

[6] Records, p. 1.

to **IO1 LANIBELLE C. ANCHETA** who posed as [a] buyer thereof using marked money, **ONE (1) piece of FIVE HUNDRED [P]eso bill bearing a [S]erial No. XW759507** without the necessary authority or permit from the proper government authorities.

CONTRARY TO LAW.[7] (Emphasis supplied)

Upon arraignment on February 17, 2009, Garcia pleaded not guilty to the charge.[8] On May 11, 2009, the prosecution filed a Motion for Leave of Court to Amend the Information and Admit Amended Information,[9] alleging that there was a typographical error in the Information, with the alleged incident occurring on January 9, 2009 and not January 8, 2009. On May 21, 2009, the RTC issued an Order[10] granting the aforesaid Motion, allowing the amendment of the Information to adjust the date of the commission of the crime from January 8, 2009 to January 9, 2009. Thereafter, the pre-trial and trial ensued. The prosecution's version, as summarized by the CA, is as follows:

The evidence for the prosecution as culled from the testimonies of IO1Lanibelle Ancheta (IO1 Ancheta) and IO2 Jojo Gayuma (IO2 Gayuma)[,] both members of the PDEA, formerly assigned at the PDEA Regional Office l, Camp Diego Silang, Carlatan, San Fernando, La Union, is as follows: On January 8, 2009[,] at about 8:00 P.M., a confidential informant (CI) went to their Office and reported to IO1 Ricky Ramos [(IO1 Ramos)], the duty officer, about the illegal drug activity of one [Garcia] in Ilocanos Norte, San Fernando City, La Union. The CI further told them that [Garcia] sells drugs only during midnight and that he could accompany their agents to the house of [Garcia]. Their Regional Director[,] Roberto S. Opena[,] was informed about the presence of the CI and upon verification from the Intelligence Section that [Garcia] is listed in their Order of Battle, organized a team to conduct a buy-bust operation with IO1 Ancheta as the *poseur* buyer, IO[2] Gayuma as her back-up, and five (5) other members as perimeter back-up. IO1 Ancheta prepared the buy-bust money

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[7] *Id.*

[8] CA *rollo*, p. 44.

[9] Records, pp. 63-64.

[10] *Id.* at 67. Penned by Presiding Judge Robert T. Cawed.

consisting of a ₱500 bill marked it with her initials 'LCA' which stands for Lanibelle C. Ancheta (Exhibits 'C' and 'C-1'), photocopied it and recorded it in their logbook.

At about 12:45 A.M. of January 9, 2009, the team, together with the CI[,] proceeded to Ilocanos Norte on board their service vehicle. Upon reaching the place, they parked their vehicle along Lete Street and Bonifacio Street, which is about 40 meters away from the house of [Garcia]. IO1 Ancheta and IO[2] Gayuma[,] together with the CI[,] alighted from the vehicle and proceeded to the house of [Garcia]. They saw [Garcia] standing outside her house so they approached her and the CI introduced IO1 Ancheta to her[,] saying in Ilocano: '*Manang* Vangie, *addatoy dan, gumatang da ti shabu*,[']meaning - 'Manang Vangie[,] here they are, the interested buyers of *shabu*.['] [Garcia) asked IO1 Ancheta how much she would buy, to which she answered '₱500 worth of *shabu*.['] [Garcia] asked for the money and after IO1 Ancheta handed her the ₱500 buy bust money, [Garcia] in turn gave IO1 Ancheta one transparent plastic sachet containing *shabu*. Immediately thereafter, they arrested [Garcia] and apprised her of her constitutional rights. IO1 Ancheta searched [Garcia] and recovered from her the ₱500 bill. IO1 Ancheta marked the plastic sachet (Exhibit 'B') with the marking A- 1LCA (Exhibit 'B-1') and likewise prepared the Certificate of Inventory (Exhibit 'E') outside the house of [Garcia], in the presence of Rico Valdez [(Valdez)] of DZNL and Danilo Nisperos [(Nisperos)], a Barangay Kagawad of Sevilla, San Fernando City who affixed their signatures on the document (Exhibits 'E-2' and 'E-3'). They took photographs of the evidence (Exhibits 'F' and 'F-1') then proceeded to their office at Camp Diego Silang, Carlatan, San Fernando City, La Union[,] where IO1 Ancheta prepared the Booking Sheet and Arrest Report (Exhibit 'D') and a Request for Laboratory Examination (Exhibit 'G') which was signed by Atty. Marvin Tabares, he being the higher ranking officer in their office. After preparing their Affidavit of Arrest (Exhibit 'H'), they brought the confiscated items to the PNP Crime Laboratory where the items were received by the duty officer PO1 Nilo as shown by his signature on the request (Exhibit 'G-1'). The result of the laboratory examination given to them by the said office was that the specimen yielded positive result for the presence of methamphetamine hydrochloride. x x x[11]

On the other hand, the version of the defense, as likewise summarized by the CA, is as follows:

[11] *Rollo*, pp. 4-5.

The evidence for the accused anchors mainly on the testimonies of [Garcia] herself and Gil Garado, a nephew of [Garcia's] husband.

[Garcia] identified the Counter-Affidavit with Motion to Dismiss she executed in relation to this case (Exhibit '1'). She denied the allegations of the prosecution witness that a buy bust operation was conducted in their house on January 9, 2009. Her version of the incident is as follows: She lives in the house of her in-laws at [N]o. 327 Ilocanos Norte[,] San Fernando City, La Union[,] which is a 2-storey house with 4 rooms downstairs and 5 rooms upstairs. Among the occupants of the house are Catherine Garcia, Freddie Garcia and the other siblings of her husband. On January 9, 2009 at 1:00 P.M., she was sleeping inside one of the rooms downstairs when 5 armed male members of the PDEA barged into their room and searched their *dura* box and other belongings. There was no female person in the group. They asked them what they were searching for but they did not answer. Her 3 [c]hildren were with her at that time but they were locked up by the PDEA agents in one of the rooms. The other occupants of the house went out of their rooms but whenever they peep[ed], they were threatened by the PDEA agents with their guns. The search lasted for five minutes but the searchers did not find anything. After the search, she was dragged outside the house and was boarded into a van[,] then brought to Camp Diego Silang. There is no truth to the claim that she was selling *shabu* after midnight because in their *barangay*, strangers are not allowed to enter beyond 8:00 P.M. and the place is totally secured.

x x x x x x x x x

Gil Garado testified that [Garcia] is his aunt because his mother and the husband of [Garcia] are siblings. He and his family live on the second floor of the house where [Garcia] also lives. On January 9, 2009, at 1 o'clock A.M., he and his sisters Charlene Garado and Christine Joy Oyando were inside their room when he heard a noise coming from the first floor and when he peeped, he saw [Garcia] being dragged from her room to the door of the house by two male PDEA agents. They were about 5 to 7 male persons then who were wearing shirts with the markings PDEA on the front. [Garcia] was shouting [and] asking for help but they were afraid to get near them because they were armed. He immediately went up because he was afraid to get involved. He identified the Joint Affidavit which he and his sister Charlene May Garado executed (Exhibit '2').[12]

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

The Ruling of the RTC

After trial on the merits, in its Decision dated November 26, 2012, the RTC convicted Garcia of the crime charged. The dispositive portion of the said Decision reads:

> **WHEREFORE**, finding the accused Evangeline Garcia *y* Suing GUILTY beyond reasonable doubt of the crime charged, she is hereby sentenced to life imprisonment and to pay a fine of five hundred thousand pesos (PHP500,000.00) without subsidiary imprisonment in case of insolvency. The period of detention of the accused should be given full credit.
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> x x x x x x x x x
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> **SO ORDERED**.[13]

According to the RTC, "[a]fter carefully assessing the testimonies of the witnesses for the prosecution and the defense, the court finds the testimonies of the prosecution witnesses credible. IO1 Ancheta and IO2 Gayuma testified convincingly that there was indeed a buy bust operation conducted by them on January 9, 2009 outside the residence of [Garcia] in Ilocanos Norte, San Fernando City, La Union. On the other hand[,] the accused failed to present any convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. The allegation of the accused that IO1 Ancheta was not present at the time of her arrest and instead pointed to one PO3 Abang and one Major De Vera as her arresting officers cannot be given credence in the absence of any showing on the part of IO1 Ancheta and IO2 Gayuma of any ill motive in falsely testifying against her or x x x against PO3 Abang and Major De Vera for arresting her without any case at all. These are serious accusations which could not have been ignored if indeed true."[14]

Aggrieved, Garcia filed an appeal before the CA.

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[13] CA *rollo*, p. 50.

[14] *Id.* at 48.

The Ruling of the CA

In the assailed Decision, the CA affirmed the RTC's conviction of Garcia.

The CA held that the RTC "did not err in finding that the prosecution amply proved all the elements of the sale of the subject drugs. As borne by the records, all the above-mentioned elements were clearly, positively and unequivocally testified upon by the PDEA agent who acted as a *poseur*-buyer, [IO1 Ancheta], and her back-up, [IO2 Gayuma.]"[15]

The CA stressed on the presumption of regularity on the part of the Philippine Drug Enforcement Agency (PDEA) agents who conducted the supposed buy-bust operation, holding that "credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary in suggesting ill-motive on the part of the police officers or deviation from the regular performance of their duties. In this case, there was no evidence showing that the prosecution witnesses[,] IO1 Ancheta and IO[2] Gayuma[,] were impelled by improper motive in testifying against [Garcia] or that they deviated from the regular performance of their duties."[16]

Hence, the instant appeal.

Issue

Stripped to its core, for the Court's resolution is the issue of whether the RTC and CA erred in convicting Garcia for violating Section 5, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. The Court acquits Garcia for failure of the prosecution to prove her guilt beyond reasonable doubt.

Garcia was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA

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[15] *Rollo*, p. 11.

[16] *Id*. at 15.

9165. In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution is required to prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[17]

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.[18] While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,[19] the law nevertheless also requires **strict compliance** with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, 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 to presentation in court for destruction.[20] 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.[21]

In this connection, Section 21, Article II of RA 9165,[22] the applicable law at the time of the commission of the alleged

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[17] *People v. Opiana*, 750 Phil. 140, 147 (2015).

[18] *People v. Guzon*, 719 Phil. 441, 451 (2013).

[19] *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

[20] *People v. Guzon*, *supra* note 18, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

[21] *Id.*, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

[22] The said section reads as follows:

crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation**; and (2) **the physical inventory and photographing must be done in the presence of** (a) **the accused or his/her representative or counsel,** (b) **an elected public official**, (c) **a representative from the media**, and (d) **a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof**.

This must be so because with "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."[23]

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence**

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

[23] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

of the aforementioned required witness, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made **immediately after, or at the place of apprehension**. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[24] In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

Upon careful review of the records of the instant case, **there is serious doubt that the physical inventory of the seized illegal drugs and the photographing of the same were conducted immediately after seizure and confiscation at the place of the apprehension** as required under Section 21 of RA 9165.

According to the Joint Affidavit of Arrest[25] dated January 9, 2009 executed by IO1 Ancheta and IO2 Gayuma, "that inventory and photograph of the items confiscated from the subject was made at the place of arrest."[26]

On cross examination, IO1 Ancheta confirmed that the place of arrest was **outside the house of Garcia** and that the inventory immediately took place thereat:

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[24] IRR of RA 9165, Art. II, Sec. 21(a).

[25] Records, pp. 12-13.

[26] *Id*. at 13.

Q You mentioned that after her arrest she was taken at your office, is that correct?

A After the inventory at the place of arrest[,] ma'am.

Q At the place of arrest which is outside the house of Evangeline Garcia?

A Yes[,] ma'am.

Q In front of their front door[,] that was the place of inventory?

A In front of their house[,] ma'am.

Q You did not enter their house, is that correct[,] madam witness?

A No[,] ma'am.[27]

IO1 Ancheta further clarified that the inventory, which was supposedly done outside the house of Garcia, was specifically conducted **in the yard of the said house** and that **the items confiscated were placed on the cemented floor outside Garcia's house during the inventory**:

Q Where did you put the items? You were just holding it, the items[,] while you were conducting the inventory[?] [Y]ou did not place them on top of a table or something?

A I put it on the floor[,] ma'am.

Q The floor outside the house[,] madam witness?

A Yes[,] ma'am.

Q That is a cemented floor?

A Yes[,] ma'am.

x x x x x x x x x

Q You were just on the vicinity, on the yard of the house of Evangeline Garcia?

A Yes[,] ma'am.[28]

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[27] TSN, December 13, 2010, p. 5.

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

In relation to the foregoing testimony, the prosecution offered into evidence a mere black and white printed copy of a photograph, marked as the prosecution's Exhibit "F."[29] **According to the prosecution, the said photograph allegedly depicts the exact moment when the inventory was supposedly being conducted at the place of arrest**.

***However*, upon simple perusal of the said photograph, it appears that the supposed taking of inventory was not conducted outside the house of Garcia, as alleged by the prosecution**. The photograph depicts three persons situated **inside a room enclosed by a wall**. The photograph also shows that **the two women depicted therein were sitting on a furniture situated in this room**. **The photograph does not show that the seized items were placed on the cemented floor**, as testified by IO1 Ancheta. **Instead, the photograph shows a small table or cabinet being utilized by the PDEA agents**.

Simply stated, the photograph submitted by the prosecution does not show that the alleged inventory was conducted at the yard outside the house of Garcia, the alleged place of arrest.

In fact, the counsel of the accused, Atty. Loida Martirez, raised the matter during the cross examination of IO1 Ancheta, asking the latter why there appears to be a furniture shown in the photograph when it was alleged by the prosecution that the inventory was conducted on the cemented floor of the yard located outside the house of Garcia. The Court then allowed the prosecution to present and identify the originals of the photographs of the alleged inventory so that the prosecution could fully explain how the photograph offered in evidence substantiated the claim that an inventory was conducted immediately after the arrest at the place of such arrest. The prosecution had every opportunity to explain the circumstances surrounding the photograph and present other photographs of the inventory. Curiously, however, the prosecution could not

[29] Records, p. 36.

produce any other copy of the subject photograph. Nor was the prosecution able to provide any other photograph depicting the inventory of the supposed plastic sachet of *shabu* retrieved during the buy-bust operation.[30] It is highly suspicious and doubtful, to say the least, that the prosecution was not able to produce nor present any other photograph depicting the alleged inventory. On the other hand, the sole photograph offered into evidence by the prosecution, marked as Exhibit "F," shows that the supposed inventory was not conducted at the place of Garcia's arrest.

In fact, the Court notices a glaring inconsistency in the testimony of IO1 Ancheta. On direct examination, IO1 Ancheta testified that she was the one who took the photograph of the inventory which was presented into evidence:

Q You took photographs[,] Madam Witness?

A Yes.[31]

However, on cross examination, when asked as to who was in charge of taking photographs of the inventory, IO1 Ancheta offered a different answer:

Q Madam witness[,] there was a picture which you identified a while ago showing you, the accused and another person named Jojo. Now, will you please tell this Honorable Court who was in charged in the taking of pictures during that time?

A One of our team members[,] sir.

Q Could you still recall the name of that member of your team[,] madam witness?

A I can no longer recall his name[,] sir.[32]

Therefore, based on the evidence on record, the Court seriously doubts that the physical inventory of the seized illegal drugs

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[30] TSN, March 14, 2011, p. 6.

[31] TSN, November 22, 2010, p. 6.

[32] TSN, March 14, 2011, pp. 11-12.

and the photographing of the same were conducted immediately after seizure and confiscation at the place of the apprehension, as mandated by Section 21 of RA 9165.

Even assuming that convincing evidence was produced by the prosecution substantiating the claim that an inventory was conducted immediately after the apprehension of Garcia at the place of arrest, the prosecution's main witness, IO1 Ancheta, testified that **none of the witnesses required under Section 21 of RA 9165 was present at the time of the seizure and apprehension** and that only Garcia; Valdez, a media representative; and Nisperos, a *Brgy. Kagawad* of *Brgy*. Sevilla were present during the conduct of the inventory. There was **no representative from the DOJ.** Further, **the elected public official and representative from the media appeared and participated only after the transaction occurred**. As admitted by IO1 Ancheta under oath in open court:

Q Who were present Madam Witness when you prepared that Certificate of Inventory?

A The subject Evangeline Garcia, media representative and elected *Barangay* Official.

Q Do you mean to say that the media representative w[as] present while you were transacting with Evangeline Garcia?

A No maam[,] after the transaction.

Q What about this *Barangay* Official[,] Madam Witness[,] was he also present or was he present while you are having transaction with Evangeline Garcia?

A No maam.[33]

None of the prosecution witnesses offered any explanation as to why a representative from the DOJ was not present in the buy-bust operation conducted against Garcia. The prosecution did not also address the issue in their pleadings, and the RTC and the CA instead had to rely only on the presumption that the police officers performed their functions in the regular manner to support Garcia's conviction.

[33] TSN, November 22, 2010, p. 5.

Further, there is serious doubt that the inventory was conducted in the presence of Garcia and/or her representative or counsel.

To reiterate, under the Section 21 of RA 9165, the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, **all of whom shall be required to sign the copies of the inventory and be given a copy thereof**.

In the Certificate of Inventory,[34] offered into evidence by the prosecution as Exhibit "E," it is not disputed that **only Valdez and Nisperos signed the same**. **It must be stressed that the inventory was not signed by Garcia nor her counsel as required by Section 21 of RA 9165**.

The Court has stressed that the presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[35] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People vs. Mendoza*,[36] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and

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[34] Records, p. 34.

[35] G.R. No. 228890, April 18, 2018.

[36] 736 Phil. 749 (2014).

thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[37]

It is important to point out that the apprehending team in this case had more than ample time to comply with the requirements established by law. As IO1 Ancheta herself testified, Garcia had already been previously placed in the PDEA's so-called "[O]rder of [B]attle."[38] Hence, the PDEA had already known for some time that Garcia was suspected of selling illegal drugs.

Further, on January 8, 2009, the civilian informer made the report on Garcia's alleged selling of *shabu* at PDEA's Regional

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[37] *People v. Tomawis*, *supra* note 35, at 11-12.

[38] TSN, November 22, 2010, p. 14.

Office 1, Camp Diego Silang, Carlatan, San Fernando City, La Union on or about 8:00 P.M. The team proceeded to execute the buy-bust operation at about 12:45 A.M. of January 9, 2009. Meaning, the team had almost five (5) hours to contact and assemble all the required witnesses. **Thus, they could have complied with the requirements of the law had they intended to — that is, assuming there really was a buy bust**. However, the apprehending officers in this case did not exert even the slightest of efforts to secure the complete attendance of the required witnesses. In fact, the required witnesses present — the elected official and the media representative — were only called in after Garcia had already been apprehended. Worse, the prosecution — during the trial — failed to show or offer any explanation for police officers' deviation from the law.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[39] The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.[40] As the Court held in

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[39] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

[40] *People v. Almorfe*, 631 Phil. 51, 60 (2010); *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Villanueva*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Dionisio*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 9; *People v. Sagauinit*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Descalso*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6.

People v. De Guzman,[41] "[t]he justifiable ground for non-compliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist."[42]

Moreover, courts cannot rule that the presence of the media representative and the public official constitutes substantial compliance with the requirements of RA 9165. To emphasize, Section 21 of RA 9165 is unequivocal in its requirement: that the inventory must be done "**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**."[43] The law is plain and clear. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[44]

In the case at hand, as already explained, not only was the representative of the DOJ absent; Garcia or her representative/counsel did not sign copies of the inventory. Further, the photograph supposedly capturing the inventory does not show that the inventory was conducted immediately after arrest at the place of the apprehension.

It bears stressing that the prosecution has the burden of (1) proving the police officers' compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,[45]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

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[41] 630 Phil. 637 (2010).

[42] *Id.* at 649.

[43] Emphasis and underscoring supplied.

[44] *Relox v. People*, G.R. No. 195694, June 11, 2014, p. 4 (Unsigned Resolution).

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

(1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention;** or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**[46] (Emphasis in the original and underscoring supplied)

In this connection, it was an error for both the RTC and the CA to convict Garcia by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers. **The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused**.[47] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[48] As the Court, in *People v. Catalan*,[49] reminded the lower courts:

Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.

We hold that both lower courts committed gross error in relying on the presumption of regularity.

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[46] *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[47] *People v. Mendoza*, *supra* note 36, at 769 (2014).

[48] *People v. Catalan,* 699 Phil. 603, 621 (2012).

[49] *Id*.

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[50] (Emphasis supplied)

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.

What further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM), the conduct of buy-bust operations requires the following:[51]

CHAPTER V

x x x x x x x x x

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[50] *Id.*

[51] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

ANTI-DRUG OPERATIONAL PROCEDURES

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V. SPECIFIC RULES

x x x x x x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation — in the conduct of buy-bust operation, the following are the procedures to be observed:

a. Record time of jump-off in unit's logbook;

b. Alertness and security shall at all times be observed[;]

c. Actual and timely coordination with the nearest PNP territorial units must be made;

d. Area security and dragnet or pursuit operation must be provided[;]

e. Use of necessary and reasonable force only in case of suspect's resistance[;]

f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;

g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;

h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arm[']s reach;

i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;

j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;

k. Take actual inventory of the seized evidence by means of weighing and/or physical counting, as the case may be;

l. Prepare a detailed receipt of the confiscated evidence for issuance to the possessor (suspect) thereof;

m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence with their initials and also indicate the date, time and place the evidence was confiscated/seized;**

n. **Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera;** and

o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination. (Emphasis supplied)

The Court has ruled in *People v. Zheng Bai Hui*[52] that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

At this juncture, it is well to point-out that while the RTC and CA were correct in stating that denial is an inherently weak defense, it grievously erred in using the same principle to convict Garcia. Both courts overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.[53] And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases: to prove the guilt of the accused beyond

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[52] 393 Phil. 68, 133 (2000).

[53] CONSTITUTION, Art. III, Sec. 14, par. (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

reasonable doubt and[54] to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[55] Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that ***this burden of proof never shifts***. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

In this connection, the prosecution therefore, in cases involving dangerous drugs, **always** has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:[56]

> x x x We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. **The State must fully establish that for us.** If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.
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> **Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the**

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[54] The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. (RULES OF COURT, Rule 133, Sec. 2)

[55] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[56] 745 Phil. 237, 250-251 (2014).

Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime. (Emphasis and underscoring supplied)

To stress, the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always be advised to do so within the bounds of the law.[57] Without the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachet of *shabu* that was evidence herein of the *corpus delicti*. Thus, this adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.[58]

Concededly, Section 21 of the IRR of RA 9165 provides that "noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items." For this provision to be effective, however, the prosecution must first (1) recognize any lapses on the part of the police officers and (2) be able to justify the same.[59] **In this case, the prosecution neither recognized, much less tried to justify, its deviation from the procedure contained in Section 21, RA 9165.**

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[57] *People v. Ramos*, 791 Phil. 162, 175 (2016).

[58] *People v. Mendoza*, *supra* note 36, at 764.

[59] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.[60] As the Court explained in *People v. Reyes*:[61]

> Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism**. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal. x x x[62] (Emphasis supplied)

In *People v. Umipang*,[63] the Court dealt with the same issue where the police officers involved did not show any genuine effort to secure the attendance of the required witness before the buy-bust operation was executed. In the said case, the Court held:

> Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF

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[60] See *People v. Sumili*, 753 Phil. 342 (2015).

[61] 797 Phil. 671 (2016).

[62] *Id.* at 690.

[63] 686 Phil. 1024 (2012).

adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21(1) of R.A. 9165. **A sheer statement that representatives were unavailable — without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to do so.**[64] (Emphasis and underscoring supplied)

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, Garcia must perforce be acquitted.

As a final note, Garcia in the instant case, despite the blatant disregard of the mandatory requirements provided under RA 9165, has been made to suffer incarceration for over a decade. While the Court now reverses this injustice by ordering the immediate release of Garcia, there is truth in the time-honored precept that *justice delayed is justice denied.* Thus, the Court heavily enjoins the law enforcement agencies, the prosecutorial service, as well as the lower courts, to strictly and uncompromisingly observe and consider the mandatory requirements of the law on the prosecution of dangerous drugs cases.

The Court believes that the evil of illegal drugs must be curtailed with decisiveness and resolve. Nonetheless, the sacred and indelible right to due process enshrined under our Constitution, fortified under statutory law, should never be sacrificed for

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[64] *Id.* at 1052-1053.

the sake of convenience and expediency. Otherwise, the malevolent mantle of the rule of men dislodges the rule of law. In any law-abiding democracy, this cannot and should not be allowed.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated May 30, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05950 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Evangeline Garcia *y* Suing is **ACQUITTED** of the crime charged on the ground of reasonable doubt and is **ORDERED IMMEDIATELY RELEASED** from detention unless she is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

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

Reyes, J. Jr., *J.* on leave.

SECOND DIVISION

[G.R. No. 216941. June 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIO URBANO TUBERA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— Tubera was charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165. In order to convict a person of the crime charged, the prosecution must prove: 1) the identity of the buyer, the seller, and the object of the consideration, and 2) the delivery of the thing sold and the payment therefor. In *People v. Ilagan*, the Court explained: In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded. x x x.

2. ID.; ID.; SECTION 21 OF RA 9165; PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED DRUGS; THE PRESENCE OF THE WITNESSES FROM THE DEPARTMENT OF JUSTICE (DOJ), MEDIA, AND FROM PUBLIC ELECTIVE OFFICE IS REQUIRED AT THE TIME OF THE CONDUCT OF THE PHYSICAL INVENTORY OF THE SEIZED ITEMS AT THE PLACE OF SEIZURE; RATIONALE FOR THE THREE-WITNESS REQUIREMENT.— In *People v. Tomawis*, the Court further held that the presence of the three witnesses is required at the time of the conduct of the physical inventory of the seized items at the place of seizure, *i.e.*, at the time of the warrantless arrest. The rationale for said requirement was discussed in this wise x x x. The presence of the witnesses

from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused. x x x.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE MANDATORY REQUIREMENTS UNDER JUSTIFIABLE GROUNDS, PROVIDED THAT THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER/TEAM, SHALL NOT RENDER VOID AND INVALID SAID SEIZURE AND PROVIDED, FURTHER THAT THE PROCEDURAL LAPSES AND/OR DEVIATIONS COMMITTED BY THE POLICE OFFICERS MUST FIRST BE RECOGNIZED BY THE PROSECUTION AND JUSTIFIED OR EXPLAINED.— Although the last sentence of Section 21(1) provides that "non-compliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seizure items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items," the Court in *People v. Reyes* explained that: 1) the procedural lapses and/or deviations committed by the police officers must first be recognized by the prosecution and 2) the said lapses and/or deviations must be justified or explained. Otherwise, the chain of custody, and therefore the very integrity and evidentiary value of the *corpus delicti* will be compromised, resulting in the acquittal of the accused.

4. ID.; ID.; ID.; ID.; AN ACCUSED MAY NOT BE CONVICTED ON THE BASIS OF THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES SIMPLY BECAUSE HE OR SHE IS UNABLE TO

PRESENT PROOF OF ILL MOTIVE AND ESPECIALLY WHEN THERE ARE IRREGULARITIES COMMITTED BY POLICE OFFICERS IN THE SEIZURE OF THE DANGEROUS DRUGS AND THE ARREST OF THE ACCUSED.— It bears emphasis that the prosecution bears the burden of proving strict compliance with the chain of custody because the accused has the constitutional right to be presumed innocent until the contrary is proved. As a result of this presumption, an accused may not be convicted on the basis of the supposed presumption of regularity in the performance of duties simply because he or she is unable to present proof of ill motive and especially when there are irregularities committed by police officers in the seizure of the dangerous drugs and the arrest of the accused. In *People v. Malana*, the Court explained x x x. Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** x x x. **Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policeman because the records were replete with indicia of their serious lapses x x x. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.**

5. ID.; ID.; ID.; ID.; THE PROSECUTION ALWAYS BEARS THE BURDEN OF PROVING COMPLIANCE WITH THE REQUIREMENTS AND PROCEDURES MANDATED BY SECTION 21 OF RA 9165, AND FAILURE TO STRICTLY ADHERE THERETO WILL NOT ONLY RENDER THE SAVING CLAUSE UNDER SECTION 21 INOPERATIVE, UNLESS THE PROSECUTION RECOGNIZES THE PROCEDURAL LAPSES COMMITTED BY THE POLICE OFFICERS AND SUFFICIENTLY JUSTIFIES THE SAME, BUT WILL ALSO PREVENT THE PRESUMPTION

OF REGULARITY FROM ARISING.— Police officers are mandated to strictly comply with the requirements and procedures mandated by Section 21 of RA 9165. This includes the requirement that: 1) the seized items be inventoried and photographed immediately after seizure or confiscation at the place of apprehension unless otherwise impracticable; (2) the physical inventory and photographing be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), also at the place of apprehension. In all cases involving dangerous drugs, the prosecution always bears the burden of proving compliance with the said procedure. Failure to strictly adhere to the procedure outlined under Section 21 will not only 1) render the saving clause under Section 21(a) inoperative, unless the prosecution recognizes the procedural lapses committed by the police officers and sufficiently justifies the same, but will also 2) prevent the presumption of regularity from arising.

6. ID.; ID.; ID.; ID.; IRREGULARITIES COMMITTED BY MEMBERS OF THE BUY-BUST TEAM AND THEIR FAILURE TO EXPLAIN OR JUSTIFY THE SAME CAST REASONABLE DOUBT AS TO THE IDENTITY AND INTEGRITY OF THE DRUGS SEIZED AND CONSEQUENTLY, REASONABLE DOUBT AS TO THE GUILT OF ACCUSED-APPELLANT.— In the case at bar, the buy-bust team committed several procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drugs. ***First,*** the marking and inventory were not done and the photographs were not taken at the place of apprehension and seizure and no explanation of justification was proffered as to why the same was impracticable. x x x. ***Second***, although the police officers conducted surveillance and casing prior to the conduct of the instant buy-bust operation, the three required witnesses were not present at the time of the seizure and arrest and no explanation or justification was proffered as to why their presence could not be procured. x x x. ***Finally***, no representative from the DOJ was present during the time of the arrest or even during the marking, inventory, and photographing of the seized drugs. Again, no explanation or justification was proffered as to why the presence of a DOJ representative could not be procured. x x x. Evidently, the police officers failed to strictly comply with the mandate of Section 21. The prosecution neither recognized, much less justified,

the many lapses and irregularities affecting the chain of custody. Thus, the RTC and the CA gravely erred in relying on the saving clause under Section 21(1) and on the presumption of regularity in the performance of duties to justify the conviction of Tubera as both were rendered inapplicable by the irregularities committed by the members of the buy-bust team and their failure to explain or justify the same. The aforementioned procedural lapses cast reasonable doubt as to the identity and integrity of the drugs seized and consequently, reasonable doubt as to the guilt of accused-appellant Tubera. In view of the foregoing, Tubera must be acquitted because the prosecution failed to prove the *corpus delicti* of the offense charged.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Mario Urbano Tubera (Tubera) assailing the Decision[2] dated July 31, 2014 (Assailed Decision) of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01341, which affirmed the Decision[3] dated March 30, 2011 of the Regional Trial Court of Ormoc City, Branch 35 (RTC) in Criminal Case No. R-ORM-08-0097-HC, finding Tubera guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"[4] as amended.

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[1] See Notice of Appeal dated September 3, 2014; *rollo*, pp. 17-18.

[2] *Rollo*, pp. 4-16. Penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Gabriel T. Ingles; and Renato C. Francisco concurring.

[3] CA *rollo*, pp. 27-38. Penned by Judge Apolinario M. Buaya.

[4] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE

The Facts

The Information filed against Tubera for violation of Section 5, Article II of RA 9165 reads:

That at about 7:45 o'clock in the evening of May 19, 2008, at Mabini Street, Ormoc City, and within the jurisdiction of this [H]onorable [C]ourt, the above-named accused: MARIO URBANO TUBERA, did then and there wilfully, unlawfully and feloniously sell one (1) pack heat-sealed transparent sachet filled with white crystalline substance, worth [₱500.00] to Agent III Levi S. Ortiz of the PDEA, Region VIII, Palo, Leyte, who acted as the poseur-buyer during a buy-bust operation conducted by elements of the PDEA, Region VIII, Palo, Leyte led by Atty. Gil T. Pabilona, and when a laboratory examination was conducted on said sealed transparent sachet containing white crystalline substance with a weight of point zero eight gram (0.08) gram by a Forensic Chemical Officer at PNP, Regional Crime Laboratory Office 8, at Camp Kangleon, Palo, Leyte, the same gave POSITIVE results to the test for the presence of Methylamphetamine Hydrocholride, a dangerous drug, without the necessary license or permit to sell, a dangerous drug.[5]

During the arraignment, Tubera pleaded not guilty.[6] Thereafter, pre-trial and trial on the case ensued.[7] The CA summarized the version of the prosecution as follows:

On April 14, 2008, after persistent reports of the alleged drug trading activities of accused-appellant Mario Urbano Tubera, Investigating Agent III Levi S. Ortiz, of the Philippine Drug Enforcement Agency, filed a pre-operation report with his office at Regional Office VIII, Palo, Leyte for the conduct of surveillance, casing and buy-bust operation against accused-appellant.

After several surveillance and casing operations were conducted in *Barangay* Mabini, Ormoc City, it was confirmed by the operatives

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DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES, approved on June 7, 2002.

[5] *Rollo*, p. 5. Records, p. 1.

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

[7] *Id*.

of the PDEA that indeed, accused-appellant was one of those individuals engaging in the illicit drug trade in the area.

Sometime around 7:45 P.M. on May 19, 2008, Investigating Agent III Levi S. Ortiz, acting as team leader and poseur-buyer, together with the other members of his team, arrived at *Barangay* Mabini, Ormoc City. There, they were met by their confidential informant who was to accompany agent Ortiz during the buy-bust operation.

After several minutes of casing the area, the confidential agent was able to spot accused-appellant. Together with agent Ortiz, the confidential agent then approached accused-appellant and engaged him in a conversation. During their talk, the confidential agent informed accused-appellant Mario Urbano Tubera of their desire to purchase *shabu*.

Suspicious about agent Ortiz however, accused-appellant asked from the confidential agent whether the former could be trusted. The confidential agent then answered in the affirmative.

Wary, however, of agent Ortiz, accused-appellant beckoned the pair to follow him into the interior portion of the *barangay*. After walking some fifteen meters through a narrow footpath, accused-appellant pulled out from his pocket a plastic container. He then positioned himself into one of the dimly lit corners of the pathway and demanded from the pair, the money for the *shabu*. Agent Ortiz then handed accused-appellant Tubera the five hundred peso bill he had pre-marked and blottered at the PDEA office.

Upon receipt of the money, accused-appellant then pocketed it and opened the plastic container, which contained several packets containing white crystalline substance, and handed one packet to agent Ortiz.

While the whole transaction was going on, an unidentified person hovered around the group and acted as a lookout for accused-appellant. Several inhabitants, also of the area, were also keenly observing the transaction.

After agent Ortiz received the plastic packet, he immediately announced his identity and authority and arrested accused-appellant Mario Urbano Tubera. While he was arresting accused-appellant, however, the latter was able to toss the plastic container he was carrying to his lookout who immediately scampered away into the maze of houses inside the interior portion of the *barangay*.

After accused-appellant was secured, and the marked money was retrieved from his possession, the PDEA agents immediately left the area and proceeded to their office at Baras, Palo, Leyte. Enroute, the purchased packet as well as the marked money was in the possession of agent Ortiz.

At the PDEA Regional Office 8, the purchased packet was marked by agent Ortiz with the initial "MT". Photographs and an inventory were also made in the presence of an elected *barangay* official, a member of the media and accused-appellant.

Subsequently, the purchased packet, together with a letter request for its laboratory examination, was delivered by police officer Mataro and agent Ortiz to the PNP Regional Crime Laboratory Office 8 and Camp Ruperto Kangleon, Palo[,] Leyte.

On May 20, 2008, the PNP Regional Crime Laboratory Office 8 released Chemistry Report No. D-099-2008 finding the specimen submitted by the PDEA bearing the mark "MT" to be positive for the presence of methamphetamine (sic) hydrochloride, a dangerous drug.[8]

On the other hand, the CA summarized Tubera's version of the facts as follows:

In his defense, accused-appellant Mario Urbano Tubera together with his brother-in-law, Bobby Asis, took the witness stand and declared that around 7:45 P.M. on May 19, 2008, they were having a round of drinks inside the house of one of their friends in *Barangay* Mabini, District 4, Ormoc City, when elements from the Philippine Drug Enforcement Agency suddenly arrested accused-appellant. They insist that no buy-bust operation ever took place and that the PDEA officers merely ganged up on accused-appellant, pointed their guns at him and his brother-in-law, and then immediately brought accused-appellant inside their white van and then brought him to their office at Tacloban City. Accused-Appellant concludes that inside the office of the PDEA, he was surprised to see one sachet of *shabu* that was being inventoried and photographed by the officers as having been recovered from accused-appellant during an alleged buy-bust operation.[9]

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

[9] *Id.* at 7-8.

Ruling of the RTC

After trial on the merits, the RTC, in its Decision[10] dated March 30, 2011 convicted Tubera of the crime charged. The dispositive portion of the said Decision stated:

> **WHEREFORE**, finding the evidence of the Prosecution satisfying that degree of moral certainty, accused MARIO URBANO TUBERA is found Guilty beyond reasonable doubt of having violated Section 5, Article II of Republic Act No. 9165 as set forth in the information filed in this case. He is therefore sentenced to pay a fine of ₱500,000.00 and to undergo life imprisonment pursuant to law. He is however, credited with his preventive imprisonment if he is entitled to any.
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> x x x x x x x x x
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> SO ORDERED.[11]

The RTC held that the prosecution sufficiently established the elements of the crime charged.[12] As to compliance with Section 21 of RA 9165, the RTC held that although the marking, inventory, and photographing of the dangerous drugs were done at the police station, the integrity and evidentiary value of the seized items were preserved as Investigating Agent III Levi S. Ortiz (Agent Ortiz) had possession and control of the same from the time it was confiscated up to the time it was submitted to the laboratory for examination.[13] Thus, the failure to strictly comply with Section 21 was not fatal to the case.[14]

Aggrieved, Tubera appealed to the CA.

Ruling of the CA

In the Assailed Decision, the CA affirmed the conviction of Tubera under Section 5 of RA 9165.[15] The CA gave more

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[10] CA *rollo*, pp. 27-38.

[11] *Id.* at 37-38.

[12] *Id*. at 34.

[13] *Id.* at 35-36.

[14] *Id*. at 35.

[15] *Rollo*, p. 16.

credence to the testimony of Investigating Agent Ortiz, which it considered as candid, simple, and straightforward.[16] As regards compliance with Section 21 of RA 9165, the CA held that the marking of the dangerous drugs at the police station does not automatically impair the integrity of the chain of custody as long as the integrity and evidentiary value of the seized items have been preserved.[17] In this case, the CA found that every link in the chain of custody, from the purchase of the seized drug to its eventual surrender to the trial court was duly accounted for despite the procedural lapses.[18] Further, the CA stated that Tubera failed to rebut the presumption of regularity, considering that he failed to present any proof of ill motive on the part of the arresting officers.[19] The CA thus concluded that the element of *corpus delicti* in the prosecution for illegal sale of dangerous drugs was established beyond reasonable doubt.[20]

Hence, the instant appeal.

Issue

Whether the RTC and the CA erred in convicting Tubera of the crimes charged.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit Tubera as the prosecution failed to prove his guilt beyond reasonable doubt.

Tubera was charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165. In order to convict a person of the crime charged, the prosecution must prove: 1) the identity of the buyer, the seller, and the object of the

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[16] *Id*. at 12.

[17] *Id*. at 14.

[18] *Id*. at 14-15.

[19] *Id*. at 13.

[20] *Id*. at 15.

consideration, and 2) the delivery of the thing sold and the payment therefor.[21]

In *People v. Ilagan*,[22] the Court explained:

> In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.
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> In all drugs cases, therefore, 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 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 drugs is established with the same unwavering exactitude as that requisite to make a finding of guilt.
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> In this connection, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. **The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) x x x the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.**
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> This must be so because with "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady

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[21] *People v. Opiana*, 750 Phil. 140, 147 (2015).

[22] G.R. No. 227021, December 5, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64800>.

characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."

As stated, Section 21 of RA 9165 requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witnesses**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means **that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.** In this connection, this also means that **the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately done at the place of seizure and confiscation —a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.[23]

In *People v. Tomawis*,[24] the Court further held that the presence of the three witnesses is required at the time of the conduct of

[23] *Id*. Citations omitted. Emphasis and underscoring supplied.

[24] G.R. No. 228890, April 18, 2018, accessed at <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64241>.

the physical inventory of the seized items at the place of seizure, *i.e.*, at the time of the warrantless arrest. The rationale for said requirement was discussed in this wise:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly at the time of the warrantless arrest. It is at this point in which the presence of the three witnesses is most needed, **as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug.** If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, **the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing**

of the seized and confiscated drugs "immediately after seizure and confiscation.[25]

The foregoing requirements must be strictly complied with. Although the last sentence of Section 21(1) provides that "noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items,"[26] the Court in *People v. Reyes*[27] explained that: 1) the procedural lapses and/or deviations committed by the police officers must first be recognized by the prosecution and 2) the said lapses and/or deviations must be justified or explained. Otherwise, the chain of custody, and therefore the very integrity and evidentiary value of the *corpus delicti* will be compromised, resulting in the acquittal of the accused.[28]

It bears emphasis that the prosecution bears the burden of proving strict compliance with the chain of custody because the accused has the constitutional right to be presumed innocent until the contrary is proved.[29] As a result of this presumption, an accused may not be convicted on the basis of the supposed presumption of regularity in the performance of duties simply because he or she is unable to present proof of ill motive and especially when there are irregularities committed by police officers in the seizure of the dangerous drugs and the arrest of the accused. In *People v. Malana*,[30] the Court explained:

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[25] *Id*. Citations omitted. Emphasis and underscoring supplied.

[26] RA 9165 as amended by RA 10640, Sec. 1.

[27] 797 Phil. 671 (2016). Also cited in *People v. Malana*, G.R. No. 233747, December 5, 2018, accessed at < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64809>.

[28] *Id.*

[29] CONSTITUTION, Art. III, Sec. 14 (2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[30] *Supra* note 27.

[I]t was error for both the RTC and the CA to convict accused-appellant Malana by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers. **The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused**. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. As the Court, in *People v. Catalan*, reminded the lower courts:

> Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.
>
> We hold that both lower courts committed gross error in relying on the presumption of regularity.
>
> Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence**. Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.
>
> **Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses.** As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. **To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.**[31]

[31] *Id.* Citations omitted. Emphasis and underscoring supplied.

In sum, police officers are mandated to strictly comply with the requirements and procedures mandated by Section 21 of RA 9165. This includes the requirement that: 1) the seized items be inventoried and photographed immediately after seizure or confiscation at the place of apprehension unless otherwise impracticable; (2) the physical inventory and photographing be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), also at the place of apprehension.[32] In all cases involving dangerous drugs, the prosecution always bears the burden of proving compliance with the said procedure.[33] Failure to strictly adhere to the procedure outlined under Section 21 will not only 1) render the saving clause under Section 21(a) inoperative, unless the prosecution recognizes the procedural lapses committed by the police officers and sufficiently justifies the same, but will also 2) prevent the presumption of regularity from arising.[34]

In the case at bar, the buy-bust team committed several procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drugs.

First, the marking and inventory were not done and the photographs were not taken at the place of apprehension and seizure and no explanation or justification was proffered as to why the same was impracticable. On cross examination, Agent Ortiz, who acted as team-leader and poseur buyer, testified:

Q: When you conducted the inventory of seized items[,] where particularly in Ormoc City did you conduct the same?

A: We conducted the same in our office.

Q: Where is your office located?

A: In Palo.

Q: So you have not conducted an inventory right after the incident?

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[32] *People v. Ilagan*, *supra* note 22, and *People v. Tomawis*, *supra* note 24.

[33] *People v. Malana*, *supra* note 27.

[34] *People v. Tomawis*, *supra* note 24.

A: We proceeded immediately to our office.

Q: So it is very clear that no inventory was conducted here in Ormoc City?

A: Yes, mam.[35]

Second, although the police officers conducted surveillance and casing prior to the conduct of the instant buy-bust operation, the three required witnesses were not present at the time of the seizure and arrest and no explanation or justification was proffered as to why their presence could not be procured. Agent Ortiz stated during his direct examination that when he proceeded to the place where the buy-bust operation was to take place, he was only accompanied by his fellow agent and confidential informant.[36] On cross examination, Agent Ortiz testified:

Q: And you will agree with me Mr. Witness that the casing and surveillance was conducted on the very same day wherein you conducted the buy-bust operation, right?

A: Not necessarily, Mam. We conducted the surveillance before the conduct of the operation. But before that we also conducted surveillance in Mabini.

Q: You mean to tell us that prior [to] May 19, 2008 you have been conducting casing and surveillance against the accused?

A: Not [necessarily] the accused but drug personalities in Mabini.

Q: We are talking here about the subject person, the accused in this case Mr. Witness. So my question refers to your operation against him. So my previous question refers to your conduct of the buy bust operation against the accused and again I would like to ask if you will agree with me that the casing and surveillance operation against the accused was conducted at the very same day wherein you conduced your buy-bust operation?

A: As I've said, we were still conducting surveillance and would still come up as one of the [pushers] in that area so we have knowledge of him already.

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[35] TSN, August 19, 2009, p. 36.

[36] *Id*. at 13.

x x x x x x x x x

Q: So there's no other evidence aside from your testimony that you were with another person or you were with your co-agent at that time?

A: Yes, mam.

Q: And in fact when you alleged that the container which contained the other sachets of shabu which was in the possession of the accused at that time was not even recovered because you were only the agent present when the transaction or the buy-bust operation was consummated?

A: Yes, mam.

x x x x x x x x x

Q: You alleged that your inventory was witnessed by the Members of the Media and the Brgy. Officials?

A: Mam.

Q: You will agree with me that they were not around when the transaction transpired?

A: Yes, mam.[37]

Finally, no representative from the DOJ was present during the time of the arrest or even during the marking, inventory, and photographing of the seized drugs. Again, no explanation or justification was proffered as to why the presence of a DOJ representative could not be procured. During direct examination, Agent Ortiz stated:

Q: You said that you brought to the office the items you have recovered?

A: Yes, sir.

Q: What did you do with it?

A: We [made] an inventory of the items which we confiscated before the elected *Barangay* Officials, a representative of the media and the accused.[38]

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[37] *Id*. at 32-37.

[38] *Id*. at 20-21.

Evidently, the police officers failed to strictly comply with the mandate of Section 21. The prosecution neither recognized, much less justified, the many lapses and irregularities affecting the chain of custody. Thus, the RTC and the CA gravely erred in relying on the saving clause under Section 21(1) and on the presumption of regularity in the performance of duties to justify the conviction of Tubera as both were rendered inapplicable by the irregularities committed by the members of the buy-bust team and their failure to explain or justify the same. The aforementioned procedural lapses cast reasonable doubt as to the identity and integrity of the drugs seized and consequently, reasonable doubt as to the guilt of accused-appellant Tubera. In view of the foregoing, Tubera must be acquitted because the prosecution failed to prove the *corpus delicti* of the offense charged.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated July 31, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 01341 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant MARIO URBANO TUBERA is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

FIRST DIVISION

[G.R. No. 220398. June 10, 2019]

SERGIO O. VALENCIA, *petitioner, vs.* **HON. SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; THE SANDIGANBAYAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DENIED PETITIONER'S DEMURRER TO EVIDENCE ON THE GROUND THAT THERE WAS SUFFICIENT EVIDENCE TO HOLD HIM LIABLE FOR MALVERSATION DESPITE THE LACK OF SPECIFIC ALLEGATIONS OF THE FACTUAL DETAILS PERTAINING TO THE CRIME OF MALVERSATION IN THE INFORMATION.— During the pendency of this case, the issue regarding the sufficiency of the allegations in the information for plunder as to include the crime of malversation against herein petitioner was resolved in the April 18, 2017 *En Banc* Resolution of the Court in *Macapagal-Arroyo v. People*. x x x. In addressing the said issue in its April 18, 2017 Resolution, the Court ruled: In thereby averring the predicate act of malversation, the State did not sufficiently allege the aforementioned essential elements of malversation in the information. The omission from the information of factual details descriptive of the aforementioned elements of malversation highlighted the insufficiency of the allegations. Consequently, the State's position is entirely unfounded. The Court judiciously believes that the foregoing ruling squarely applies in the instant petition since one of the issues raised in the latter is the denial of petitioner's constitutional right to due process. He asserts that he cannot be held liable for malversation in view of the insufficiency of the allegations of its elements in the information. It is well to note that the Information subject of the aforementioned cases of Arroyo and Aguas is the very same information under scrutiny in the present case wherein petitioner is their co-accused and where all the incidental matters stemmed and had their origin.

> Hence, there is no reason not to apply the afore-quoted ruling in the present petition since it has reached its finality, per Entry of Judgment, on May 30, 2017. We are therefore not free to disregard it in any related case which involves closely similar factual evidence. Otherwise, we would jettison the doctrine of immutability of final judgment and, further, obviate the possibility of rendering conflicting rulings on the same set of facts and circumstances in the same information. It is therefore apparent that in denying petitioner's Demurrer to Evidence and ruling that there was sufficient evidence to hold him liable for malversation despite the lack of specific allegations of the factual details pertaining to the crime of malversation in the information, respondent *Sandiganbayan* is said to have gravely abused its discretion amounting to lack of jurisdiction.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako Law Offices for petitioner.

Office of the Special Prosecutor for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for *Certiorari* under Rule 65 of the Rules of Court, filed by Sergio O. Valencia (petitioner), assails the April 6, 2015 Resolution[1] of the *Sandiganbayan* (First Division) in Criminal Case No. SB-12-CRM-0174 which denied petitioner's Demurrer to Evidence on the ground that there was sufficient evidence to hold him liable for malversation under Article 217 of the Revised Penal Code (RPC), as well as its September 10, 2015 Resolution[2] which denied petitioner's Motion for Reconsideration subsequently filed for lack of merit.

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[1] *Rollo*, Vol. I, pp. 127-181; penned by Associate Justice Rafael R. Lagos and concurred in by Associate Justices Efren N. De La Cruz and Napoleon G. Inoturan; Associate Justice Rodolfo A. Ponferrada and Alex L. Quiroz, with Concurring and Dissenting Opinion.

[2] *Id.* at 214-226.

Factual Antecedents:

On July 26, 2011, a verified complaint for Plunder, Malversation of Public Funds and Violation of Anti-Graft and Corrupt Practices Act (Republic Act [RA] No. 3019) was filed against petitioner along with Gloria Macapagal-Arroyo (Arroyo), Jose R. Taruc V (Taruc), Raymundo T. Roquero (Roquero), Manuel L. Morato (Morato), Reynaldo Villar (Villar), Eduardo Ermita (Ermita), Rosario Uriarte (Uriarte) and Fatima A. S. Valdes (Valdes), for alleged irregularities in the utilization and additional grant of Confidential and Intelligence Fund (CIF) to the Philippine Charity Sweepstakes Office (PCSO).

On December 2, 2011, another verified complaint for Plunder and Violation of RA 3019 was filed by PCSO's Board Secretary Eduardo G. Araullo against the same individuals together with Benigno Aguas (Aguas) and Nilda B. Plaras (Plaras) in connection with the illegal and fraudulent release, withdrawal, and disbursement of PCSO's CIF in the year 2007 to 2010.

During the time material, Arroyo was then the President of the Philippines, Ermita was the Executive Secretary, Aguas was the PCSO Budget and Accounts Officer, Uriarte was the PCSO General Manager and Vice Chairman, petitioner was the PCSO Chairman of the Board of Directors, while Morato, Taruc, Roquero and Valdes, were PCSO Members of the Board of Directors. On the other hand, Villar was the Chairman of the Commission on Audit (COA) and Plaras was the COA Head of Intelligence/Confidential Fund Fraud Audit Unit.

After they filed their respective counter-affidavits in the two complaints which were later consolidated, the Office of the Ombudsman issued on July 10, 2012, a Review Joint Resolution finding probable cause to indict them, except Ermita, for the crime of Plunder, and recommended the immediate filing of the corresponding information against them with the *Sandiganbayan*. Forthwith, an information on even date was filed and docketed as SB-12-CRM-0174.

Petitioner's Motion for Reconsideration to the aforesaid finding was denied and, soon after entering a plea of not guilty, he filed a Petition for Bail.

After the presentation of evidence in connection with his petition for bail, the *Sandigabayan*, on June 6, 2013, granted the bail petition ratiocinating that the evidence so far presented did not show evident proof of petitioner's guilt insofar as the crime of plunder was concerned since his cash advances only amounted to ₱13.3 million, or below the ₱50 million threshold in plunder.

After the prosecution adduced additional evidence on the merits, petitioner filed a Motion for Leave of Court to File Demurrer to Evidence which was granted. In support of his Demurrer to Evidence, petitioner contended that the elements of the crime of plunder were not established. He averred that the prosecution failed to prove that he amassed, accumulated, or acquired ill-gotten wealth amounting to at least ₱50 million. He claimed that the cash advances for PCSO's intelligence activities were properly liquidated per the credit advices issued by the COA Chairman. He also contended that the prosecution failed to prove that there were no intelligence projects for which the ₱13.3 million was allegedly disposed of. Lastly, he pointed out that there was no evidence to prove conspiracy.

Sandiganbayan April 6, 2015 Resolution:

In its assailed Resolution dated April 6, 2015, the *Sandiganbayan* denied petitioner's Demurrer to Evidence. It held that the credit advises issued by the COA, purportedly showing petitioner's liquidation of the amount of ₱13.3 million, were binding only on the COA, but not the Ombudsman or the court. Moreover, it ruled that these credit advices approving petitioner's disbursements affected only his administrative accountability, but not his criminal responsibility,[3] as enunciated in *Aguinaldo v. Sandiganbayan*.[4]

Likewise, the *Sandiganbayan* gave credence to the testimonies of the intelligence chief of the military, police, and the National Bureau of Investigation that there were no

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[3] *Rollo*, Vol. I, pp. 172-173.

[4] 332 Phil. 893 (1996).

intelligence projects for which petitioner's cash advances were allegedly disbursed as claimed in his liquidation documents.[5]

Further, the *Sandiganbayan* ruled that there was not enough evidence to show that he conspired with his co-accused Arroyo, Aguas and Uriarte. However, the *Sandiganbayan* held that petitioner could not be completely exculpated. It found that, although petitioner could not be held liable for plunder (since he only allegedly amassed the amount of ₱13.3 million which was way below the ₱50 million threshold for plunder), still, there was sufficient evidence to convict him of malversation under Article 217 of the RPC. The *Sandiganbayan* ratiocinated, thus:

> Accused Valencia's exculpation, nevertheless, is not absolute. His CIF disbursements may not be part of the conspiracy to plunder but it cannot be denied that they were irregular. Valencia was able to access these CIF funds also in violation of COA Circulars and LOI 1282. In his cover letters to accused Villar for his liquidations of his CIF, Valencia repeatedly stated that 'The supporting details of the expenses that were incurred from the fund are in our possession which can be made available if so required.' In the attached Certifications, he stated:
>
> > 'x x x that the details and supporting documents and papers on these highly confidential missions and assignments are in his office' custody and being kept in confidential file which can be made available if circumstances so demand. x x x'
>
> Despite these repeated statements, the detail and supporting documents and papers on these highly confidential missions and assignments could not be produced by Valencia up to now. These missing documents, in addition to the certifications and testimonies from the PNP, AFP and NBI that they have no records of any such projects, [lead] this Court to ask where the ₱13 million CIF funds released to Valencia went. As the trial stands now, while accused Valencia cannot be found guilty of plunder beyond reasonable doubt, there is, however, sufficient evidence to convict him of Malversation under [Article] 217 of the Revised Penal Code.

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[5] *Rollo*, Vol. I, pp. 173-174.

Under Section 4, Rule 120 of the Revised Rules of Criminal Procedure, when there is a variance between the offense charged in the complaint or information, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved. Applying this variance rule, accused Valencia may be convicted of the offense proved which is included in the crime of plunder, which, in this case is Malversation. x x x

x x x x x x x x x

Therefore, as charged in the information, the elements of Malversation exist and the prosecution, although unable to sufficiently prove plunder, was able to present sufficient evidence for Malversation. Given the evidence presented by the prosecution, namely, the certifications from the AFP, NBI and PNP and the testimonies in support of and authenticating the same, there is enough proof of malversation to support Valencia's conviction. As the accountable officer for the more than ₱13 million CIF that he received, it was incumbent upon him to show the proper liquidation thereof, especially in view of his certifications. That he cannot do so raises the presumption that he has put such missing fund or property to his personal use, thus, misappropriating the same.[6]

In fine, the *Sandiganbayan* denied petitioner's Demurrer to Evidence based on its finding that there was sufficient evidence to hold him liable for Malversation under Article 217 of the RPC.[7]

Aggrieved, petitioner filed a Motion for Reconsideration arguing that his constitutional right to due process and the right to be presumed innocent until proven guilty were violated. He asserted that "the crime of plunder cannot be downgraded to the crime of malversation as the latter is not included in the former;"[8] in any case, there was no sufficient evidence to hold him liable for malversation.[9]

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[6] *Id.* at 176-178.

[7] *Id.* at 180.

[8] *Id.* at 195.

[9] *Id*. at 216.

In its second assailed Resolution of September 10, 2015, the *Sandiganbayan* spurned petitioner's contention as follows:

> Contrary to accused Valencia's position, the variance rule also finds applicability in the determination of whether an offense punishable under the Revised Penal Code (e.g. malversation or bribery) is necessarily included in a crime punishable under special law. x x x
>
> x x x x x x x x x
>
> The real nature of the criminal charge is the actual recital of the facts in the Information, not the caption or preamble, or the specification of the provision of law alleged to have been violated. Any conviction of an accused should only arise from the allegations set forth in the Information. x x x
>
> x x x x x x x x x
>
> The above accusations against accused Valencia are unmistakable and these constitute the fourth element of malversation. The statement that the accused diverted the funds and converted the same, withdrew and received and unlawfully transferred the proceeds into their possession and control, and that they took advantage of their respective positions to enrich themselves are the very same allegations that can be found in an information for malversation. While the words used in the information may not be those used in the Revised Penal Code, it is easy to understand what they convey. As long as the information makes out a case for a crime, the accused cannot claim deprivation of the right to be informed. Verily, accused Valencia was made aware of the acts he supposedly committed and he could very well defend himself against these same accusations, whether it [be] for the crime of plunder or malversation.
>
> x x x x x x x x x
>
> Lastly, although this Court was divided in the issue as to whether there was sufficient evidence against accused Arroyo and Aguas with regard to the plunder charge, the Court was unanimous in ruling that accused Valencia could still be held liable for malversation under the variance rule. It is only the fact that accused Valencia's accumulation of CIF funds fell short of the ₱50 Million threshold which negated his liability for plunder. Other than that, a clear case for malversation can be pursued against him.[10]

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[10] *Id.* at 215-221.

Following the denial of his Motion for Reconsideration, petitioner filed the instant Petition for *Certiorari*[11] under Rule 65 of the Rules of Court anchored on the following issues/ arguments:

I

The Sandiganbayan gravely abused its discretion in promulgating the assailed Resolutions violating petitioner's right to due process;

II

The assailed Resolutions violate the petitioner's constitutional right to be presumed innocent until proven guilty;

III

The Sandiganbayan gravely abused its discretion in finding that there is sufficient evidence to hold petitioner liable for malversation under the Revised Penal Code.[12]

Petitioner asserts that the denial of his Demurrer to Evidence and his subsequent Motion for Reconsideration, based on the *Sandiganbayan's* finding that the information included the crime of malversation, were tainted with grave abuse of discretion amounting to lack or in excess of jurisdiction.

Respondents, on the other hand, advocate the theory that an order denying a demurrer to evidence is interlocutory and is not appealable. The proper recourse is for the court to proceed with the trial after which the accused may file an appeal from the judgment of the lower court rendered after the trial. Respondents insist that the subject resolutions were not issued with grave abuse of discretion amounting to lack of jurisdiction.

During the pendency of this case, the issue regarding the sufficiency of the allegations in the information for plunder as to include the crime of malversation against herein petitioner was resolved in the April 18, 2017 *En Banc* Resolution of the Court in *Macapagal-Arroyo v. People*.[13] The said Resolution

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[11] *Id*. at 3-60.

[12] *Id*. at 15.

[13] G.R. Nos. 220598 and 220953, April 18, 2017 (Resolution), 823 SCRA 370.

pertained to the State's Motion for Reconsideration to the July 19, 2016 *En Banc* Decision[14] wherein the Court annulled and set aside the *Sandiganbayan's* April 6, 2015 and September 10, 2015 Resolutions in Criminal Case No. SB-12-CRM-0174 as to Arroyo and Aguas, granted the respective Demurrer to Evidence of Arroyo and Aguas and dismissed Criminal Case No. SB-12-CRM-0174 as against them for insufficiency of evidence. Notably, the State's Motion for Reconsideration was denied for lack of merit in the April 18, 2017 Resolution. One of the key issues behind the Court's disposition was: Even assuming that the elements of plunder were not proven beyond reasonable doubt, the evidence presented by the People established at least a case for malversation against Arroyo and Aguas.

In addressing the said issue in its April 18, 2017 Resolution, the Court ruled:

> In thereby averring the predicate act of malversation, the State did not sufficiently allege the aforementioned essential elements of malversation in the information. The omission from the information of factual details descriptive of the aforementioned elements of malversation highlighted the insufficiency of the allegations. Consequently, the State's position is entirely unfounded.

The Court judiciously believes that the foregoing ruling squarely applies in the instant petition since one of the issues raised in the latter is the denial of petitioner's constitutional right to due process. He asserts that he cannot be held liable for malversation in view of the insufficiency of the allegations of its elements in the information. It is well to note that the Information subject of the aforementioned cases of Arroyo and Aguas is the very same information under scrutiny in the present case wherein petitioner is their co-accused and where all the incidental matters stemmed and had their origin. Hence, there is no reason not to apply the afore-quoted ruling in the present petition since it has reached its finality, per Entry of Judgment, on May 30,

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[14] 790 Phil. 367 (2016).

2017.[15] We are therefore not free to disregard it in any related case which involves closely similar factual evidence. Otherwise, we would jettison the doctrine of immutability of final judgment and, further, obviate the possibility of rendering conflicting rulings on the same set of facts and circumstances in the same information.

It is therefore apparent that in denying petitioner's Demurrer to Evidence and ruling that there was sufficient evidence to hold him liable for malversation despite the lack of specific allegations of the factual details pertaining to the crime of malversation in the information, respondent *Sandiganbayan* is said to have gravely abused its discretion amounting to lack of jurisdiction. Consequently, we find no need to discuss the other issues raised by petitioner.

WHEREFORE, the Petition is **GRANTED**. The assailed April 6, 2015 and September 10, 2015 Resolutions of the *Sandiganbayan* in Criminal Case No. SB-12-CRM-0174 are **SET ASIDE** and the Demurrer to Evidence of petitioner is **GRANTED**.

SO ORDERED.

Bersamin, C.J., Jardeleza, and *Reyes, A. Jr.*,[*] *JJ.*, concur.

Carandang, J., on leave.

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[15] See *rollo*, Vol. IV, p. 1752.

[*] Per Raffle dated April 10, 2019.

THIRD DIVISION

[G.R. No. 220456. June 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GAJIR ACUB *y* ARAKANI *a.k.a.* "ASAW,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165), AS AMENDED; ILLEGAL SALE OF DANGEROUS DRUGS; TO SUSTAIN A CONVICTION FOR THE ILLEGAL SALE OF DANGEROUS DRUGS, IT MUST BE PROVEN THAT A TRANSACTION TOOK PLACE AND THE *CORPUS DELICTI* OR THE ILLICIT DRUG MUST BE PRESENTED INTO EVIDENCE.— To sustain a conviction for the illegal sale of dangerous drugs, it must be proven that a transaction took place and the *corpus delicti* or the illicit drug must be presented into evidence. Although not easily identifiable, the identity of the illicit drug must be clearly established since its very existence is essential to convict an accused. *People v. Jaafar* explained: In all prosecutions for violations of Republic Act No. 9165, the *corpus delicti* is the dangerous drug itself. Its existence is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established. Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.

2. ID.; ID.; ID.; SECTION 21 OF R.A. NO. 9165; CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED, AND/OR SURRENDERED DRUGS AND/OR DRUG PARAPHERNALIA; TO PREVENT TAMPERING AND PLANTING OF EVIDENCE, STRICT COMPLIANCE IS

THE EXPECTED STANDARD IN THE CUSTODY AND DISPOSITION OF SEIZED ILLEGAL DRUGS.— Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, provides the manner of custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. x x x. This Court has repeatedly emphasized that strict compliance is the expected standard when it comes to the custody and disposition of seized illegal drugs, to prevent tampering and planting of evidence. *People v. Que* stressed: The Comprehensive Dangerous Drugs Act requires nothing less than strict compliance. Otherwise, the *raison d' etre* of the chain of custody requirement is compromised. Precisely, deviations from it leave the door open for tampering, substitution, and planting of evidence. Even acts which approximate compliance but do not strictly comply with Section 21 have been considered insufficient. Strict compliance with Section 21 is in keeping with the doctrine that penal laws are strictly construed against the government and its agents. In *People v. Gonzales*: These provisions obviously demand strict compliance, for only by such strict compliance may be eliminated the grave mischiefs of planting or substitution of evidence and the unlawful and malicious prosecution of the weak and unwary that they are intended to prevent. Such strict compliance is also consistent with the doctrine that penal shall be construed strictly against the Government and liberally in favor of the accused.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE MANDATORY 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 THE SEIZURES OF AND CUSTODY OVER SAID ITEMS.— [T]he Comprehensive Dangerous Drugs Act recognizes that strict compliance with its provisions may not always be possible. Hence, a saving clause was introduced, first in the Implementing Rules and Regulations, before being eventually inserted in the amended law. The saving clause states: [P]rovided, finally, 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. The law

is clear that for the saving clause to apply, the twin requirements must be met: (1) the noncompliance was justifiable; and (2) the integrity and evidentiary value of the seized item were preserved. Not only must the prosecution explain why the requirements were not strictly complied with, it must also prove during trial the justifiable grounds for noncompliance.

4. ID.; ID.; ID.; ID.; THE UNJUSTIFIED LAPSES OR NONCOMPLIANCE WITH SECTION 21 OF RA NO. 9165 IS TANTAMOUNT TO A SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY, WHICH CASTS SERIOUS DOUBTS ON THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI*.— The prosecution failed to prove that an inventory of the seized sachet was prepared and that it was photographed in the presence of accused-appellant, an elected public official, and representatives from the National Prosecution Service or the media. Despite the blatant lapses, the prosecution did not explain the arresting officers' failure to comply with the requirements in Section 21. Nonetheless, despite the prosecution's indifference to the established legal safeguards, both the lower courts still found accused-appellant guilty of the charge against him. Contrary to what the lower courts may believe, the saving clause, as an exception to the rule of strict compliance, is not a talisman that the prosecution may invoke at will. Instead, it may only be appreciated in the prosecution's favor if the latter shows a valid reason for not observing the procedure laid out in Section 21. The unjustified lapses or noncompliance with Section 21 is tantamount to a substantial gap in the chain of custody. In *Mariñas v. People*: There is no question that the prosecution miserably failed to provide justifiable grounds for the arresting officers' non-compliance with Section 21 of R.A. No. 9165, as well as the IRR. *The unjustified absence of an elected public official and DOJ representative during the inventory of the seized item constitutes a substantial gap in the chain of custody.* There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti*. As such, the petitioner must be acquitted.

5. ID.; ID.; ID.; ID.; NONCOMPLIANCE WITH SECTION 21 OF R.A. NO. 9165 CREATES A HUGE GAP IN THE CHAIN OF CUSTODY THAT NOT EVEN THE PRESUMPTION OF REGULARITY IN THE

PERFORMANCE OF OFFICIAL DUTIES MAY REMEDY, AS THE LAPSES THEMSELVES ARE UNDENIABLE EVIDENCE OF IRREGULARITY.— The prosecution utterly failed to provide any justifiable ground for the arresting officers' failure to inventory and photograph the seized sachet in the presence of accused-appellant, an elected public official, and representatives from the National Prosecution Service or the media. Worse, the prosecution remained silent as to the noncompliance with Section 21. This noncompliance created a huge gap in the chain of custody that not even the presumption of regularity in the performance of official duties may remedy, as the lapses themselves are undeniable evidence of irregularity.

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.*:

State agents must strictly comply with the legal safeguards established in Section 21 of Republic Act No. 9165, as amended, for the custody and disposition of seized illegal drugs, to ensure that the evidence was not tampered with, substituted, or planted. For the saving clause in Section 21 to apply, the prosecution must prove beyond reasonable doubt that noncompliance was justified and that the integrity and evidentiary value of the seized item were preserved.

This Court reviews the March 16, 2015 Decision[1] of the Court of Appeals in CA-G.R. CR HC No. 01003-MIN, affirming the conviction of accused-appellant Gajir Acub *y* Arakani a.k.a. "Asaw" (Acub) for violation of Section 5 of the Comprehensive Dangerous Drugs Act.

[1] CA *rollo*, pp. 86-93. The Decision was penned by Associate Justice Oscar V. Badelles, and concurred in by Associate Justices Romulo V. Borja and Maria Filomena D. Singh of the Twenty-First Division, Court of Appeals, Cagayan De Oro City.

In an Information dated February 11, 2005, Acub was charged with selling a dangerous drug to an undercover police officer during a buy-bust operation:

> That on or about February 10, 2005, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drug, did then and there willfully and unlawfully, sell and deliver to PO2 Ronald Canete Cordero, member of the PNP, Anti-Illegal Drugs Special Operation Task Force (AIDSOTF), who acted as poseur buyer, one (1) pc. heat sealed transparent plastic sachet containing white crystalline substance weighing 0.0188 gram, which when subjected to qualitative examination gave positive result to the test for the presence of METHAMPHETAMlNE HYDROCHLORIDE (*shabu*), accused knowing the same to be a dangerous drug, in flagrant violation of the above-mentioned law.
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> CONTRARY TO LAW.[2]

Upon arraignment, Acub pleaded not guilty to the charge against him. Trial on the merits ensued, with the prosecution presenting three (3) police officers as its witnesses and the defense presenting Acub and his wife, Intan Acub (Intan), as its witnesses.[3]

The prosecution evidence established that at about 1:00 p.m. on February 10, 2005, a confidential informant tipped Senior Police Officer 1 Amado Mirasol (SPO1 Mirasol) of the Zamboanga City Police Station that a certain Asaw, later identified as Acub, had been selling illegal drugs at Ayer Village. SPO1 Mirasol informed Chief Police Inspector Ibrahim Jambiran (Chief Inspector Jambiran) of the tip, and the latter planned a buy-bust operation against Asaw.[4]

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

[3] *Id*. at 20-24. Intan was sometimes spelled "Intad" in the *rollo*.

[4] *Id*. at 87.

Chief Inspector Jambiran directed PO2 Ronald Cordero (PO2 Cordero) to act as the poseur-buyer, with PO3 Ajuji as back-up.[5] Chief Inspector Jambiran gave PO2 Cordero a ₱500.00 bill, which the latter then marked with his initials.[6]

The informant and PO2 Cordero then rode a motorcycle to Ayer Village. PO3 Ajuji followed on another motorcycle, while the rest of the police officers rode a white service van.[7]

Upon arriving at Ayer Village, PO2 Cordero and the informant walked toward a small alley, where they then saw Asaw. The informant talked to Asaw and pointed to PO2 Cordero as a buyer. When Asaw asked for the money, PO2 Cordero gave him the marked ₱500.00 bill.[8]

With the payment in hand, Asaw went into a house and came out a few minutes later with a plastic sachet containing white crystalline substance, which he handed over to PO2 Cordero. The police officer examined the plastic sachet, after which he folded his lower shirt sleeve—the pre-arranged signal that the sale had been consummated.[9]

As PO2 Cordero grabbed Asaw's arm and introduced himself as a police officer, PO3 Ajuji rushed to the scene and searched Asaw for weapons and the marked bill. He then informed Asaw of his constitutional rights in the Tausug dialect, before bringing him to the police station.[10]

At the police station, PO2 Cordero marked the seized sachet with his initials before turning it and Asaw over to PO3 Arlan Delumpines (PO3 Delumpines).[11]

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[5] *Id*. PO3 Ajuji was also referred to as PO1 Ajuji in the *rollo*.

[6] *Id*. at 21.

[7] *Id*. at 22.

[8] *Id*. at 87.

[9] *Id.*

[10] *Id.*

[11] *Id*. at 90.

PO3 Delumpines then marked the sachet with his own initials, prepared a request for laboratory examination, and delivered the request and the seized sachet to the Regional Crime Laboratory Office.[12] At about 8:20 p.m., PO1 Joel Bentican received the request with the sachet, and turned them over to Police Inspector Melvin Ledesma Manuel (Inspector Manuel) at 2:00 a.m. the following day.[13]

Later, at around 6:00 a.m., Inspector Manuel examined the specimen and found it positive for methamphetamine hydrochloride or *shabu*. He summarized his findings in a Chemistry Report.[14]

In his defense, Acub, a pedicab driver, testified that on February 10, 2005, he was at home resting after he and his wife, Intan, had gone to the pawnshop earlier that morning to pawn her earrings. Later, at around 1:00 p.m., he went outside to buy food. On his way back, Acub was suddenly stopped by two (2) men and one (1) woman. One (1) of the men restrained him, while the other poked a gun at him and asked if he had money. After Acub denied having money, they all brought him to his house.[15]

Inside his house, Acub saw his wife crying while three (3) other persons searched his house for *shabu*. When they found nothing, all six (6) strangers then brought Acub to the police station.[16]

Intan corroborated her husband's testimony. She testified that while her husband was outside buying food, three (3) police officers in civilian clothes suddenly entered and searched their house without a search warrant. They left after finding nothing, but soon returned with more police officers and Acub, who had his hand cuffed and was beaten up by the police officers.[17]

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[12] *Id*. at 87-88.

[13] *Id*. at 20-21. Inspector Manuel was sometimes referred to as Police Senior Inspector Manuel.

[14] *Id*. at 21.

[15] *Id*. at 22-23 and 88.

[16] *Id*.

[17] *Id*.

The police officers then asked Intan to produce the *shabu*, but she denied having any. When they asked her to just give them money instead, she also denied having it.[18]

Intan later visited Acub at the police station, where she was told that she had to pay ₱50,000.00 for her husband's release. She told the officer that she did not have the money for her husband's freedom.[19]

The Regional Trial Court, in its Decision promulgated on November 4, 2011,[20] found Acub guilty of the crime of illegal sale of dangerous drugs.

Upholding the presumption of regularity in the police officers' official actions, the trial court pointed out that it was "out of sync with human nature"[21] for a team of police officers to prey on an impoverished pedicab driver. It also highlighted Acub's admission that prior to the buy-bust operation, he had no misunderstanding with the arresting officers, striking a blow to his frame-up allegations.[22]

The trial court likewise brushed aside the lack of an inventory, as the chain of custody of evidence remained unbroken and the evidence was properly identified in court.[23]

Acub was sentenced to life imprisonment and to pay a penalty of ₱500,000.00. The dispositive portion of the Regional Trial Court Decision read:

WHEREFORE, in the light of all the foregoing, this Court finds accused GADJIR ACUB *Y* ARAKANI, a.k.a. "ASAW" **GUILTY** beyond reasonable doubt for violating Section 5, Article II of the

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[18] *Id.*

[19] *Id.*

[20] *Id.* at 41-49. The Decision docketed as Crim. Case No. 5658 (21352) was penned by Presiding Judge Eric D. Elumba of Branch 13, Regional Trial Court, Zamboanga City.

[21] *Id.* at 48.

[22] *Id.*

[23] *Id.*

Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000) without subsidiary imprisonment in case of insolvency.

SO ORDERED.[24] (Emphasis in the original)

Acub filed a Notice of Appeal.[25] In its May 3, 2012 Resolution,[26] the Court of Appeals directed Acub to file his appellant's brief and the Office of the Solicitor General to file its corresponding appellee's brief upon receipt of the appellant's brief. Both parties complied and filed their respective briefs.[27]

In its March 16, 2015 Decision,[28] the Court of Appeals affirmed the Regional Trial Court Decision convicting Acub.

The Court of Appeals upheld the Regional Trial Court's findings that the prosecution successfully established all the elements of the illegal sale of a dangerous drug. Furthermore, it affirmed that there were no gaps in the chain of custody.[29]

The Court of Appeals opined that the police officers' failure to strictly comply with Article II, Section 21 of the Comprehensive Dangerous Drugs Act was immaterial as the integrity and evidentiary value of the seized *shabu* were properly preserved.[30]

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 04 November 2011 rendered by the Regional Trial

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[24] *Id*. at 49.

[25] *Id*. at 8.

[26] *Id*. at 9.

[27] *Id*. at 16-40, Acub's Brief, and 56-83, Office of the Solicitor General's Brief.

[28] *Id*. at 86-93.

[29] *Id*. at 89-91.

[30] *Id*. at 91-92.

Court of Zamboanga City, Branch 13, in *Crim. Case No. 5658 (21352)*, which declares accused-appellant guilty of violation of Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002 (RA 9165) is hereby AFFIRMED with the MODIFICATION, in that the accused-appellant shall not be eligible for parole.

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

Thus, Acub filed a Notice of Appeal,[32] which was given due course by the Court of Appeals in its July 14, 2015 Resolution.[33]

In its November 25, 2015 Resolution,[34] this Court notified the parties that they may file their respective supplemental briefs. However, as noted in this Court's April 6, 2016 Resolution,[35] both parties manifested[36] that they were dispensing with the filing of a supplemental brief. Instead, they would adopt their Briefs filed before the Court of Appeals.

Accused-appellant alleges that the prosecution failed to show strict compliance with Section 21 of the Comprehensive Dangerous Drugs Act. The police officers have not marked, inventoried, and photographed the sachet of *shabu* upon seizure and in the presence of the required representatives.[37] Furthermore, accused-appellant notes that the prosecution failed to offer a justifiable ground for the officers' noncompliance with Section 21.[38]

Additionally, accused-appellant claims that the prosecution failed to substantiate its allegation of a planned buy-bust operation. He points out that the lack of a pre-operation report or blotter in the records raises doubt on whether the buy-bust

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[31] *Id*. at 93.

[32] *Id*. at 99-101.

[33] *Id*. at 108.

[34] *Rollo*, p. 17.

[35] *Id*. at 34-35.

[36] *Id*. at 19-21 and 28-30.

[37] CA *rollo*, pp. 24-26.

[38] *Id*. at 28.

money was marked, and whether the police officers participated in the supposed operation.[39]

Stressing that the prosecution failed to establish an unbroken chain of custody, accused-appellant points out that no other testimony aside from PO2 Cordero's, the poseur-buyer, was presented to prove the alleged sale. Moreover, he states that the prosecution failed to present the confidential informant who supposedly tipped off the police officers. This, he points out, could have shed light on the transaction.[40]

Accused-appellant argues that another gap in the chain was created after Inspector Manuel, the forensic chemist, admitted that he did not personally receive the laboratory request with the specimen. He points out that the Chemistry Report Inspector Manuel identified did not bear his name, but that of a certain Nur-in Moderika *y* Sawadjaan. He insists that all of these circumstances created doubt on the integrity and identity of the sachet of *shabu* that he supposedly sold to PO2 Cordero.[41]

For its part, plaintiff-appellee People of the Philippines, through the Office of the Solicitor General, claims that it was able to prove all the elements of illegal sale of dangerous drugs. It explains that the identities of the buyer and seller, consideration, and object of the sale were established.[42] Denying accused-appellant's assertion that the failure to present the marked money was fatal to its case, it argues that in buy-bust operations, the marked money is not an indispensable requirement, but is merely corroborative.[43]

Plaintiff-appellee, likewise, denies that noncompliance with Section 21 was fatal to its case since the integrity and evidentiary value of the seized sachet were preserved by the apprehending officers, as shown by the unbroken chain of custody.[44]

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[39] *Id.*

[40] *Id.* at 31-32.

[41] *Id.* at 34-35.

[42] *Id.* at 65-69.

[43] *Id.* at 69-70.

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

Finally, plaintiff-appellee maintains that accused-appellant failed to present clear and convincing evidence to overturn the presumption of regularity in the arresting officers' performance of their duties.[45]

The sole issue for this Court's resolution is whether or not accused-appellant Gajir Acub *y* Arakani's guilt was proven beyond reasonable doubt despite noncompliance with the required procedure under Section 21 of the Comprehensive Dangerous Drugs Act, as amended.

Accused-appellant must be acquitted.

To sustain a conviction for the illegal sale of dangerous drugs, it must be proven that a transaction took place and the *corpus delicti* or the illicit drug must be presented into evidence.[46]

Although not easily identifiable, the identity of the illicit drug must be clearly established since its very existence is essential to convict an accused. *People v. Jaafar*[47] explained:

> In all prosecutions for violations of Republic Act No. 9165, the *corpus delicti* is the dangerous drug itself. Its existence is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established.
>
> Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.[48]

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[45] *Id*. at 79-80.

[46] *People v. Morales*, 630 Phil. 215, 228 (2010) [Per *J*. Del Castillo, Second Division] citing *People v. Darisan*, 597 Phil. 479 (2009) [Per *J*. Corona, First Division].

[47] 803 Phil. 582 (2017) [Per *J*. Leonen, Second Division].

[48] *Id*. at 591 citing *People v. Simbahon*, 449 Phil. 74 (2003) [Per *J*. Ynares-Santiago, First Division]; *People v. Laxa*, 414 Phil. 156 (2001) [Per *J*.

Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, provides the manner of custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Section 21, as amended, imposes the following requirements when it comes to custody of drugs or drug paraphernalia prior to the filing of a criminal case:

> SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
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> 1. The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items[;]

Mendoza, Second Division]; and *Mallillin v. People*, 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

2. Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

3. A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

This Court has repeatedly emphasized that strict compliance[49] is the expected standard when it comes to the custody and disposition of seized illegal drugs, to prevent tampering and planting of evidence. *People v. Que*[50] stressed:

The Comprehensive Dangerous Drugs Act requires nothing less than strict compliance. Otherwise, the *raison d'etre* of the chain of custody requirement is compromised. Precisely, deviations from it leave the door open for tampering, substitution, and planting of evidence.

Even acts which approximate compliance but do not strictly comply with Section 21 have been considered insufficient.[51]

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[49] *People v. Que*, G.R. No. 212994, January 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63900> [Per *J.* Leonen, Third Division]; *People v. Gonzales*, 708 Phil. 121, 129 (2013) [Per *J.* Bersamin, First Division]; and *People v. Carin*, 645 Phil. 560, 566 (2010) [Per *J.* Carpio Morales, Third Division].

[50] G.R. No. 212994, January 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63900> [Per *J.* Leonen, Third Division].

[51] *Id.*

Strict compliance with Section 21 is in keeping with the doctrine that penal laws are strictly construed against the government and its agents. In *People v. Gonzales*:[52]

> These provisions obviously demand strict compliance, for only by such strict compliance may be eliminated the grave mischiefs of planting or substitution of evidence and the unlawful and malicious prosecution of the weak and unwary that they are intended to prevent. Such strict compliance is also consistent with the doctrine that penal laws shall be construed strictly against the Government and liberally in favor of the accused.[53]

Nonetheless, the Comprehensive Dangerous Drugs Act recognizes that strict compliance with its provisions may not always be possible. Hence, a saving clause was introduced, first in the Implementing Rules and Regulations, before being eventually inserted in the amended law. The saving clause states:

> [P]rovided, finally, 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.

The law is clear that for the saving clause to apply, the twin requirements must be met: (1) the noncompliance was justifiable; and (2) the integrity and evidentiary value of the seized item were preserved. Not only must the prosecution explain why the requirements were not strictly complied with,[54] it must also prove during trial the justifiable grounds for noncompliance.[55] *People v. Umipang*[56] instructed:

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[52] 708 Phil. 121 (2013) [Per *J.* Bersamin, First Division].

[53] *Id*. at 129 citing *People v. Denoman*, 612 Phil. 1165 (2009) [Per *J.* Brion, Second Division].

[54] *People v. Almorfe*, 631 Phil. 51, 60 (2010) [Per *J.* Carpio Morales, First Division] citing *People v. Garcia*, 599 Phil. 416 (2009) [Per *J.* Brion, Second Division].

[55] *People v. De Guzman*, 630 Phil. 637, 648-649 (2010) [Per *J.* Nachura, Third Division].

[56] 686 Phil. 1024 (2012) [Per *J.* Sereno, Second Division].

Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were "recognized and explained in terms of [] justifiable grounds." There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason." However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.[57] (Citations omitted)

Here, both the trial court[58] and the Court of Appeals[59] acknowledged that the prosecution failed to prove strict compliance with Section 21. However, they both brushed this failure aside by reasoning that the integrity and evidentiary value of the seized *shabu* were nevertheless preserved. The Court of Appeals held:

Section 21, Article II of RA 9165 clearly outlines the post-seizure procedure for the custody and disposition of seized drugs. The law mandates that the officer taking initial custody of the drug shall, immediately after seizure and confiscation, conduct the physical inventory of the same and take a photograph thereof in the presence of the accused, of 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.

However, the Implementing Rules and Regulations of the said law provide a saving clause whenever the procedures laid down in the law are not strictly complied with, thus:

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[57] *Id*. at 1053-1054.

[58] CA *rollo*, p. 48.

[59] *Id*. at 91-92.

> ... 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.

As gleaned from the foregoing, the most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused. As long as the evidentiary value and integrity of the illegal drug are properly preserved, strict compliance of the requisites under Section 21 of RA 9165 may be disregarded. Further, slight infractions or nominal deviations by the police from the prescribed method of handling the *corpus delicti* should not exculpate an otherwise guilty defendant.[60] (Citations omitted)

The Court of Appeals is mistaken.

It has not escaped this Court's attention that the seized sachet only contained 0.0188 gram of *shabu*,[61] a minuscule amount that is practically just a grain of rice. This magnifies the danger of tampering with or planting evidence. Hence, the lower courts should have been on guard instead of easily resorting to the presumption of regularity enjoyed by police officers in the performance of their official acts. In *People v. Holgado*:[62]

> While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In [*Mallillin*] *v. People*, this court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives."[63]

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[60] *Id.* at 91-92.

[61] *Id.* at 86.

[62] 741 Phil. 78 (2014) [Per *J.* Leonen, Third Division].

[63] *Id.* at 99 citing *Mallillin v. People*, 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

It is disconcerting how quickly the lower courts downplayed the legal safeguards in Section 21 by immediately resorting to the saving clause and embracing the presumption of regularity accorded to State agents.

The prosecution failed to prove that an inventory of the seized sachet was prepared and that it was photographed in the presence of accused-appellant, an elected public official, and representatives from the National Prosecution Service or the media. Despite the blatant lapses, the prosecution did not explain the arresting officers' failure to comply with the requirements in Section 21. Nonetheless, despite the prosecution's indifference to the established legal safeguards, both the lower courts still found accused-appellant guilty of the charge against him.

Contrary to what the lower courts may believe, the saving clause, as an exception to the rule of strict compliance, is not a talisman that the prosecution may invoke at will. Instead, it may only be appreciated in the prosecution's favor if the latter shows a valid reason for not observing the procedure laid out in Section 21.

The unjustified lapses or noncompliance with Section 21 is tantamount to a substantial gap in the chain of custody. In *Mariñas v. People*:[64]

> There is no question that the prosecution miserably failed to provide justifiable grounds for the arresting officers' non-compliance with Section 21 of R.A. No. 9165, as well as the IRR. *The unjustified absence of an elected public official and DOJ representative during the inventory of the seized item constitutes a substantial gap in the chain of custody.* There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti*. As such, the petitioner must be acquitted.[65] (Emphasis supplied)

In his separate concurring opinion in *Mariñas*, Associate Justice Diosdado Peralta expounded that the prosecution, in

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[64] G.R. No. 232891, July 23, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64388> [Per *J.* Reyes, Jr., Second Division].

[65] *Id.*

accordance with the Rules on Evidence, has the burden of proving a justifiable cause for noncompliance with Section 21.[66] He then listed some of the possible justifiable reasons for noncompliance with Section 21:

> In this case, the prosecution never alleged and proved that the presence of all 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[s] themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove 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.[67] (Citation omitted)

The prosecution utterly failed to provide any justifiable ground for the arresting officers' failure to inventory and photograph the seized sachet in the presence of accused-appellant, an elected public official, and representatives from the National Prosecution Service or the media. Worse, the prosecution remained silent as to the noncompliance with Section 21.

This noncompliance created a huge gap in the chain of custody that not even the presumption of regularity in the performance of official duties may remedy, as the lapses themselves are undeniable evidence of irregularity.[68]

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[66] *J.* Peralta, Concurring Opinion in *Mariñas v. People*, G.R. No. 232891, July 23, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64388> [Per *J.* Reyes, Jr., Second Division].

[67] *Id.*

[68] *People v. Ramirez*, G.R. No. 225690, January 17, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63896> [Per *J.* Martires, Third Division] *citing People v. Mendoza*, 736 Phil. 749, 769-770 (2014) [Per *J.* Bersamin, First Division].

WHEREFORE, the March 16, 2015 Decision of the Court of Appeals in CA-G.R. CR HC No. 01003-MIN is **REVERSED and SET ASIDE.** Accused-appellant Gajir Acub *y* Arakani a.k.a. "Asaw" is **ACQUITTED** for the prosecution's failure to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Penal Institute Superintendent of the Bureau of Corrections San Ramon Prison and Penal Farm, Zamboanga City, for immediate implementation. The Penal Institute Superintendent is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

The Regional Trial Court is directed to turn over the seized sachet of *shabu* to the Dangerous Drugs Board for destruction in accordance with law.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr., Hernando*, and *Inting, JJ.*, concur.

SECOND DIVISION

[G.R. No. 220464. June 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NELSON FLORES *y* FONBUENA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); SECTION 21, ARTICLE II OF RA 9165; MANDATORY

PROCEDURES TO BE FOLLOWED TO PRESERVE THE INTEGRITY OF THE CONFISCATED DRUGS; IN ORDER TO OBVIATE ANY UNNECESSARY DOUBT ON THE IDENTITY OF THE SEIZED DRUG, THE PROSECUTION HAS TO SHOW AN UNBROKEN CHAIN OF CUSTODY OVER THE SAME AND ACCOUNT FOR EACH LINK IN THE CHAIN OF CUSTODY FROM THE MOMENT THE DRUG IS SEIZED UP TO ITS PRESENTATION IN COURT AS EVIDENCE OF THE CRIME.— In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is essential, therefore, that the identity and integrity of the seized drug be established with moral certainty. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime. In this regard, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation;** and (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

2. ID.; ID.; ID.; ID.; THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS MUST BE DONE IN THE PRESENCE OF THE THREE REQUIRED WITNESSES WHICH MUST BE MADE IMMEDIATELY AFTER, OR AT THE PLACE OF APPREHENSION, EXCEPT WHEN THE SAME IS NOT PRACTICABLE THAT THE INVENTORY AND PHOTOGRAPHING MAY BE DONE AS SOON AS THE

BUY-BUST TEAM REACHES THE NEAREST POLICE STATION OR THE NEAREST OFFICE OF THE APPREHENDING OFFICER/TEAM.— The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has sufficient time to gather and bring with them the said witnesses.

3. ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE LAID OUT IN SECTION 21 OF RA 9165 DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID, PROVIDED THAT THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE, WHICH MUST BE PROVEN AS A FACT, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 does not *ipso facto* render the seizure and custody over the items void. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons

behind the procedural lapses. Without any justifiable explanation, which must be proven as a fact, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.

4. ID.; ID.; ID.; ID.; THE PRESENCE OF THE REQUIRED WITNESSES AT THE TIME OF THE APPREHENSION AND INVENTORY IS MANDATORY, AND THE FAILURE OF THE BUY-BUST TEAM TO OFFER ANY EXPLANATION FOR THEIR FAILURE TO STRICTLY COMPLY WITH THE MANDATORY REQUIREMENTS CREATES REASONABLE DOUBT AS TO THE IDENTITY AND INTEGRITY OF THE SEIZED DRUGS FROM ACCUSED.— [T]he buy-bust team failed to comply with the mandatory requirements under Section 21, which thus creates reasonable doubt as to the identity and integrity of the seized drugs from Nelson. x x x. [N]one of the three required witnesses was present during the arrest of the accused and the marking, photography, and inventory of the seized drugs. The *barangay* official and media representative only arrived at the police station to sign the Certificate of Inventory, which was already prepared beforehand by the police officers. Neither did the police officers offer any sufficient explanation as to the absence of the DOJ representative. x x x. It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose — to prevent or insulate against the planting of drugs. In the instant case, the belated participation of the two mandatory witnesses after the arrest of the accused and seizure of the drugs defeats the aforementioned purpose of the law in having these witnesses present at the place of apprehension. [T]he buy-bust team did not offer any explanation for their failure to strictly comply with the requirements of Section 21.

5. ID.; ID.; ID.; ID.; JUSTIFIABLE REASONS FOR THE ABSENCE OF THE THREE WITNESSES TO THE PHYSICAL INVENTORY AND PHOTOGRAPH OF THE ILLEGAL DRUG SEIZED.— The Court has consistently held that the prosecution has the burden of (1) proving its compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc*

unanimously held in the recent case of *People vs. Lim,* It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention;** or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**. In the case at bar, the police officers offered no such explanation.

6. ID.; ID.; ID.; ID.; THE INNOCENCE OF THE ACCUSED MUST BE AFFIRMED WHERE THE PROSECUTION FAILED TO PROVE THE *CORPUS DELICTI* OF THE OFFENSE OF SALE OF ILLEGAL DRUGS DUE TO THE MULTIPLE UNEXPLAINED BREACHES OF PROCEDURE COMMITTED BY THE BUY-BUST TEAM IN THE SEIZURE, CUSTODY, AND HANDLING OF THE SEIZED DRUG.— [T]he prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. In other words, the prosecution was not able to overcome the presumption of innocence of Nelson. x x x [T]he Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with**. In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed

procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated February 12, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05893, which affirmed the Decision[3] dated November 27, 2012 rendered by the Regional Trial Court, Branch 28, San Fernando City, La Union (RTC) in Criminal Case No. 8978, finding herein accused-appellant Nelson Flores *y* Fonbuena (Nelson) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165,[4] otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended (RA 9165).

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[1] See Notice of Appeal dated March 5, 2015, *rollo*, pp. 11-12.

[2] *Rollo*, pp. 2-10. Penned by Associate Justice Manuel M. Barrios with Associate Justices Ramon M. Bato, Jr. and Maria Elisa Sempio Diy, concurring.

[3] CA *rollo*, pp. 36-50. Penned by Judge Victor M. Viloria.

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

The Facts

The Information[5] filed against Nelson for violation of Section 5, Article II of RA 9165 pertinently reads:

> That on or about the 22nd day of November 2010, in the City of San Fernando, La Union, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused did then and there, willfully, unlawfully[,] and feloniously, deliver and sell two (2) pieces of transparent plastic sachets containing methamphetamine hydrochloride otherwise known as "*shabu*" with an individual weight of zero point zero one nine zero (0.0190) gram and zero point zero two five four (0.0254) gram or with a total weight of zero point zero four four four (0.0444) gram, to IO2 Ricky Ramos, who posed as [a] poseur buyer, and in consideration of said *shabu*, used marked money, consisting of two (2) pieces of FIVE HUNDRED (₱500.00) Philippine Currency bill with serial numbers EJ988043 and EK460440 without first securing the necessary permit, license or authority from the proper government agency.[6]

Upon arraignment, Nelson pleaded not guilty to the offense charged.[7]

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

> The witnesses for the prosecution were Intelligence Officer 2 (IO2) Ricky Ramos, PO2 Armand Bautista, and Forensic Chemist Lei-yen[8] Valdez. x x x
>
> The evidence of the prosecution showed that on 22 November 2010, at around 3:00 in the afternoon, IO2 Ricky Ramos of the Philippine Drug Enforcement Agency (PDEA), Region I, Camp Diego Silang, Carlatan, San Fernando City, La Union received a tip from an informant that accused-appellant was selling illegal drugs. IO2 [Ricky] Ramos relayed the information to the team leader, IO3 Sharon

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[5] Records, p. 1.

[6] *Id.*

[7] *Rollo*, p. 4.

[8] Also "Lei Yen" in some parts of the *rollo*.

Bautista, who promptly coordinated with the Quick Reaction Force Team and with the Illegal Drug Special Operation Task Group (PAIDSOTG) of the Philippine National Police and thereafter, formed a team to conduct an anti-illegal drug operation. It was composed of IO2 Ricky Ramos who was designated as poseur-buyer, PO2 Armand Bautista as the immediate back-up, the confidential informant, and about six (6) members of the PNP Quick Reaction Force. They prepared the buy-bust money and the pre-arranged signal to indicate the done deal is for IO2 Ricky Ramos to remove his bull-cap.

After the briefing, the confidential informant contacted accused-appellant to arrange the sale of *shabu* worth ₱1,000.00. IO2 Ramos and the confidential informant then proceeded to meet [the] accused-appellant at Purok 4, Sevilla, San Fernando City, La Union near a Shell gasoline station. Upon reaching the place, they found accused-appellant standing in front of his house and the informant introduced IO2 Ramos to accused-appellant as the buyer. After a brief conversation, the confidential informant told accused-appellant in Ilocano dialect. "*daytoy diay mangala ti sangaribo*" (he is the one who will get one thousand). Accused-appellant asked for the money and simultaneously took out two (2) pieces of small heat-sealed transparent plastic sachets from his pocket and handed them to IO2 Ramos. At this point[,] IO2 Ramos executed the pre-arranged signal and the rest of the team rushed to the scene. As IO2 Ramos informed accused-appellant that he was a police officer, accused-appellant suddenly ran towards his house. The policemen chased accused-appellant who jumped into a canal, and he was eventually arrested. Accused-appellant was allowed to wash up and change clothing, and thereafter, IO2 Ramos marked the items and took pictures thereof. Accused-appellant and the drugs were brought to the police office where IO2 Ramos made an inventory and prepared a request for laboratory examination. He personally submitted the request and the subject plastic sachets with white crystalline substance to the crime laboratory and they were received by Forensic Chemist Lei Yen Valdez. After examination, she issued Chemistry Report No. PDEAROI-DD010-0007 affirming that the subject substances were positive for methamphetamine hydrochloride, commonly known as "*shabu*[.]"[9]

Version of the Defense

On the other hand, the version of the defense, as summarized by the CA, is as follows:

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[9] *Rollo*, pp. 4-6.

On the other hand, accused-appellant [, who was the sole witness for the defense,] vehemently denied the charge against him. He contended that on 22 November 2010, at around 3:00 in the afternoon, he was cooking inside his house when members of the PDEA suddenly barged in looking for a certain Mike, a former boarder in his house. He told the police that Mike no longer lived there, but the police insisted that he was Mike. The police then grabbed, kicked[,] and punched him until he fell into a canal near the kitchen. Two of the team members poked a gun at him, handcuffed[,] and then brought to the water pump for bathing. After cleaning, he was brought back to the house where he saw a woman [take] out two (2) pentel-marked sachets and two (2) five hundred peso bills placed on the table. He was directed to point at the sachets as the police took photographs of him. Thereafter, he was brought to the PDEA office and detained in a cell. After two (2) hours, he was brought back to the office where he saw barangay officials signing some papers and soon thereafter, he was brought back to the cell.[10]

Ruling of the RTC

In the assailed Decision dated November 27, 2012, the RTC held that the prosecution clearly established the *corpus delicti* of the crime[11] and that the police officers complied with the chain of custody rule.[12] It further held that there was substantial compliance with the requirements of Section 21 of RA 9165, thus the integrity of the drugs seized from Nelson was preserved.[13] Lastly, it ruled that the defense of denial interposed by Nelson is a weak defense.[14]

The dispositive portion of the RTC Decision reads:

WHEREFORE, in light of the foregoing premises, the court finds accused NELSON FLORES *y* FONBUENA guilty beyond reasonable doubt of the crime of Violation of Sec. 5 of R.A. 9165 and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

[10] *Id.* at 6.

[11] CA *rollo*, p. 41.

[12] *Id.*

[13] *Id.* at 42.

[14] *Id.* at 49.

x x x x x x x x x

SO ORDERED.[15]

Aggrieved, Nelson appealed to the CA.

Ruling of the CA

In the assailed Decision dated February 12, 2015, the CA affirmed Nelson's conviction. The dispositive portion of the CA Decision reads:

WHEREFORE, foregoing considered, the Decision dated 27 November 2012 of the Regional Trial Court, Branch 28, San Fernando City, La Union is **AFFIRMED**.

SO ORDERED.[16]

The CA ruled that the testimony of an informant in drug-pushing cases is not essential for conviction and may be dispensed with if the poseur-buyer testified on the same.[17] It ruled that the absence or non-presentation of the marked money does not create a hiatus in the evidence for the prosecution as long as the sale of the dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court.[18] It further ruled that the presence of actual monetary consideration is not indispensable for the existence of the offense.[19] Lastly, it held that the police officers substantially complied with the chain of custody rule.[20]

Hence, the instant appeal.

Issue

Whether Nelson's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

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[15] *Id*. at 50.

[16] *Rollo*, pp. 9-10.

[17] *Id*. at 7.

[18] *Id*. at 8.

[19] *Id*.

[20] *Id*. at 9.

The Court's Ruling

The appeal is meritorious. The accused is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[21] and the fact of its existence is vital to sustain a judgment of conviction.[22] It is essential, therefore, that the identity and integrity of the seized drug be established with moral certainty.[23] Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime.[24]

In this regard, Section 21, Article II of RA 9165,[25] the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must

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[21] *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

[22] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[23] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 9.

[24] *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

[25] The said section reads as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (I) the seized items be inventoried and photographed **immediately after seizure or confiscation**; and (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[26]

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[27] **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has sufficient time to gather and bring with them the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;[28] and, the failure

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[26] See RA 9165, Art. II, Sec. 21 (1) and (2).

[27] IRR of RA 9165, Art. II, Sec. 21(a).

[28] *People v. Sanchez*, 590 Phil. 214, 234 (2008).

of the apprehending team to strictly comply with the procedure laid out in Section 21 does not *ipso facto* render the seizure and custody over the items void. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[29] It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.[30] Without any justifiable explanation, which must be proven as a fact,[31] the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[32]

The buy-bust team failed to comply with the mandatory requirements under Section 21.

In the instant case, the buy-bust team failed to comply with the mandatory requirements under Section 21, which thus creates reasonable doubt as to the identity and integrity of the seized drugs from Nelson.

First, none of the three required witnesses was present during the arrest of the accused and the marking, photography, and inventory of the seized drugs. The *barangay* official and media representative only arrived at the police station to sign the Certificate of Inventory, which was already prepared beforehand by the police officers. Neither did the police officers offer any sufficient explanation as to the absence of the DOJ representative. The testimony of IO2 Ricky Ramos (IO2 Ramos) equivocally established that the three mandatory witnesses were "called–in" only when the police and the accused were already at the police station. As IO2 Ramos testified:

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[29] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

[30] *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[31] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[32] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

Q Mr. Witness, there are two (2) other signatures in this document marked as Exh. "H", do you know whose signatures are these?

A Yes, Sir.

Q Whose signatures are these?

A Above the Elected Official is the signature of *barangay kagawad* Danilo Estrada, a *barangay* official in Sevilla, San Fernando City.

x x x x x x x x x

Q Likewise, Mr. Witness, there is another signature at the right side of the signature of *barangay kagawad* Danilo Estrada, whose signature is this?

A It is the signature of the media representative, sir.

x x x x x x x x x

Q I noticed, Mr. Witness, that there is no signature above the DOJ representative, do you know the reason why there was no DOJ representative at that time.

A We tried to invite a DOJ representative but it was already 5:00 or 6:00 in the afternoon at that time, so we were not able to locate any DOJ representative, sir.[33]

x x x x x x x x x

Q Isn't it a fact that you called for an elected official or the *barangay kagawad* at your office already?

A Yes, ma'am.

Q At the time that you called for them, Mr. witness, the certificate of inventory was already prepared and they were just made to sign the same?

A After putting my inventory at [*sic*] the inventory form the *barangay* officials were already there, ma'am.

Q But they just signed the inventory that was already prepared, correct?

A Yes, ma'am.[34] (Emphasis supplied)

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[33] TSN, February 23, 2011, pp. 26-27.

[34] TSN, March 8, 2011, p. 32.

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose — to prevent or insulate against the planting of drugs.[35] In the instant case, the belated participation of the two mandatory witnesses after the arrest of the accused and seizure of the drugs defeats the aforementioned purpose of the law in having these witnesses present at the place of apprehension.

Second, the buy-bust team did not offer any explanation for their failure to strictly comply with the requirements of Section 21.

The Court has consistently held that the prosecution has the burden of (1) proving its compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance.[36] As the Court *en banc* unanimously held in the recent case of *People vs. Lim*,[37]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reasons such as:
>
> (1) t**heir 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**

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[35] *People v. Tomawis*, G.R. No. 228890, April 8, 2018, pp. 11-12.

[36] *People v. Musor*, G.R. No. 231843, November 7, 2018; *People v. Bricero*, G.R. No. 218428, November 7, 2018.

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

> **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**.[38] (Emphasis in the original and underscoring supplied)

In the case at bar, the police officers offered no such explanation. They admittedly "called-in" the mandatory witnesses only after the buy-bust operation had already been supposedly accomplished although it is obvious that they had no excuse to do so. It is worthy to note that IO2 Ramos has been an intelligence officer of the Philippine Drug Enforcement Agency (PDEA) since 2008; thus, he has already previously conducted several buy-bust operations.[39] The buy-bust operation in this case happened in 2010. Verily, he and his team already knew the standard procedure in a buy-bust operation and the mandatory requirements under Section 21. Hence, they should have had the foresight to do all the necessary preparations for it.

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. In other words, the prosecution was not able to overcome the presumption of innocence of Nelson.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with**. In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation

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[38] *Id*. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[39] TSN, February 23, 2011, p. 3.

therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[40]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated February 12, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05893, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **NELSON FLORES *y* FONBUENA** is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

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[40] See *People v. Jugo*, G.R. No. 231792, January 29, 2018.

THIRD DIVISION

[G.R. No. 227200. June 10, 2019]

MANUEL B. PABLICO and MASTER'S PAB RESTO BAR, *petitioners, vs.* **NUMERIANO B. CERRO, JR., MICHAEL CALIGUIRAN, EFREN PANGANIBAN, GENIUS PAUIG, REYNALIE LIM, GLORIA NAPITAN, RICHARD CARONAN and MANNY BAGUNO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE CLAIM OF ILLEGAL DISMISSAL CANNOT BE SUSTAINED IN THE ABSENCE OF ANY SHOWING OF AN OVERT OR POSITIVE ACT PROVING THAT THE EMPLOYEES HAVE BEEN DISMISSED, AS THE EMPLOYEES' CLAIM IN THAT EVENTUALITY WOULD BE SELF-SERVING, CONJECTURAL AND OF NO PROBATIVE VALUE.— [T]he Court affirms that the rest of the respondents have not been terminated. It is a basic principle in illegal dismissal cases that the employees must first establish by competent evidence the fact of their termination from employment. In this regard, mere allegation does not suffice, evidence must be substantial and the fact of dismissal must be clear, positive and convincing. In the case at bar, respondents Caliguiran, Panganiban, Pauig, Lim, Napitan, Caronan, and Baguno failed to discharge this burden. The only evidence they presented are text messages supposedly informing them that they have been terminated. However, as opined by the tribunals below, nowhere from the language thereof can it be remotely inferred that they are being terminated. It was also not shown that the respondents tried reporting for work, but were prevented to do so. Jurisprudence settled that the claim of illegal dismissal cannot be sustained in the absence of any showing of an overt or positive act proving that the employees have been dismissed, as the employees' claim in that eventuality would be "self-serving, conjectural and of no probative value." In the same vein, the rule that the employer bears the burden of proof in

illegal dismissal cases finds no application in this case as the petitioner denies having dismissed the respondents, and the latter failed to prove the fact of termination.

2. ID.; ID.; WAGE RATIONALIZATION ACT (REPUBLIC ACT NO. 6727); IN ORDER TO BE EXEMPTED FROM THE COVERAGE OF THE LAW, IT MUST BE SHOWN THAT THE ESTABLISHMENT IS REGULARLY EMPLOYING NOT MORE THAN TEN (10) WORKERS, AND THAT THE ESTABLISHMENT HAD APPLIED FOR AND WAS GRANTED EXEMPTION BY THE APPROPRIATE REGIONAL BOARD IN ACCORDANCE WITH THE APPLICABLE RULES AND REGULATIONS ISSUED BY THE COMMISSION.— It is a basic principle in procedure that the burden is upon the person who asserts the truth of the matter that he has alleged. The Court emphasized in *C. Planas Commercial v. NLRC (Second Division)*, that in order to be exempted under Republic Act (R.A.) No. 6727 or the *Wage Rationalization Act*, two elements must concur — *first*, it must be shown that the establishment is regularly employing not more than ten (10) workers, and *second*, that the establishment had applied for and was granted exemption by the appropriate Regional Board in accordance with the applicable rules and regulations issued by the Commission. The conclusion proceeds from the unequivocal language of the law itself x x x. Herein, the petitioner himself admitted that he did not apply for such exemption, thus, it is clear that he cannot claim benefits under the law. The petitioner cannot shield himself from complying with the law by the lone fact that he is just a layman and cannot be expected to know of the law's requirements. Under our legal system, ignorance of the law excuses no one from compliance therewith. Furthermore, the policy of the Labor Code, under which R.A. No. 6727 is premised, is to include all establishments, except a few specific classes, under the coverage of the law. As the petitioner failed to apply for an exemption, and it is undisputed that the respondents are MPRB's employees and are paid less than the prescribed minimum wage, the petitioner's liability for wage differential cannot be denied.

3. ID.; ID.; EMPLOYMENT; THE STATUS OF EMPLOYMENT CAN NEITHER BE DICTATED BY THE STIPULATION OF CONTRACT OR ANY

DOCUMENT, NOR IS AN EMPLOYEE'S AVOWAL OF HIS/HER EMPLOYMENT STATUS AS REGULAR, CASUAL, CONTRACTUAL, AND SEASONAL CONCLUSIVE UPON THE COURT, BUT THE EMPLOYMENT STATUS IS DETERMINED BY THE FOUR-FOLD TEST, AND THE ATTENDANT CIRCUMSTANCES OF EACH CASE, AS SUPPORTED BY ANY COMPETENT AND RELEVANT EVIDENCE.— Employment status is not determined by contract or document. Neither is an employee's avowal of his or her employment status — as regular, casual, contractual, seasonal — conclusive upon the Court. To be sure, employment status is determined by the four-fold test, and the attendant circumstances of each case, as supported by any competent and relevant evidence. The status of employment cannot be dictated by the stipulation of contract or any document, because the same is contrary to public policy and heavily impressed with public interest. The law relating to labor and employment is an area where the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by means of contract or waiver.

4. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF LABOR OFFICIALS, WHO ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR JURISDICTION, ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY AND BIND THE COURT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.—** [T]he Court finds no reason to disturb the findings of the labor tribunals. Well-settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality and bind this Court when supported by substantial evidence, as in the case at bar. The mere existence of these guest relations officers/waitresses employed under the same terms and conditions as the respondents is sufficient to disqualify petitioner and MPRB from the exemption under R.A. No. 6727. Devoid of any unfairness or arbitrariness in the labor tribunals' decision making process, the Court is left with no recourse but to affirm the findings made by them.

5. **LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; WAGE RATIONALIZATION ACT (REPUBLIC ACT NO.**

6727); LEGAL INTEREST OF TWELVE PERCENT (12%) PER ANNUM ON THE COMPENSATION DUE IMPOSED UPON THE EMPLOYER FOR VIOLATION OF R.A. NO. 6727.— Since there is a clear violation of R.A. No. 6727, the petitioner is also liable to pay interest on the appropriate compensation due, not only by the express provision of the law but because the failure to pay constitutes a loan or forbearance of money, at the rate of one percent (1%) per month or twelve percent (12%) *per annum*. The Court must clarify that in keeping with the reason behind the law in imposing the same interest, and in light of the Court's ruling in *Nacar v. Gallery Frames, et al.*, the imposition of interest must be reconciled with Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796 dated May 16, 2013, which effectively amended the rate of interest. Accordingly, the amount of wage differentials which the petitioner owed to the respondents shall earn interest at the rate of twelve percent (12%) *per annum* from the time payment thereof has accrued or their respective dates of employment until the date they last reported for work or July 1, 2013, whichever is earlier. Thereafter, it having been concluded that the respondents have not been illegally dismissed and as such entitled to reinstatement, provided that they have rendered services within the period, the interest shall be six percent (6%) *per annum* until their full satisfaction.

6. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; WHILE PHOTOCOPIED DOCUMENTS ARE GENERALLY ADMITTED AND GIVEN PROBATIVE VALUE IN ADMINISTRATIVE PROCEEDINGS, ALLEGATIONS OF FORGERY AND FABRICATION PROMPT THE PARTY TO PRESENT THE ORIGINAL DOCUMENTS FOR INSPECTION.— The dismissal of the allegation of forgery only means, at most, that the signatures therein are genuine. In fact, the Resolution issued by the Assistant City Prosecutor provides that the basis of dismissal is not the absolute certainty that the signatures in the payroll belong to the respondents; rather, it is because of the failure by the respondents to adduce evidence to establish the manner in which the petitioner committed the alleged forgery. The dismissal notwithstanding, the fact remains that the documents presented by the petitioner are plain photocopies and insufficient in this regard to support his allegation of payment. While photocopied documents are

generally admitted and given probative value in administrative proceedings, allegations of forgery and fabrication prompt the petitioner to present the original documents for inspection. This is to give the respondents the opportunity to examine and controvert the documents presented. Notably, the petitioner did not present the originals nor even attempted to explain why he cannot present the same, when these should have been easily accounted for as the same were in his possession. The non-presentation of the original without any explanation, that the photocopied documents do not present a complete list of MPRB's employees, the absence of certification as to their authenticity, and the allegation of forgery by the respondents raise legitimate doubts on the authenticity of the payrolls which renders the same devoid of any rational probative value.

7. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REINSTATEMENT; WHERE THE EMPLOYEE WAS NEITHER FOUND TO HAVE BEEN DISMISSED NOR TO HAVE ABANDONED HIS/HER WORK, THE COURT SHALL DISMISS THE COMPLAINT, DIRECT THE EMPLOYEE TO RETURN TO WORK, AND ORDER THE EMPLOYER TO ACCEPT THE EMPLOYEE; EXCEPTIONS; NOT PRESENT.—** Indeed, "where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the **Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee**." However, the same is not absolute. In the following instances, separation pay was awarded in lieu of reinstatement, *viz*.: 1) in case of closure of establishment under Article 298 [formerly Article 283] of the Labor Code; 2) in case of termination due to disease or sickness under Article 299 [formerly Article 284] of the Labor Code; 3) as a measure of social justice in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character; 4) where the dismissed employee's position is no longer available; 5) when the continued relationship between the employer and the employee is no longer viable due to the strained relations between them; or 6) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the , best interest of the parties involved. In all of these cases, the grant of separation pay presupposes that the employee to

whom it was given was dismissed from employment, whether legally or illegally. x x x. However, none of the foregoing circumstances obtain in the case at bar. Not only were the parties unable to adduce evidence in support of the foregoing, much less, they have not made any allegation for the Court to consider that reinstatement is no longer preferred in the case at bar.

8. ID.; ID.; ID.; ID.; THE DOCTRINE OF STRAINED RELATIONS AS AN EXCEPTION TO THE GENERAL RULE OF REINSTATEMENT DOES NOT AUTOMATICALLY APPLY NOR CAN BE INFERRED WHENEVER A CASE FOR ILLEGAL DISMISSAL IS FILED, AS STRAINED RELATIONS BETWEEN THE PARTIES CANNOT BE BASED ON IMPRESSION ALONE, BUT MUST BE PROVEN AS A FACT AND SUPPORTED BY SUBSTANTIAL EVIDENCE.— [J]urisprudence also recognizes the doctrine of strained relations as an exception to the general rule of reinstatement. In which instance, separation pay is accepted as an alternative when reinstatement is no longer desirable or viable. The doctrine, however, does not automatically apply nor can be inferred whenever a case for illegal dismissal is filed. Strained relations between the parties cannot be based on impression alone. It must be proven as a fact and supported by substantial evidence. There being no allegation, much more evidence to prove that reinstatement is impossible because of the strained relations of the parties, the NLRC's order for reinstatement is proper.

APPEARANCES OF COUNSEL

Toribio Gonzales-Toribio and Associates Law Offices for petitioners.

D E C I S I O N

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

Before this Court is a Petition for Review[1] filed by Manuel B. Pablico (petitioner) and Master's Pab Resto Bar under Rule

[1] *Rollo*, pp. 12-22.

45 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision[2] of the Court of Appeals (CA) in C.A. G.R. SP No. 131134 dated October 27, 2015, and its Amended Decision[3] dated September 19, 2016, partly granting the motion for reconsideration thereof.

The Antecedent Facts

Respondent Numeriano Cerro, Jr. (Cerro) works as a bartender in Master's Pab Resto Bar (MPRB). At the former's suggestion, the petitioner purchased and took over the management of MPRB from its original owner, the Feliciano family, on November 18, 2008.[4]

On the same day, the petitioner took over, he promoted Cerro as Officer-in-Charge with a daily wage of ₱200.00, and gave the latter the authority to hire additional employees.[5] Pursuant to which, herein respondents were employed to work at MPRB, *viz*.:

NAME	DATE OF EMPLOYMENT	POSITION	DAILY WAGE
Michael Caliguiran (Caliguiran)	November 18, 2008	Disk Jockey	Php 200.00
Efren Panganiban (Panganiban)	November 18, 2008	Cook	Php 200.00
Gloria Napitan (Napitan)	March 26, 2008	Accountant	Php 200.00
Reynalie Lim (Lim)	January 23, 2011	Barmaid	Php 200.00
Manny Baguno (Baguno)	March 2, 2011	Utility	Php 133.33
Genius Pauig (Pauig)	November 18, 2008	Waiter	Php 157.66
Richard Caronan (Caronan)	March 2, 2011	Assistant Cook	Php 166.66

[2] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison and Ma. Luisa C. Quijano Padilla, concurring; *id*. at 32-41.

[3] *Id*. at 43-47.

[4] *Id.* at 33.

[5] *Id*. at 33-34.

Sometime in September 2011, due to several infractions that caused MPRB losses, the petitioner transferred Cerro to another establishment.[6] On October 18, 2011, respondents Caliguiran, Panganiban, Pauig, Lim, Napitan, Caronan, and Baguno received text messages, which they interpreted to mean that they have been terminated from work on account of their close association to Cerro.[7]

Acting on this, on October 24, 2011, the respondents then filed a Complaint[8] for illegal dismissal, underpayment of salaries and benefits, damages and attorney's fees before the National Labor Relations Commission (NLRC).

On March 30, 2012, Labor Arbiter (LA) Jaime M. Reyno rendered his Decision,[9] the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for lack of merit.
>
> SO ORDERED.[10]

In his Decision, the LA dismissed the respondents' claim of illegal dismissal. Insofar as Cerro, the LA held that his suspension is a valid exercise by the employer of disciplinary authority pursuant to the former's infractions. Anent the other respondents on the other hand, the LA held that they failed to discharge the burden of proving that they have been terminated. Finally, on account of the respondents' money claims, the LA found the payrolls presented by the petitioner as sufficient proof of payment.[11]

The respondents appealed to the NLRC. On November 21, 2012, the NLRC promulgated its Decision.[12] Therein, the NLRC ruled:

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[6] *Id*. at 34.

[7] *Id*. at 34, 50-51, and 149.

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

[9] *Id*. at 148-155.

[10] *Id*. at 155.

[11] *Id*. at 151-154.

[12] *Id*. at 49-59.

WHEREFORE, premises considered, the appeal is Partially Granted. The Decision of the [LA] dated March 30, 2012 is hereby AFFIRMED with MODIFICATION. The Decision of the [LA] is sustained insofar as (1) the legality of complainant Cerro's suspension, (2) the dismissal of complainants' claim of illegal dismissal and (3) dismissal of complainants' claim for moral and exemplary damages are concerned. However, regarding complainants' monetary claims, the Commission finds that they are entitled to the following, namely: (1) wage differentials for 3 years counted backwards from October 2011; and (2) 13th month pay for a period of 3 years counted backwards from October 2011. Moreover, as a consequence of the finding that complainants were not dismissed from employment, complainants are directed to return to work and respondents are directed to reinstate complainants to their former positions, without backwages. Considering, however, the apparent strained relations between the parties brought about by the filing of this complaint, respondents are directed to grant separation pay, in lieu of reinstatement, to each of complainants, reckoned from date of his/her employment up to the finality of this Decision.

The Computation Division of this Office is directed to make the necessary computation of the separation pay and herein monetary benefits herein granted complainants, which shall form an integral part of this Decision.

SO ORDERED.[13]

Unsatisfied with the decision of the NLRC, the respondents filed a partial motion for reconsideration, which the NLRC denied in its Resolution[14] dated May 20, 2013.

The petitioner elevated the case to the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court. The CA rendered the herein assailed Decision[15] on October 27, 2015, the dispositive portion of which reads:

WHEREFORE, there being no grave abuse of discretion amounting to lack or excess of jurisdiction committed by the NLRC, the petition is **DISMISSED** for lack of merit.

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[13] *Id*. at 58-59.

[14] *Id*. at 63-65.

[15] *Id*. at 32-41.

SO ORDERED.[16] (Emphases in the original)

On motion for reconsideration, the CA issued an Amended Decision[17] on September 19, 2016, adjudging as follows:

WHEREFORE, premises considered, the petitioner's Motion for Reconsideration is **PARTIALLY GRANTED**. Our Decision dated October 27, 2015 is MODIFIED in that the NLRC's Decision dated November 21, 2012 in NLRC NCR CASE No. 10-16169-11 / NLRC LAC NO. 05-001595-12 is affirmed except for the award of Separation Pay which is hereby **DELETED**.

SO ORDERED.[18] (Emphases Ours)

Thus, this petition for review on *certiorari* filed by the petitioner, attributing the following errors committed by the CA for the Court's consideration, *to wit*:

1. THE NLRC COMMITTED A REVERSIBLE ERROR WHEN IT RULED THAT THE PETITIONER IS NOT EXEMPT FROM THE MINIMUM WAGE LAW;

2. THE NLRC COMMITTED A REVERSIBLE ERROR WHEN IT GRANTED THE CLAIM OF THE EMPLOYEES FOR WAGE DIFFERENTIAL WITHOUT DUE REGARD TO THE EVIDENCE PRESENTED BY THE PETITIONER ANENT THE AMOUNT OF SALARY BEING PAID TO HIS EMPLOYEES; and

3. THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ARBITRARILY COMPUTING THE ALLEGED LIABILITY OF THE PETITIONER.[19]

Ruling of the Court

The petition is **not** meritorious.

As the Court sees it, the petitioner merely reiterates the same points he has raised in his petition before the CA. The petitioner

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[16] *Id.* at 39-40.

[17] *Id.* at 43-47.

[18] *Id.* at 45.

[19] *Id.* at 16-17.

argues that he is exempted from the application of the "Minimum Wage Law" as he is engaged in the service business that employs less than ten (10) employees. He asserts that the mere fact that his business has not been granted exemption by the Department of Labor and Employment (DOLE) does not disqualify him from availing the benefits of the said law, as a layman like him cannot be expected to be knowledgeable of this requirement.[20] Also, the petitioner faults the NLRC in not considering the "*Pinagsamang Sinumpaang Salaysay*" issued by the Guest Relations Officers/Waitresses working at MPRB as proof that the same individuals are not its employees.[21]

Preliminarily, it must be stated that the labor tribunals and the CA were unanimous in ruling that Cerro's suspension is legal and that the rest of the respondents have not been dismissed. The Court agrees.

Cerro admitted having appropriated the funds of the MPRB without the knowledge and consent of its owner, for sure, this act justifies the exercise of management prerogative to place him under preventive suspension particularly considering his position.[22] Being an Officer-in-Charge of MPRB, Cerro is

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[20] *Id*. at 18.

[21] *Id*. at 20.

[22] Sections 8 and 9 of Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code, as amended by DOLE Department Order No. 9, Series of 1997, which read:

SEC. 8. ***Preventive suspension.*** – The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

SEC. 9. ***Period of suspension.*** – No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

responsible for the company's over-all operations and, as such in a position, cause damage to the property of the employer.

Similarly, the Court affirms that the rest of the respondents have not been terminated. It is a basic principle in illegal dismissal cases that the employees must first establish by competent evidence the fact of their termination from employment. In this regard, mere allegation does not suffice, evidence must be substantial and the fact of dismissal must be clear, positive and convincing.[23] In the case at bar, respondents Caliguiran, Panganiban, Pauig, Lim, Napitan, Caronan, and Baguno failed to discharge this burden. The only evidence they presented are text messages supposedly informing them that they have been terminated. However, as opined by the tribunals below, nowhere from the language thereof can it be remotely inferred that they are being terminated.[24] It was also not shown that the respondents tried reporting for work, but were prevented to do so. Jurisprudence settled that the claim of illegal dismissal cannot be sustained in the absence of any showing of an overt or positive act proving that the employees have been dismissed, as the employees' claim in that eventuality would be "self-serving, conjectural and of no probative value."[25] In the same vein, the rule that the employer bears the burden of proof in illegal dismissal cases finds no application in this case as the petitioner denies having dismissed the respondents,[26] and the latter failed to prove the fact of termination.

Next, the petitioner argues that the respondents are not entitled to wage differentials as he is engaged in the service business employing less than ten (10) employees.

It is a basic principle in procedure that the burden is upon the person who asserts the truth of the matter that he has alleged.[27] The Court emphasized in *C. Planas Commercial v. NLRC (Second*

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[23] *Tri-C General Services v. Matuto, et al.*, 770 Phil. 251, 262 (2015).

[24] *Rollo*, p. 88.

[25] *Tri-C General Services v. Matuto, et al.*, *supra* note 23, at 262.

[26] *Id.* at 262-263.

[27] *Aznar Brothers Realty Company v. Aying, et al.*, 497 Phil. 788, 803 (2005).

Division),[28] that in order to be exempted under Republic Act (R.A.) No. 6727 or the *Wage Rationalization Act*, two elements must concur — *first*, it must be shown that the establishment is regularly employing not more than ten (10) workers, and *second*, that the establishment had applied for and was granted exemption by the appropriate Regional Board in accordance with the applicable rules and regulations issued by the Commission.[29] The conclusion proceeds from the unequivocal language of the law itself:

> **Section 4.** x x x
>
> x x x x x x x x x
>
> (c) Exempted from the provisions of this Act are x x x
>
> Retail/service establishments regularly employing not more than ten (10) workers may be exempted from the applicability of this Act upon application with and as determined by the appropriate Regional Board in accordance with the applicable rules and regulations issued by the Commission. Whenever an application for exemption has been duly filed with the appropriate Regional Board, action on any complaint for alleged non-compliance with this Act shall be deferred pending resolution of the application for exemption by the appropriate Regional Board.
>
> In the event that applications for exemptions are not granted, employees shall receive the appropriate compensation due them as provided for by this Act plus interest of one per cent (1%) per month retroactive to the effectivity of this Act.[30]

Herein, the petitioner himself admitted that he did not apply for such exemption, thus, it is clear that he cannot claim benefits under the law. The petitioner cannot shield himself from complying with the law by the lone fact that he is just a layman and cannot be expected to know of the law's requirements. Under our legal system, ignorance of the law excuses no one from compliance therewith.[31] Furthermore, the policy of the

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[28] 511 Phil. 232 (2005).

[29] *Id*. at 241-242.

[30] *R.A. No*. 6727, *Wage Rationalization Act*.

[31] CIVIL CODE OF THE PHILIPPINES, Article 3.

Labor Code, under which R.A. No. 6727 is premised, is to include all establishments, except a few specific classes, under the coverage of the law.[32] As the petitioner failed to apply for an exemption, and it is undisputed that the respondents are MPRB's employees and are paid less than the prescribed minimum wage, the petitioner's liability for wage differential cannot be denied.

Although inconsequential, with the petitioner's liability already established, it is still useful to state that the first element is also wanting in the case at bar. Herein, the LA, the NLRC, and the CA all found that the petitioner is employing more than ten (10) employees in his establishment. The petitioner counters the foregoing conclusion, raising in evidence the affidavit issued collectively by its guest relations officers/ waitresses.

Employment status is not determined by contract or document. Neither is an employee's avowal of his or her employment status — as regular, casual, contractual, seasonal — conclusive upon the Court. To be sure, employment status is determined by the four-fold test, and the attendant circumstances of each case, as supported by any competent and relevant evidence.[33] The status of employment cannot be dictated by the stipulation of contract or any document, because the same is contrary to public policy and heavily impressed with public interest. The law relating to labor and employment is an area where the parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by means of contract or waiver.[34]

Still, the Court finds no reason to disturb the findings of the labor tribunals. Well-settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not

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[32] *Cf. Murillo v. Sun Valley Realty, Inc.*, 246 Phil. 279, 285-286 (1988).

[33] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 412-413 (2014).

[34] *Servidad v. NLRC*, 364 Phil. 518, 527 (1999), citing *Pakistan International Airlines Corp. v. Hon. Ople*, 268 Phil. 92, 101 (1990).

only respect but even finality and bind this Court when supported by substantial evidence,[35] as in the case at bar. The mere existence of these guest relations officers/waitresses employed under the same terms and conditions as the respondents is sufficient to disqualify petitioner and MPRB from the exemption under R.A. No. 6727. Devoid of any unfairness or arbitrariness in the labor tribunals' decision making process, the Court is left with no recourse but to affirm the findings made by them.[36]

Since there is a clear violation of R.A. No. 6727, the petitioner is also liable to pay interest on the appropriate compensation due, not only by the express provision of the law but because the failure to pay constitutes a loan or forbearance of money, at the rate of one percent (1%) per month or twelve percent (12%) *per annum*. The Court must clarify that in keeping with the reason behind the law in imposing the same interest, and in light of the Court's ruling in *Nacar v. Gallery Frames, et al.*,[37] the imposition of interest must be reconciled with Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796 dated May 16, 2013,[38] which effectively amended the rate of interest.[39]

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[35] *C. Planas Commercial v. NLRC (Second Division)*, *supra* note 28, at 243.

[36] *Id.* at 243-244.

[37] 716 Phil. 267 (2013).

[38] The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.

This Circular shall take effect on 1 July 2013.

[39] See *Sec. of the Dep't. of Public Works and Highways, et al. v. Sps. Tecson*, 758 Phil. 604, 639 (2015).

Accordingly, the amount of wage differentials which the petitioner owed to the respondents shall earn interest at the rate of twelve percent (12%) *per annum* from the time payment thereof has accrued or their respective dates of employment until the date they last reported for work or July 1, 2013, whichever is earlier.[40] Thereafter, it having been concluded that the respondents have not been illegally dismissed and as such entitled to reinstatement, provided that they have rendered services within the period, the interest shall be six percent (6%) *per annum* until their full satisfaction.[41] Simple enough, the case presents no controversy on this aspect as it appears that the respondents ceased to report to work prior to July 1, 2013 per Report[42] of the Computation Division of the NLRC:

NAMES	DATE EMPLOYED	DATE LAST REPORTED TO WORK
Cerro	November 18, 2008	June 30, 2010
Caliguiran	November 18, 2008	June 30, 2010
Panganiban	November 18, 2008	June 30, 2010
Napitan	March 26, 2010	June 30, 2010
Lim	January 23, 2011	October 18, 2011
Baguno	March 2, 2011	October 18, 2011
Pauig	November 18, 2008	June 30, 2010
Caronan	March 2, 2011	October 18, 2011

Fittingly, the foregoing dates should serve as basis not only of the amount of wage differential but of the proper interest due. Having ruled out illegal dismissal, no wages are due for the period they have not reported to work.

Finally, the petitioner raises as the final error on this appeal the award of the monetary benefits in favor of the respondents.

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[40] *Id.*

[41] *Id.*

[42] *Rollo*, pp. 60-61.

The petitioner posits that the NLRC and the CA erred in not relying on his documentary evidence. He claims that had the payrolls been considered, they would be sufficient to prove that the respondents have been paid of the benefits they now claim. Ultimately, the petitioner argues that while the documents he presented are mere photocopies, the fact that the allegation of forgery has been dismissed by the Office of the City Prosecutor of Quezon City[43] should render the same sufficient for the purpose of this appeal.

The petitioner's arguments are not persuasive.

The dismissal of the allegation of forgery only means, at most, that the signatures therein are genuine. In fact, the Resolution[44] issued by the Assistant City Prosecutor provides that the basis of dismissal is not the absolute certainty that the signatures in the payroll belong to the respondents; rather, it is because of the failure by the respondents to adduce evidence to establish the manner in which the petitioner committed the alleged forgery.[45] The dismissal notwithstanding, the fact remains that the documents presented by the petitioner are plain photocopies and insufficient in this regard to support his allegation of payment. While photocopied documents are generally admitted and given probative value in administrative proceedings, allegations of forgery and fabrication prompt the petitioner to present the original documents for inspection.[46] This is to give the respondents the opportunity to examine and controvert the documents presented.[47] Notably, the petitioner did not present the originals nor even attempted to explain why he cannot present the same, when these should have been easily accounted for as the same were in his possession. The non-presentation of the original without any explanation, that the

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[43] *Id.* at 170-173.

[44] *Id.*

[45] *Id.* at 172.

[46] *Loon, et al. v. Power Master, Inc., et al.*, 723 Phil. 515, 530 (2013).

[47] *Id.*

photocopied documents do not present a complete list of MPRB's employees, the absence of certification as to their authenticity, and the allegation of forgery by the respondents raise legitimate doubts on the authenticity of the payrolls which renders the same devoid of any rational probative value.[48]

In closing, while not raised as an issue in this appeal, on account of its close relation to the errors herein assigned[49] and for the guidance of the Bench and the Bar, the Court deems it proper to discuss the propriety of the award for separation pay.

The CA, on motion for reconsideration, amended its decision and deleted the award of separation pay, ratiocinating that the grant of the said benefit is inconsistent with the finding that there is no illegal dismissal.

While the Court agrees with the ultimate result, a clarification must nonetheless be made.

Indeed, "where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the **Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee**."[50] However, the same is not absolute. In the following instances, separation pay was awarded in lieu of reinstatement, *viz.*:

> 1) in case of closure of establishment under Article 298 [formerly Article 283] of the Labor Code; 2) in case of termination due to disease or sickness under Article 299 [formerly Article 284] of the Labor Code; 3) as a measure of social justice in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character; 4) where the dismissed employee's position is no longer available; 5) when the continued relationship between the employer and the employee is

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[48] *Asuncion v. NLRC*, 414 Phil. 329, 338-339 (2001).

[49] *Aklan College, Inc. v. Enero, et al.*, 597 Phil. 60, 74-75 (2009).

[50] *Claudia's Kitchen, Inc., et al. v. Tanguin*, 811 Phil. 784, 799 (2017), citing *Dee Jay's Inn and Cafe and/or Melinda Ferraris v. Rañeses*, 796 Phil. 574, 595-596 (2016).

no longer viable due to the stained relations between them; or 6) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved. In all of these cases, the grant of separation pay presupposes that the employee to whom it was given was dismissed from employment, whether legally or illegally. In fine, as a general rule, separation pay in lieu of reinstatement could not be awarded to an employee whose employment was not terminated by his employer.

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There were cases, however, wherein the Court awarded separation pay in lieu of reinstatement to the employee **even after a finding that there was neither dismissal nor abandonment.** In *Nightowl Watchman & Security Agency, Inc. v. Lumahan (Nightowl)*, the Court awarded separation pay in view of the findings of the NLRC that respondent stopped reporting for work for more than ten (10) years and never returned, based on the documentary evidence of petitioner.[51] (Citations omitted, emphasis and underscoring Ours)

However, none of the foregoing circumstances obtain in the case at bar. Not only were the parties unable to adduce evidence in support of the foregoing, much less, they have not made any allegation for the Court to consider that reinstatement is no longer preferred in the case at bar.

In the same vein, jurisprudence also recognizes the doctrine of strained relations as an exception to the general rule of reinstatement. In which instance, separation pay is accepted as an alternative when reinstatement is no longer desirable or viable. The doctrine, however, does not automatically apply nor can be inferred whenever a case for illegal dismissal is filed. Strained relations between the parties cannot be based on impression alone. It must be proven as a fact and supported by substantial evidence.[52] There being no allegation, much more evidence to prove that reinstatement is impossible because of the strained relations of the parties, the NLRC's order for reinstatement is proper.

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[51] *Id.* at 799-800.

[52] *Id.*; *Golden Ace Builders, et al. v. Talde*, 634 Phil. 364, 370-371 (2010).

WHEREFORE, in view of the foregoing, the instant petition for review on *certiorari* is hereby **DENIED**. Accordingly, the Decision dated October 27, 2015 and the Amended Decision dated September 19, 2016 of the Court of Appeals in C.A. G.R. SP No. 131134 are hereby **AFFIRMED with MODIFICATION** in that the wage differential which petitioner Manuel B. Pablico must pay respondents Numeriano Cerro, Jr., Michael Caliguiran, Efren Panganiban, Gloria Napitan, Reynalie Lim, Manny Baguno, Genius Pauig, and Richard Caronan shall be subject to interest at the rate of twelve percent (12%) *per annum*. Further, all of the monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid. The appealed decision is affirmed in all other respects.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Hernando*, and *Inting, JJ.*, concur.

SECOND DIVISION

[G.R. No. 228002. June 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **OSCAR PEDRACIO GABRIEL, JR.,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, AS AMENDED (REPUBLIC ACT NO. 9165); SECTION 21 OF RA NO. 9165; THE APPREHENDING TEAM IS REQUIRED TO CONDUCT A PHYSICAL INVENTORY OF THE SEIZED ITEMS AND TO PHOTOGRAPH THE SAME IMMEDIATELY

AFTER SEIZURE AND CONFISCATION AT THE SCENE OF APPREHENSION. IT IS ONLY WHEN THE SAME IS IMPRACTICABLE THAT THE INVENTORY AND PHOTOGRAPHING MAY BE DONE AS SOON AS THE BUY-BUST TEAM REACHES THE NEAREST POLICE STATION OR THE NEAREST OFFICE OF THE APPREHENDING OFFICER/TEAM.— x x x [T]he buy-bust team failed to comply with the requirements under Section 21 of RA 9165. x x x [T]he arresting officers failed to mark and photograph the seized illegal drug at the place of arrest. x x x In fact, it appears that even at the police station, no inventory was prepared and no photographs were taken of the illegal drugs. x x x. Contrary to the findings of the RTC and the CA, Section 21 requires the apprehending team to conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation at the scene of apprehension, except when the same is impracticable. In *People v. Angeles (Angeles),* the Court explained: The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. **It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.** x x x In the instant case, however, no explanation or justification was given on why the inventory and photographing were "not practicable" at the scene of the apprehension.

2. ID.; ID.; ID.; ID.; WITNESS REQUIREMENT; THE PRESENCE OF THE WITNESSES FROM THE DEPARTMENT OF JUSTICE (DOJ), MEDIA, AND FROM PUBLIC ELECTIVE OFFICE AT THE TIME OF THE APPREHENSION AND INVENTORY IS MANDATORY TO PROTECT AGAINST THE POSSIBILITY OF PLANTING, CONTAMINATION, OR LOSS OF THE SEIZED DRUG.— [N]one of the three required witnesses was present at the time of seizure and apprehension. x x x. It is settled that the presence of the three required witnesses at the time of the apprehension and inventory is mandatory. In *People*

v. Tomawis, the Court explained the purpose of the law in mandating the presence of the required witnesses as follows: The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza,* without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti,* and thus adversely affected the trustworthiness of the incrimination of the accused. x x x.

3. ID.; ID.; ID.; NONCOMPLIANCE OF THE MANDATORY REQUIREMENTS UNDER JUSTIFIABLE GROUNDS, AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING OFFICER/ TEAM, SHALL NOT RENDER VOID AND INVALID SUCH SEIZURES AND CUSTODY OVER SAID ITEMS; PROVIDED, THE PROSECUTION MUST FIRST RECOGNIZE ANY LAPSE ON THE PART OF THE POLICE OFFICERS AND BE ABLE TO JUSTIFY THE SAME.— [T]he buy-bust team proffered no explanation whatsoever to justify the non-compliance with the mandatory rules. In *Angeles,* the Court explained that "Section 21 of the IRR of RA 9165 provides that 'noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.' **For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same."** In the instant case, the prosecution did neither.

4. ID.; ID.; ID.; THE REGULARITY OF THE PERFORMANCE OF THEIR DUTY COULD NOT BE PROPERLY PRESUMED IN FAVOR OF THE POLICE OFFICERS

MAINLY BECAUSE OF FAILURE TO PROVE THE POLICE OFFICERS' ILL-MOTIVE WHERE THE RECORDS ARE REPLETE WITH INDICIA OF THEIR SERIOUS LAPSES.— [T]he RTC and the CA erroneously relied on the presumption that the police officers regularly performed their functions and convicted Gabriel for having failed to prove the police officers' ill-motive. In *People v. Catalan,* the Court unequivocally stated that the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused, *viz.:* Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, **mainly because the accused did not show that they had ill motive behind his entrapment.** We hold that both lower courts committed gross error in relying on the presumption of regularity. Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** x x x. **Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policeman because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air.**

5. ID.; ID.; ID.; THE *CORPUS DELICTI* OF THE OFFENSES CHARGED NOT PROVED WHERE THE PROSECUTION FAILED TO EXPLAIN THE BUY-BUST TEAM'S VIOLATIONS AND DEVIATIONS IN THE SEIZURE, CUSTODY, AND HANDLING OF THE SEIZED ILLEGAL DRUGS, WARRANTING THE ACQUITTAL OF THE ACCUSED.— Contrary to the rulings of the RTC and the CA, the prosecution bears the burden of proving compliance with the procedure outlined in Section 21 of RA 9165. Both courts committed gross error in relying on the presumption of regularity as basis to convict Gabriel, just because he failed to show the buy-bust team's ill motive. In view of the foregoing, Gabriel

must be acquitted. As a result of the buy-bust team's many unexplained violations and deviations in the seizure, custody, and handling of the seized illegal drugs, the prosecution miserably failed to prove the *corpus delicti* of the offenses charged.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by the accused-appellant Oscar Pedracio Gabriel, Jr. (Gabriel), assailing the Decision[2] dated November 12, 2015 (Assailed Decision) of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06450, which affirmed with modification the Decision[3] dated June 12, 2013 of the Regional Trial Court, Antipolo City, Branch 73 (RTC) in Criminal Case Nos. 03-25992 and 03-25993, finding Gabriel guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, as amended.

The Facts

Two (2) Informations[5] were filed against Gabriel, the accusatory portions of which read as follows:

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[1] See Notice of Appeal dated December 15, 2015; *rollo*, pp. 13-15.

[2] *Rollo*, pp. 2-12. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Nina G. Antonio-Valenzuela and Pedro B. Corales concurring.

[3] CA *rollo*, pp. 35-38. Penned by Executive Judge Ronaldo B. Martin.

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

[5] Records, pp. 1-2, 17-18.

Criminal Case No. 03-25992

That on or about the 27th day of June 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to poseur buyer PO1 Gangan, one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance, for and in consideration of the amount of ₱100.00, which, after the corresponding laboratory examination conducted by the PNP Crime Laboratory was found positive to the test for [Methamphetamine] Hydrochloride, also known as "*shabu*" a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[6]

Criminal Case No. 03-25993

That on or about the 27th day of June, 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized by law, to possess of [*sic*] any dangerous drug, did, then and there willfully, unlawfully and knowingly have in his possession, custody and control one (7) [*sic*] heat-sealed transparent plastic sachet containing 0.019 [gram] of white crystalline substance, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave positive result to the tests for [Methamphetamine] [H]ydrochloride, also known as "*Shabu*", a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[7]

During the arraignment on August 26, 2003, Gabriel pleaded not guilty to both offenses.[8] Thereafter, pre-trial and trial on the cases ensued.[9] The CA reproduced the prosecution's narration of facts in its Appellee's Brief[10] as follows:

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[6] *Id*. at 1.

[7] *Id.* at 17.

[8] *Rollo*, p. 3.

[9] *Id*.

[10] CA *rollo*, pp. 45-61.

About 2:15 in the afternoon of June 27, 2003, SPO1 Danilo Sumpay was on duty at the Antipolo City Police Station when their office received an information about illegal drug activities of appellant Oscar Gabriel in his house at No. 6 Claire Street, *Barangay* Cupang, Antipolo City. Acting on the information received, the Chief of Police, Col. Primitivo Tabajora, immediately formed a buy-bust team which was composed of SPO1 Sumpay as the team leader, PO1 Robert Gangan as the poseur[-]buyer, and PO3 Edmund Gacute and P/A Cristito Magsino as members. After a briefing, the team coordinated with the Philippine Drug Enforcement Agency (PDEA), prepared the buy-bust money and recorded their operation in their blotter book. Thereafter, the team proceeded to the target area.

When the team reached *Barangay* Cupang, PO1 Gangan alighted from the vehicle and walked going to appellant's house while the other members of the team secretly followed him. Upon arriving at appellant's house, PO1 Gangan knocked on the door. Somebody asked who he was, to whom PO1 Gangan replied, "*pa iskor naman*." PO1 Gangan was told to wait for a while. Thereafter, appellant opened the door and PO1 Gangan immediately handed to him the marked money. Thereafter, appellant handed to PO1 Gangan a plastic sachet of *shabu*. At that point, PO1 Gangan made the pre-arranged signal by scratching his head and the other members of the team proceeded to the scene and introduced themselves as police officers to appellant.

PO3 Edmund Gacute, who was the first to arrive at the scene, was able to recover the One Hundred Peso (₱100) buy-bust money from appellant. When PO3 Gacute ordered appellant to empty his pocket, seven (7) more plastic sachets of *shabu* were recovered from him. After apprising appellant of his constitutional rights, the police officers arrested him and brought him to the Antipolo City Police Station. At the police station, the team executed a joint affidavit and put marking on the plastic packs recovered. The plastic sachet of *shabu* bought by PO1 Gangan from appellant was marked as "JR," while the seven (7) plastic sachets of *shabu* seized from appellant were respectively marked "OG-1" to "OG-7." Thereafter, they prepared the letter requesting for laboratory examination of the eight (8) plastic sachets containing white crystalline substance.

Forensic Chemist PCI Annalee Forro of the Eastern Police District Crime Laboratory Office was the one who received the letter request and said plastic sachets. Laboratory examination on the substance

contained in all the eight (8) plastic sachets yielded positive result for methamphetamine hydrochloride, a dangerous drug.[11]

On the other hand, the CA cited the RTC's summary of Gabriel's version of the facts as follows:

> On the other hand, accused claimed he was merely walking near their house when several men alighted from a vehicle one of whom fired a shot and told him not to run. Accused averred he only recognized one of the men as Magsino and that he ran nonetheless because he was caught by surprise. According to accused, he was chased and arrested after being told that the men had a warrant of arrest against him but that no document was presented to him. Accused stated that he was boarded to the men's vehicle and brought to the police station where he was detained for selling *shabu*. x x x[12]

Ruling of the RTC

After trial on the merits, the RTC, in its Decision[13] dated June 12, 2013 convicted Gabriel of the crimes charged. The dispositive portion of the said Decision states:

> WHEREFORE, premises considered, accused Oscar Gabriel Jr. *y* Pedracio is found guilty of the offense charged in the two Informations and is sentenced to *Reclusion Perpetua* in Criminal Case No. 03-25992 as provided for by law. In Criminal Case No[.] 03-25993, accused Oscar Gabriel Jr. *y* Pedracio is also found guilty and is hereby sentenced to suffer an Imprisonment of Twelve (12) Years and One (1) Day to Twenty (20) Years and a fine of Php300,000.00 as provided for under Sec. 11 Par. (3) [o]f RA 9165, as amended.
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> SO ORDERED.[14]

The RTC reasoned that the three police officers categorically testified that Gabriel's arrest was by virtue of a valid buy-bust operation.[15] This was evident from the straightforward manner

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[11] *Rollo*, pp. 3-4.

[12] *Id.* at 5.

[13] CA *rollo*, pp. 35-38.

[14] *Id.* at 38.

[15] *Id.*

by which the poseur-buyer was able to narrate the specific details of the entrapment operation from the time they received a call from a concerned citizen, to the creation of the buy-bust team, to the actual conduct of the said police entrapment.[16] The RTC gave more weight to the testimony of the police officers than Gabriel's "self- serving" statements,[17] especially considering that "[a]ccused never testified that the apprehending officers held a grudge against him or had any reason for selecting him out of nowhere to face the instant charge."[18] The RTC thus concluded "that in the absence of proof to the contrary, the testimony of police officers carried with it the presumption of regularity in the performance of official functions."[19]

Aggrieved, Gabriel appealed to the CA.

Ruling of the CA

In the Assailed Decision, the CA affirmed the RTC's conviction of Gabriel under Sections 5 and 11 of RA 9165.[20] The CA found Gabriel's defenses to be weak and self-serving and instead gave credence "to [the testimony of the] prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary suggesting ill-motive x x x."[21]

As regards compliance with Section 21 of RA 9165, the CA held that the failure of the arresting officers to mark the seized items at the place of arrest or to conduct the required physical inventory and photographing of the evidence confiscated is not fatal, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/ team.[22] The CA likewise stated that the "integrity of the evidence

[16] *Id.*

[17] *Id.*

[18] *Id.* at 37.

[19] *Id.*

[20] *Rollo*, p. 11.

[21] *Id.* at 9.

[22] *Id.* at 7.

is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with."[23] The CA concluded that as Gabriel failed to discharge his burden of proving that the evidence was tampered with, the presumption of regularity should prevail.[24]

Hence, the instant appeal.

Issue

Whether the RTC and the CA erred in convicting Gabriel of the crimes charged.

The Court's Ruling

The appeal is meritorious. The Court acquits Gabriel for failure of the prosecution to prove his guilt beyond reasonable doubt.

In *People v. Dela Cruz*,[25] the Court explained:

> In cases involving dangerous drugs, **the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction**. It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime.
>
> In this regard, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) **the seized items be inventoried and photographed immediately after seizure or confiscation**; (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from**

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[23] *Id.*

[24] *Id.*

[25] G.R. No. 234151, December 5, 2018.

the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.

The phrase "immediately after seizure and confiscation" means that **the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. **However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses. Without any justifiable explanation, which must be proven as a fact, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.**[26]

In the case at bar, the buy-bust team failed to comply with the requirements under Section 21 of RA 9165.

First, the arresting officers failed to mark and photograph the seized illegal drug at the place of arrest. PO1 Robert Gangan (PO1 Gangan), the poseur-buyer, testified:

[26] *Id.* at 6-7. Emphasis and underscoring supplied; citations omitted.

Q: After the marked money was recovered from the arrested person, what happened next?

A: PO3 Edmund Gacute ordered the suspect to empty his pocket and he was able to find 7 more plastic sachets of shabu, Mam.

Q: After the suspect was found to have in his pocket 7 more plastic sachets, what happened next?

A: We told him his constitutional rights and the offense that he committed.

Q: After that what happened next?

A: We brought him to the station, Mam.

Q: At your station, what happened next?

A: We executed an affidavit, Mam.

Q: After executing an Affidavit, what did you [do] next?

A: The evidence confiscated was submitted to Camp Crame Laboratory for laboratory examination.[27]

In fact, it appears that even at the police station, no inventory was prepared and no photographs were taken of the illegal drugs. SPO1 Danilo Sumpay (SPO1 Sumpay), on cross-examination, stated:

Q: I am asking you Mr. witness, did you prepare any written inventory of the items confiscated from the accused?

A: No, sir.

Q: How about taking pictures of the items confiscated together with the accused?

A: None.

Q: Did you made [sic] the markings on the sachets?

A: PO3 Gacute made the markings.

Q: The items confiscated were marked at the police station?

A: Yes, sir.[28]

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[27] TSN, February 10, 2005, pp. 10-11.

[28] TSN, November 6, 2008, pp. 6-7.

Contrary to the findings of the RTC and the CA, Section 21 requires the apprehending team to conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation at the scene of apprehension, except when the same is impracticable. In *People v. Angeles*[29] (*Angeles*), the Court explained:

> The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. **It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.** x x x[30]

In the instant case, however, no explanation or justification was given on why the inventory and photographing were "not practicable" at the scene of the apprehension.

Second, none of the three required witnesses was present at the time of seizure and apprehension. The team was composed of SPO1 Sumpay, PO3 Edmund Gacute, PO1 Gangan, and P/A Cristito Magsino.[31] SPO1 Sumpay, on cross-examination, admitted:

Q: During the buy bust operation, did you secure the presence of any *barangay* official?
A: No, sir.

Q: How about any media?
A: No, sir.[32]

It is settled that the presence of the three required witnesses at the time of the apprehension and inventory is mandatory. In *People v. Tomawis*,[33] the Court explained the purpose of the

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[29] G.R. No. 237355, November 21, 2018.

[30] *Id.* at 8. Emphasis supplied.

[31] TSN, February 10, 2005, p. 7.

[32] TSN, November 6, 2008, p. 4.

[33] G.R. No. 228890, April 18, 2018.

law in mandating the presence of the required witnesses as follows:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*, without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.
>
> The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.
>
> The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.
>
> To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[34]

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[34] *Id.* at 11-12. Emphasis and underscoring in the original; citations omitted.

Finally, the buy-bust team proffered no explanation whatsoever to justify the non-compliance with the mandatory rules. In *Angeles*, the Court explained that "Section 21 of the IRR of RA 9165 provides that 'noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.' **For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.**"[35] In the instant case, the prosecution did neither.

In fact, the prosecution admits to having committed the following irregularities: (1) conducting the inventory at the police station without offering an explanation as to why it was not practicable at the place of the arrest; and (2) conducting the inventory without any of the required witnesses, namely a representative from the DOJ, a media representative, and an elective official.[36] Nevertheless, the RTC and the CA erroneously relied on the presumption that the police officers regularly performed their functions and convicted Gabriel for having failed to prove the police officers' ill-motive.

In *People v. Catalan*,[37] the Court unequivocally stated that the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused, *viz.*:

> Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, **mainly because the accused did not show that they had ill motive behind his entrapment**.
>
> We hold that both lower courts committed gross error in relying on the presumption of regularity.

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[35] *Supra* note 29, at 16.

[36] CA *rollo*, p. 50.

[37] 699 Phil. 603 (2012).

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that triggers the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[38]

Contrary to the rulings of the RTC and the CA, the prosecution bears the burden of proving compliance with the procedure outlined in Section 21 of RA 9165. Both courts committed gross error in relying on the presumption of regularity as basis to convict Gabriel, just because he failed to show the buy-bust team's ill motive.

In view of the foregoing, Gabriel must be acquitted. As a result of the buy-bust team's many unexplained violations and deviations in the seizure, custody, and handling of the seized illegal drugs, the prosecution miserably failed to prove the *corpus delicti* of the offenses charged.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated November 12, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06450 is hereby

[38] *Id.* at 621. Emphasis supplied.

REVERSED and **SET ASIDE**. Accordingly, accused-appellant OSCAR PEDRACIO GABRIEL, JR. is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

THIRD DIVISION

[G.R. No. 228223. June 10, 2019]

ROEL PENDOY *y* POSADAS, *petitioner, vs.* **HON. COURT OF APPEALS (18TH DIVISION) - CEBU CITY; THE HON. DIONISIO CALIBO, JR., Presiding Judge of Branch 50, Regional Trial Court of Loay, Bohol; and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A WRIT OF *CERTIORARI* WILL NOT ISSUE WHERE THE REMEDY OF APPEAL IS AVAILABLE TO THE AGGRIEVED PARTY. — [T]he Court

finds that Pendoy's resort to the special civil action for *Certiorari* under Rule 65, in his quest to reverse and set aside the assailed June 24, 2016 Decision and the October 27, 2016 Resolution of the CA, is erroneous. Pendoy filed the instant petition designating it in both the caption and the body as one for "*certiorari*" contending that the questioned decision and resolution of the CA were issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Well settled is the rule that *certiorari* will lie only when "there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law." The general rule is that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. The availability of the right of appeal precludes recourse to the special civil action for *certiorari*. In the case at bench, appeal was not only available to Pendoy but also a speedy and adequate remedy. Also, Pendoy failed to show circumstances that would warrant a deviation from the general rule as to make available to him a petition for *certiorari* in lieu of making an appeal.

2. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; PROPER REMEDY WHERE THE ARGUMENTS RAISED BY THE PARTY DELVED INTO THE WISDOM OR LEGAL SOUNDNESS OF THE DECISION OF THE COURT OF APPEALS WHICH DISPOSED ON THE MERITS OF HIS APPEAL, AND NOT ON THE JURISDICTION OF THE APPELLATE COURT TO RENDER SAID DECISION.— [A] writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Here, it is obvious that the arguments raised by Pendoy delved into the wisdom or legal soundness of the June 24, 2016 Decision of the CA which disposed on the merits his appeal in CA-G.R. CEB CR. No. 02486, and not on the jurisdiction of the appellate court to render said decision. Thus, the same is beyond the province of a petition for *certiorari*. The appropriate remedy available to Pendoy then was to appeal before this Court the assailed decision and resolution of the CA via a petition for review on *certiorari* under Rule 45 of the Rules of Court and not to file a petition for *certiorari* under Rule 65. Viewed in this light, the instant petition should be dismissed outright.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; WHILE THE ACCUSED IN A RAPE CASE MAY BE CONVICTED SOLELY ON THE TESTIMONY OF THE COMPLAINING WITNESS, COURTS ARE, NONETHELESS, DUTY-BOUND TO ESTABLISH THAT THEIR RELIANCE ON THE VICTIM'S TESTIMONY IS JUSTIFIED. — In rape cases, the conviction of the accused rests heavily on the credibility of the victim. Hence, the strict mandate that all courts must examine thoroughly the testimony of the offended party. While the accused in a rape case may be convicted solely on the testimony of the complaining witness, courts are, nonetheless, duty-bound to establish that their reliance on the victim's testimony is justified. If the testimony of the complainant meets the test of credibility, the accused may be convicted on the basis thereof.

4. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENT OF FORCE AND INTIMIDATION; THE FORCE NEED NOT BE IRRESISTIBLE OR OF SUCH CHARACTER THAT IT COULD NOT BE REPELLED, FOR ALL THAT IS NECESSARY IS THAT THE FORCE USED BY THE ACCUSED IS SUFFICIENT TO CONSUMMATE HIS EVIL PURPOSE, OR THAT IT WAS SUCCESSFULLY USED.— [W]e are convinced that Pendoy had employed force to subjugate AAA's will. It bears stressing that force need not be irresistible or of such character that it could not be repelled; all that is necessary is that the force used by the accused is sufficient to consummate his evil purpose, or that it was successfully used. AAA pleaded to Pendoy to desist from what he was doing on her but no amount of begging subdued him. In *People v. Quintos*, it was held that "sexual congress with a person who expressed her resistance by words or deeds constitutes force; it is rape." In addition, it appears that AAA later submitted to Pendoy's lust out of fear of him because she earlier learned from a neighbor that he had killed someone in the past. She just cried silently. Indeed, the prosecution had amply proved the absence of AAA's consent to the sexual congress.

5. ID.; ID.; ID.; WHEN THE TESTIMONY OF A RAPE VICTIM IS CONSISTENT WITH THE MEDICAL FINDINGS, SUFFICIENT BASIS EXISTS TO WARRANT A CONCLUSION THAT THE ESSENTIAL REQUISITE OF

CARNAL KNOWLEDGE HAS THEREBY BEEN ESTABLISHED. — [A]AA's testimony was corroborated by the medical findings of Dr. Pizarras who testified that when she conducted a physical examination on the victim, she noted that the latter sustained a trauma or injury in the genitalia which can be readily observed even without the use of any medical instrument. According to Dr. Pizarras, the trauma and the redness in the fourchette of AAA may have been caused by probable sexual abuse. It has been said that "when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established." This testimony of Dr. Pizarras strengthens even more the claim of rape by AAA against Pendoy.

6. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE RAPE VICTIM'S NATURAL INTEREST IN SECURING THE CONVICTION OF THE PERPETRATOR WOULD STRONGLY DETER HER FROM IMPLICATING A PERSON OTHER THAN THE REAL CULPRIT.—** Worth noting too is the fact that there is no evidence or even a slightest indication that AAA was actuated by any dubious reason or impelled by improper motive to testify falsely against Pendoy or implicate him in such a serious offense. Also, the fact that AAA resolved to face the ordeal and related in public what she suffered evinces that she did so to obtain justice and to vindicate the outrageous wrong done to her person, honor and dignity. AAA's natural interest in securing the conviction of the perpetrator would strongly deter her from implicating a person other than the real culprit.

7. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE FAILURE OF THE VICTIM TO CRY FOR HELP OR ATTEMPT TO ESCAPE DURING THE RAPE IS NOT FATAL TO THE CHARGE OF RAPE, FOR IT IS ENOUGH THAT THE PROSECUTION HAD PROVEN THAT FORCE OR INTIMIDATION CONCURRED IN THE COMMISSION OF THE CRIME.—** Failure of the victim to shout for help does not negate rape. Failure to cry for help or attempt to escape during the rape is not fatal to the charge. It is enough if the prosecution had proven that force or intimidation concurred in the commission of the crime as in this case. The law does not impose upon a rape victim the burden of proving

resistance. After all, resistance is not an element of rape, neither is it necessary to convict an accused. In any event, the workings of the human mind placed under emotional stress are unpredictable such that different people react differently to a given situation or type of situation and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.

8. ID.; ID.; ID.; THE FAILURE OF THE VICTIM TO SHOUT OR OFFER TENACIOUS RESISTANCE CANNOT BE CONSTRUED AS A VOLUNTARY SUBMISSION TO THE CULPRIT'S DESIRES, NOR CAN IT BE CONSIDERED AS AN IMPLIED CONSENT TO THE SEXUAL ACT.— Anent petitioner's theory that the sexual intercourse was consensual, suffice it to state that the same is not substantiated by any evidence and thus, it deserves scant consideration. Nowhere in records does it show that AAA had an extramarital affair with Pendoy nor was there any proof that she was attracted to him enough to consent and willingly give in to the bestial desires of the latter. AAA's failure to shout or offer tenacious resistance cannot be construed as a voluntary submission to the culprit's desires. It cannot be considered as an implied consent to the sexual act.

9. ID.; ID.; ID.; THE CONDUCT OF THE VICTIM AFTER THE SEXUAL MOLESTATION, AS IF NOTHING HAPPENED, IS NOT ENOUGH TO DISCREDIT HER, AS VICTIMS OF A CRIME AS HEINOUS AS RAPE, CANNOT BE EXPECTED TO ACT WITHIN REASON OR IN ACCORDANCE WITH SOCIETY'S EXPECTATIONS. — AAA's conduct after the sexual molestation, as if nothing happened, is not enough to discredit her. Victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations. It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim, as AAA. Seemingly, AAA tried to cope with the traumatic experience that befell her by opting not to dwell on it and act as if it never occurred. Naivete is not equivalent to consensual sex and cannot erase the rape committed by Pendoy against AAA.

10. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL; ACCUSED'S DEFENSE OF DENIAL CANNOT PREVAIL

OVER RAPE VICTIM'S UNWAVERING TESTIMONY AND OF HER POSITIVE AND FIRM IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR.— Petitioner's denial must be rejected as the same could not prevail over AAA's unwavering testimony and of her positive and firm identification of him as the perpetrator. As negative evidence, it pales in comparison with a positive testimony that asserts the commission of a crime and the identification of the accused as its culprit.

11. ID.; ID.; DEFENSE OF ALIBI; IN ORDER THAT ALIBI MIGHT PROSPER, IT IS NOT ENOUGH TO PROVE THAT THE ACCUSED HAS BEEN SOMEWHERE ELSE DURING THE COMMISSION OF THE CRIME; IT MUST ALSO BE SHOWN THAT IT WOULD HAVE BEEN IMPOSSIBLE FOR HIM TO BE ANYWHERE WITHIN THE VICINITY OF THE CRIME SCENE.— The defense of alibi is, likewise, unavailing. In order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene. Pendoy miserably failed to discharge this burden. Apart from Pendoy's allegation, no competent and independent evidence was proffered to corroborate his claimed whereabouts at around 6 o'clock in the evening of January 24, 2006 and more importantly, that it was physically impossible for him to be at his house at the time the crime of rape was committed. We find that the testimonies of the defense witnesses are inadequate to validate the averments of the petitioner. Given the positive identification by AAA of Pendoy as the culprit, and the failure to establish physical impossibility of said petitioner to be at the scene of the crime at the time of its commission, his defenses of denial and alibi must fail.

12. ID.; CRIMINAL PROCEDURE; JUDGMENT FOR TWO OR MORE OFFENSES; WHEN TWO OR MORE OFFENSES ARE CHARGED IN A SINGLE COMPLAINT OR INFORMATION BUT THE ACCUSED FAILS TO OBJECT TO IT BEFORE TRIAL, THE COURT MAY CONVICT THE APPELLANT OF AS MANY AS ARE CHARGED AND PROVED, AND IMPOSE ON HIM THE PENALTY FOR EACH OFFENSE, SETTING OUT

SEPARATELY THE FINDINGS OF FACT AND LAW IN EACH OFFENSE; AN OFFENDER MAY BE CONVICTED FOR BOTH RAPE AND RAPE AS AN ACT OF SEXUAL ASSAULT FOR ONE INCIDENT WHERE THESE CRIMES ARE PROPERLY ALLEGED IN THE INFORMATION AND PROVEN DURING TRIAL.— The Information, read as a whole, has sufficiently informed Pendoy that he is being charged with these two offenses. It is true that Section 13, Rule 110 of the Revised Rules on Criminal Procedure requires that "a complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Failure to comply with this rule is a ground for quashing the duplicitous complaint or information and the accused may raise the same in a motion to quash before he enters his plea, otherwise, the defect is deemed waived. In this connection, Section 3, Rule 120, as well as settled jurisprudence, states that "when two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense." In the case at bench, the evidence bears out that what was proven by the People beyond reasonable doubt in Criminal Case No. 1089 was the felonious coitus committed by Pendoy against AAA on January 24, 2006. Likewise borne by records is the insertion of petitioner's finger into AAA's vagina. AAA testified that before Pendoy mounted on her and inserted his penis into her private part, he first inserted his finger into her genital. Inasmuch as Pendoy failed to object and file a motion to quash anchored on the ground that more than one offense is charged in April 7, 2006 Information before he pleads to the same, the effect is that he is deemed to have waived such defect and he can be convicted of the crimes of rape and rape as an act of sexual assault. Jurisprudence elucidates that an offender may be convicted for both rape and rape as an act of sexual assault for one incident provided that these crimes were properly alleged in the information and proven during trial.

13. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610);

LASCIVIOUS CONDUCT UNDER SECTION 5(B) OF R.A. NO. 7610; PROPER IMPOSABLE PENALTY.— [T]he June 24, 2016 Decision of the CA should be modified by convicting Pendoy of the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610, instead of rape by sexual assault. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, *i.e., prision mayor* in its medium period to *reclusion temporal* in its minimum period, or anywhere from eight (8) years and one (1) day to fourteen (14) years and eight (8) months, while the maximum term shall be that which could be properly imposed under the law, which is seventeen (17) years and one (1) day to twenty (20) years of *reclusion temporal* maximum. This Court deems it proper to impose on petitioner Pendoy the indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.

14. ID.; REVISED PENAL CODE; RAPE; PROPER IMPOSABLE PENALTY.— The Court affirms that Pendoy should suffer the penalty of *reclusion perpetua* for Rape in accordance with paragraph 1(a) of Article 266-A in relation to Article 266-B of the RPC, as amended by R.A. No. 8353.

15. ID.; ID.; RAPE; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The Court finds that the award of civil indemnity and moral damages for the crime of Rape should be increased to ₱75,000.00 each in line with the ruling in *People v. Jugueta*. In addition, the Court awards the victim AAA with exemplary damages of ₱75,000.00 as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

16. ID.; REPUBLIC ACT NO. 7610; LASCIVIOUS CONDUCT UNDER SECTION 5(B) OF R.A. NO. 7610; CIVIL LIABILITY OF ACCUSED-APPELLANT.— For the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610, the Court, likewise, finds it apt to the award exemplary damages in addition to civil indemnity and moral damages, the amount of which should all be fixed at ₱50,000.00 each in line with existing jurisprudence. Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded to be reckoned from the date of the finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

Lord M. Marapao for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

PERALTA, *J.*:

Petitioner Roel Pendoy y Posadas (*Pendoy*) seeks to reverse and set aside the June 24, 2016 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CEB CR No. 02486 finding him guilty beyond reasonable doubt of the crimes of simple rape and rape by sexual assault committed against AAA[2] via a petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order to enjoin said appellate court from enforcing the assailed judgment.

The Facts

Pendoy was indicted for the crime of Rape in an Information[3] dated April 7, 2006, filed before the Regional Trial Court, [redacted], Bohol (*RTC*) on May 9, 2006 and docketed therein as Criminal Case No. 1089. The accusatory portion of the said Information states:

That on or about the 24th day of January 2006, in the Municipality of [redacted], Province of [redacted], Philippines, acting as a Family Court, the above-named accused, with lewd design and

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[1] Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi concurring; *rollo*, pp. 137-164.

[2] Per this Court's Resolution dated September 19, 2006 in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (533 Phil. 703 [2006]), pursuant to Republic Act No. 9262 or the "*Anti-Violence Against Women and Their Children Act of 2004*" and its implementing rules, the real name of the victims and their immediate family members other than the accused are to be withheld and fictitious initials are to be used instead. Likewise, the exact addresses of the victims are to be deleted.

[3] Records, pp. 20-21.

with the use of force or intimidation, did then and there willfully, unlawfully and feloniously made one AAA, a sixteen (16)-year-old minor (born on December 11, 1989), lie down on the kitchen floor and remove her panty and insert his finger into her vagina and, thereafter, place himself on top of her and insert his erect penis into her vagina, thereby succeeding in having carnal knowledge with the said victim without her consent and against her will; to the damage and prejudice of the said offended party.

Acts committed contrary to the provisions of Article 266-A(1) of the Revised Penal Code, as amended.

Upon arraignment, Pendoy pleaded not guilty to the charge. After pre-trial was terminated, trial on the merits followed.

Evidence for the prosecution tends to show that AAA was the househelp of petitioner Pendoy, his wife and three children. On January 24, 2006 at about 6 o'clock in the evening, AAA was washing clothes near the kitchen inside the house of the Pendoys, wearing a black shirt and green maong shorts. The area was lighted with a yellow bulb. When AAA turned her back, she saw petitioner turn off the light. Petitioner then pulled her down, forced her and made her lie on the floor. He lowered her underwear and her shorts. He also removed her shirt and unhooked her brassiere. AAA pleaded for petitioner to desist from what he was doing by saying, "*Don't Kuya*." Petitioner did not heed her plea and instead kissed her on the cheeks, her lips, neck, and her breast. Pendoy inserted his finger into her vagina. Thereafter, he mounted her and inserted his penis into her vagina.

AAA was crying throughout this ordeal and she was not able to move as petitioner was holding her hands down. She was afraid of petitioner since prior to this incident, she heard from a neighbor that petitioner had killed someone in the past. Petitioner withdrew his penis from AAA's vagina and something came out from his penis. Petitioner went out of the house after committing the dastardly act.

Later, AAA's textmate called her up and inquired from her why she was crying. She eventually told him what petitioner

had done to her. She asked her textmate to call her sister and report to her what had happened. Her sister, who was residing in [redacted], then informed their cousin, a certain Wewart Buslon, who was the one who contacted the police in [redacted].

The police arrived at the house of the Pendoy s and brought AAA to the police station of [redacted] where she executed an affidavit. She was then 16 years old as she was born on December 11, 1989. On the following day, AAA was examined by Dr. Nonaluz Pizarras (*Dr. Pizarras*) of the Governor Celestino Gallares Memorial Hospital. Dr. Pizarras found that there was a trauma or injury on the genitalia of AAA which may have been caused by probable sexual abuse.

Pendoy vehemently denied the charge against him and claimed that he was not in his house at the time the alleged crime was committed. The evidence for the defense shows that on January 24, 2006 at 8 o'clock in the morning, Pendoy, a tour guide, left his house and went to Panglao Island Nature Resort (*PINR*), in Panglao Island, Bohol to fetch the guests of his employer, the Baclayon Travel and Tours. He took the guests to some scenic spots in Bohol. While touring the guests, Pendoy met his tour guide colleague, Norlyn Palban, who reminded him of the meeting of their tour guide association at the house of Janice Talip in Lindaville Subdivision, Tagbilaran City around 7 o'clock in the evening of that day.

When the tour was over, Pendoy brought the guests back to PINR at almost 6 o'clock in the evening. After a brief talk with the guests and sharing his tip with the driver, Pendoy proceeded to Lindaville Subdivision for the meeting of the tour guide association. However, as he wanted to have the chain of his motorcycle fixed and the tire aligned, Pendoy decided to stop by at the house of a certain Pablito Maestrado. It took Pablito about 20 to 30 minutes to finish the repair job. He arrived at Lindaville Subdivision at past 7:00 in the evening. He left the meeting at 8:30 in the evening and proceeded to the house of his half-brother, Fernando Tero, at La Paz, Cortes, Bohol to join his wife and children there. He arrived at his half-brother's

house at around 9 o'clock in evening and left at 10:30 in the evening with his wife, on board his motorcycle, while their children boarded the van of their neighbor.

They arrived at their house in San Isidro, Baclayon, Bohol at around 11 o'clock in the evening. Pendoy found it odd that AAA suddenly asked him the exact location of their house shortly after their arrival. He also noticed that AAA's bag was already packed up and placed under a table. Few minutes later, policemen arrived at his house together with AAA's uncle. Pendoy confronted AAA and asked her what the problem was, but AAA merely told him that she only wanted to go home. Confused about what was happening, he asked the policemen why they had to fetch AAA, and they answered that AAA was reportedly raped by him at 6 o'clock in the evening of that day. This came as a surprise to him because he was not in his house the whole day. The police also told him that maybe AAA just wanted to go home.

The RTC Ruling

In its December 11, 2014 Decision,[4] the RTC convicted Pendoy of the crime of Qualified Seduction, the dispositive portion of which reads:

> Wherefore, premises considered, the court hereby finds accused guilty beyond reasonable doubt of qualified seduction. Accordingly, the accused is hereby sentenced to an indeterminate penalty of six months of *Arresto Mayor* to four years and two months of *Prision Correccional Medium*. He is further ordered to indemnify the victim the amount of ₱20,000 in moral damages and ₱20,000 in exemplary damages.
>
> SO ORDERED.[5]

The RTC ratiocinated that while it is morally convinced that the penis of Pendoy at least touched the pudenda of AAA, there is, however, no showing that accused employed force, violence or intimidation in the commission of the sexual molestation

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[4] Penned by Judge Dionisio R. Calibo, Jr.; *rollo*, pp. 34-57.

[5] *Id*. at 57. (Citation omitted).

and, hence, Pendoy cannot be held criminally liable for rape. The RTC, however, ruled that Pendoy is guilty of qualified seduction committed against AAA, who was then sixteen years old and under his custody at the time of the perpetration of the said crime.

Not in conformity, Pendoy appealed the December 11, 2014 RTC Decision before the CA.

In his Appellant's Brief, Pendoy argued that his conviction of the crime of qualified seduction was erroneous because the recital of facts in the Information does not constitute said crime. He claimed that he is entitled to an acquittal inasmuch as his conviction violated his constitutional right to due process, particularly his right to be informed of the nature and cause of the accusation against him.

The OSG, in the Appellee's Brief, concurred with Pendoy's observation and conceded that the RTC wrongly convicted him of qualified seduction. It, however, submitted that Pendoy should be held criminally liable for rape and for rape by sexual assault contending that the elements of these two crimes were sufficiently alleged in the Information and were duly proven during trial. According to the OSG, although these two offenses were charged in the same criminal information that would have merited its quashal, the defect was never objected to by Pendoy before trial and, thus, he can be convicted of both offenses which were adequately alleged in the Information and established by the prosecution evidence.

The CA Ruling

On June 24, 2016, the CA rendered its assailed Decision setting aside the December 11, 2014 Decision of the RTC and convicted Pendoy of simple rape and rape by sexual assault, the *fallo* of which reads:

> WHEREFORE, the appeal is DENIED for reasons aforestated, the Decision of the Regional Trial Court, [redacted], in Criminal Case No. 1089, is hereby SET ASIDE. Roel Pendoy y Posadas is found guilty beyond reasonable doubt of simple rape and is sentenced to suffer the penalty of *reclusion perpetua*; and rape by sexual assault

and is sentenced to suffer the penalty of six (6) years of *prision correccional*, as minimum, to twelve (12) years of *prision mayor*, as maximum. Accordingly, Roel Pendoy y Posadas is ordered to pay [AAA] civil indemnity of Fifty Thousand Pesos (₱50,000.00) and moral damages of Fifty Thousand Pesos (₱50,000.00) for the crime of simple rape and another civil indemnity of Thirty Thousand Pesos (₱30,000.00) and moral damages of Thirty Thousand Pesos (₱30,000.00) for the crime of rape by sexual assault, with six percent (6%) interest from finality of judgment until fully satisfied.

In view of the foregoing, We,

(1) Order the bonding company concerned to surrender Roel Pendoy y Posadas to the Regional Trial Court, [redacted] for the implementation of this decision, within ten (10) days from notice, and to report to this court the fact thereof, within ten (10) days from notice of such fact; and

(2) In case of non-compliance by the bonding company, DIRECT the Regional Trial Court, [redacted],

(i) to cancel the bond posted for the provisional liberty of Roel Pendoy y Posadas and to require the bonding company to explain its failure to surrender Roel Pendoy y Posadas;

ii) to order the arrest of Roel Pendoy y Posadas for the immediate implementation of this decision; and

iii) to report to this court the action taken hereon, within ten (10) days from notice.

SO ORDERED.[6]

Citing *People v. Patosa*,[7] the CA held that since Pendoy is definitely charged with rape, he cannot be convicted of qualified seduction because the charge of rape does not include qualified seduction. After reviewing and examining the records of Criminal Case No. 1089, the CA declared that all the elements of simple rape and rape by sexual assault were duly alleged in the Information and were satisfactorily established by the prosecution through the testimony of AAA. The appellate court rejected

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[6] *Rollo*, pp. 163-164.

[7] 437 Phil. 63, 75 (2002).

Pendoy's twin defenses of denial and alibi holding that the same were not substantiated by clear and competent evidence, and not at all persuasive when pitted against the positive and convincing identification by AAA.

Pendoy filed a motion for reconsideration, but the same was denied by the CA in its October 27, 2016 Resolution.[8]

The Issue

Unfazed, Pendoy filed the present petition and raises the following sole issue:

> The assailed Decision dated 24 June 2016 as well as the assailed Resolution dated 27 October 2016 both issued by first public respondent Honorable Court of Appeals were, with all due deference to all concerned, both issued with grave abuse of discretion amounting to lack or excess of jurisdiction because the conclusions of law drawn therefrom vis-a-vis the facts clearly established therein are gravely erroneous. x x x.[9]

Essentially, petitioner claims that the prosecution evidence failed to overcome his constitutional presumption of innocence. He maintains that the prosecution failed to establish that force, threat or intimidation was exerted upon AAA in the alleged commission of the sexual congress with the latter, and this is also in consonance with the findings of the RTC. Pendoy argues that the CA erred in giving credence to the testimony of AAA which he alleged to have been riddled with inconsistencies and improbabilities tending to cast serious doubt on the veracity of her charge. Petitioner points out that AAA's actuations were inconsistent to that of one who had just been raped as AAA was seen happy, jovial and kept on sending text messages right after the alleged incident of felonious coitus.

Pendoy submits that even assuming that he had sexual intercourse with AAA, a reading of the latter's narration of the events leading to the alleged rape would reveal that the coitus was committed with her acquiescence because: (1) she did not

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[8] *Rollo*, pp. 186-190.

[9] *Id*. at 6. (Citation omitted).

offer even a small amount of resistance to the sexual advances; and (2) she did not shout for help or try to escape from the perpetrator despite the opportunity to do so. Lastly, he asserts that his alibi assumes importance in view of the alleged weakness of the evidence for the prosecution.

In its Comment, respondent People of the Philippines, through the OSG, asserts that the appeal of the December 11, 2014 Decision of the RTC threw the entire records of Criminal Case No. 1089 open for review. Respondent maintains that Pendoy can be properly convicted of as many offenses as were charged and proven. According to the respondent, the April 7, 2006 Information contains the averments that Pendoy had committed acts punishable under paragraphs 1 and 2, Article 266-A of the Revised Penal Code (*RPC*). It claims that the elements for both rape and sexual assault were adequately proven through the credible, consistent and forthright testimony of AAA, which was corroborated by the medico-legal report issued by Dr. Pizarras. Respondent prays that the June 24, 2016 Decision of the CA be affirmed *in toto*.

The Court's Ruling

We sustain the conviction of Pendoy. The appeal is devoid of merit.

Preliminarily, the Court finds that Pendoy's resort to the special civil action for *Certiorari* under Rule 65, in his quest to reverse and set aside the assailed June 24, 2016 Decision and the October 27, 2016 Resolution of the CA, is erroneous. Pendoy filed the instant petition designating it in both the caption and the body as one for "*certiorari*" contending that the questioned decision and resolution of the CA were issued with grave abuse of discretion amounting to lack or excess of jurisdiction. Well settled is the rule that *certiorari* will lie only when "there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law."[10] The general rule is that a writ of *certiorari* will not issue where the remedy of

[10] *Bernardo v. Court of Appeals*, 341 Phil. 413, 425 (1997).

appeal is available to the aggrieved party.[11] The availability of the right of appeal precludes recourse to the special civil action for *certiorari*. In the case at bench, appeal was not only available to Pendoy but also a speedy and adequate remedy. Also, Pendoy failed to show circumstances that would warrant a deviation from the general rule as to make available to him a petition for *certiorari* in lieu of making an appeal.

Further, a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction.[12] Here, it is obvious that the arguments raised by Pendoy delved into the wisdom or legal soundness of the June 24, 2016 Decision of the CA which disposed on the merits his appeal in CA-G.R. CEB CR. No. 02486, and not on the jurisdiction of the appellate court to render said decision. Thus, the same is beyond the province of a petition for *certiorari*. The appropriate remedy available to Pendoy then was to appeal before this Court the assailed decision and resolution of the CA via a petition for review on *certiorari* under Rule 45 of the Rules of Court and not to file a petition for *certiorari* under Rule 65. Viewed in this light, the instant petition should be dismissed outright.

Even if the Court is willing to overlook this procedural defect, the present petition would just the same fail.

The crux of petitioner's plea for exoneration mirrors on the alleged absence of any of the circumstances enumerated in paragraph 1 of Article 266-A of the RPC, particularly that there was no force, threat or intimidation in the commission of the alleged felonious sexual act. Pendoy's contentions fail to muster legal and rational merit.

In rape cases, the conviction of the accused rests heavily on the credibility of the victim. Hence, the strict mandate that all courts must examine thoroughly the testimony of the offended

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[11] *Cathay Pacific Steel Corporation v. Court of Appeals*, 531 Phil. 620, 631 (2006).

[12] *Tagle v. Equitable PCI Bank, et al.*, 575 Phil. 384, 396 (2008).

party. While the accused in a rape case may be convicted solely on the testimony of the complaining witness, courts are, nonetheless, duty-bound to establish that their reliance on the victim's testimony is justified. If the testimony of the complainant meets the test of credibility, the accused may be convicted on the basis thereof.[13]

We meticulously examined the records of this case in view of the disparity in the findings of the RTC and the CA. Try as we might, however, this Court failed to identify any error committed by the CA in declaring that Pendoy had carnal knowledge of AAA against her will. Despite his vigorous protestations, the Court sees no cogent reason to disturb the conclusion of the CA that the prosecution was able to prove beyond reasonable doubt that Pendoy raped AAA on that fateful night of January 24, 2006.

The CA's reliance on AAA's testimony is apt, considering that it was clear and categorical, and buttressed by the testimony of the medico-legal officer. Notwithstanding her youth and innocence, AAA was able to convey the details of her traumatic experience in the hands of Pendoy in a simple yet convincing and consistent manner. Without hesitation, AAA pointed an accusing finger against Pendoy as the person who ravished and sexually molested her. She credibly recounted how petitioner forced her to have sex with him despite her refusal; that while she was washing clothes, Pendoy suddenly appeared from her back, turned off the light, and forcibly pulled her down and made her lie on the floor; that he pulled her short pants and panty down to her knees; that she begged him to stop what he was doing, but he simply ignored her plea; that Pendoy kissed her cheeks, neck and breasts; that she was not able to resist petitioner's sexual advances because he held her hands; that still unsatisfied, petitioner licked her vagina and inserted his finger into it; and that thereafter, he mounted on her and inserted his penis into her vagina.

Thus, We are convinced that Pendoy had employed force to subjugate AAA's will. It bears stressing that force need not be

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[13] *People v. Publico*, 664 Phil. 168, 180 (2011).

irresistible or of such character that it could not be repelled; all that is necessary is that the force used by the accused is sufficient to consummate his evil purpose, or that it was successfully used.[14] AAA pleaded to Pendoy to desist from what he was doing on her but no amount of begging subdued him. In *People v. Quintos*,[15] it was held that "sexual congress with a person who expressed her resistance by words or deeds constitutes force; it is rape." In addition, it appears that AAA later submitted to Pendoy's lust out of fear of him because she earlier learned from a neighbor that he had killed someone in the past. She just cried silently. Indeed, the prosecution had amply proved the absence of AAA's consent to the sexual congress.

We note that AAA categorically stated several times (during her direct examination and cross-examination, and even upon clarificatory questioning of the trial court) that Pendoy forced his penis into her sexual organ despite her protests. Her statements pertaining to the identity of Pendoy as her violator and the perverse acts he visited upon her were straightforward, definite and clear. She remained steadfast and never wavered on her claim that Pendoy raped her, as she repeatedly (three times) recalled the harrowing ordeal. Her simple narration evinces her sincerity and truthfulness.

In addition, AAA's testimony was corroborated by the medical findings of Dr. Pizarras who testified that when she conducted a physical examination on the victim, she noted that the latter sustained a trauma or injury in the genitalia which can be readily observed even without the use of any medical instrument. According to Dr. Pizarras, the trauma and the redness in the fourchette of AAA may have been caused by probable sexual abuse. It has been said that "when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established."[16] This testimony of

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[14] *People v. Restoles*, 393 Phil. 413, 422 (2000).

[15] 746 Phil. 809, 828 (2014).

[16] *People v. Tormis*, 595 Phil. 589, 603 (2008).

Dr. Pizarras strengthens even more the claim of rape by AAA against Pendoy.

Worth noting too is the fact that there is no evidence or even a slightest indication that AAA was actuated by any dubious reason or impelled by improper motive to testify falsely against Pendoy or implicate him in such a serious offense. Also, the fact that AAA resolved to face the ordeal and related in public what she suffered evinces that she did so to obtain justice and to vindicate the outrageous wrong done to her person, honor and dignity. AAA's natural interest in securing the conviction of the perpetrator would strongly deter her from implicating a person other than the real culprit.

Still, Pendoy wants Us to undo his conviction. In his attempt at exculpation, he contends that AAA's testimony was neither credible nor consistent with human nature as she could have easily shouted during the alleged rape incident or resist the alleged sexual advances by kicking him, but she did not do so. Pendoy tries to interject reasonable doubt by arguing that even assuming that he and AAA had sexual intercourse, the same was consensual. His arguments are specious.

Failure of the victim to shout for help does not negate rape.[17] Failure to cry for help or attempt to escape during the rape is not fatal to the charge. It is enough if the prosecution had proven that force or intimidation concurred in the commission of the crime as in this case. The law does not impose upon a rape victim the burden of proving resistance.[18] After all, resistance is not an element of rape, neither is it necessary to convict an accused. In any event, the workings of the human mind placed under emotional stress are unpredictable such that different people react differently to a given situation or type of situation and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[19]

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[17] *People v. Barcelona*, 382 Phil. 46, 54 (2000).

[18] *People v. Dusohan*, 297 Phil. 1020, 1024 (1993).

[19] *People v. Silvano*, 368 Phil. 676, 704 (1999).

Anent petitioner's theory that the sexual intercourse was consensual, suffice it to state that the same is not substantiated by any evidence and thus, it deserves scant consideration. Nowhere in records does it show that AAA had an extramarital affair with Pendoy nor was there any proof that she was attracted to him enough to consent and willingly give in to the bestial desires of the latter. AAA's failure to shout or offer tenacious resistance cannot be construed as a voluntary submission to the culprit's desires.[20] It cannot be considered as an implied consent to the sexual act.

AAA's conduct after the sexual molestation, as if nothing happened, is not enough to discredit her. Victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations. It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim,[21] as AAA. Seemingly, AAA tried to cope with the traumatic experience that befell her by opting not to dwell on it and act as if it never occurred. Naivete is not equivalent to consensual sex and cannot erase the rape committed by Pendoy against AAA.

Petitioner's denial must be rejected as the same could not prevail over AAA's unwavering testimony and of her positive and firm identification of him as the perpetrator. As negative evidence, it pales in comparison with a positive testimony that asserts the commission of a crime and the identification of the accused as its culprit.[22]

The defense of alibi is, likewise, unavailing. In order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[23]

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[20] *People v. Talaboc*, 326 Phil. 451, 461 (1996).

[21] *People v. Biala*, 773 Phil. 464, 482 (2015).

[22] *People v. Canares*, 599 Phil. 60, 76 (2009).

[23] *People v. Abella*, 624 Phil. 18, 36 (2010).

Pendoy miserably failed to discharge this burden. Apart from Pendoy's allegation, no competent and independent evidence was proffered to corroborate his claimed whereabouts at around 6 o'clock in the evening of January 24, 2006 and more importantly, that it was physically impossible for him to be at his house at the time the crime of rape was committed. We find that the testimonies of the defense witnesses are inadequate to validate the averments of the petitioner. Given the positive identification by AAA of Pendoy as the culprit, and the failure to establish physical impossibility of said petitioner to be at the scene of the crime at the time of its commission, his defenses of denial and alibi must fail.

Having ascertained the guilt of Pendoy for the crime of Rape beyond reasonable doubt, the Court shall now proceed to determine whether it is correct to likewise convict him of rape by sexual assault.

The Court observes that albeit the April 7, 2006 Information designated the offense charged as one of Rape under Article 266-A(1)(a) of the RPC, a perusal of the allegations therein would clearly show that Pendoy was actually charged with two offenses. Petitioner was charged with having carnal knowledge of AAA, employing force or intimidation, under paragraph 1(a) of Article 266-A. The Information also charged Pendoy with committing sexual assault by inserting his finger into the private part of AAA under the second paragraph of Article 266-A. It is undisputed that at the time of the commission of the sexual abuse, AAA was sixteen (16) years old as duly proved by her Certificate of Live Birth.

The Information, read as a whole, has sufficiently informed Pendoy that he is being charged with these two offenses. It is true that Section 13, Rule 110 of the Revised Rules on Criminal Procedure requires that "a complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses." Failure to comply with this rule is a ground for quashing the duplicitous complaint or information and the accused may raise the same in a motion to quash before he enters his plea, otherwise, the defect is deemed

waived.[24] In this connection, Section 3, Rule 120, as well as settled jurisprudence, states that "when two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense."

In the case at bench, the evidence bears out that what was proven by the People beyond reasonable doubt in Criminal Case No. 1089 was the felonious coitus committed by Pendoy against AAA on January 24, 2006. Likewise borne by records is the insertion of petitioner's finger into AAA's vagina. AAA testified that before Pendoy mounted on her and inserted his penis into her private part, he first inserted his finger into her genital. Inasmuch as Pendoy failed to object and file a motion to quash anchored on the ground that more than one offense is charged in April 7, 2006 Information before he pleads to the same, the effect is that he is deemed to have waived such defect and he can be convicted of the crimes of rape and rape as an act of sexual assault. Jurisprudence[25] elucidates that an offender may be convicted for both rape and rape as an act of sexual assault for one incident provided that these crimes were properly alleged in the information and proven during trial.

In the recent case *People v. Salvador Tulagan*,[26] the Court prescribes the following guidelines in the proper designation or nomenclature of acts constituting sexual assault and the imposable penalty depending on the age of the victim, thus:

> Considering the development of the crime of sexual assault from a mere "crime against chastity" in the form of acts of lasciviousness to "crime against persons" akin to rape, as well as the ruling in Dimakuta and Caoili, We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual

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[24] *People v. CCC*, G.R. No. 231925, November 19, 2018.

[25] *People v. Agoncillo*, G.R. No. 229100, November 20, 2017; *People v. Brioso*, 788 Phil. 292 (2016).

[26] G.R. No. 227363, March 12, 2019.

Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b) of R.A. No. 7610" and no longer "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610," because sexual assault as a form of acts of lasciviousness is no longer covered by Article 336 but by Article 266-A(2) of the RPC, as amended by R.A. No. 8353. Nevertheless, the imposable penalty is still *reclusion temporal* in its medium period, and not *prision mayor*.

Whereas if the victim is 12 years old and under 18 years old, or 18 years old and above under special circumstances, the nomenclature of the crime should be "Lascivious Conduct under Section 5(b) of R.A. No. 7610" with the imposable penalty of reclusion temporal in its medium period to reclusion perpetua, but it should not make any reference to the provisions of the RPC. It is only when the victim of the sexual assault is 18 years old and above, and not demented, that the crime should be called as "Sexual Assault under paragraph 2, Article 266-A of the RPC" with the imposable penalty of *prision mayor*. (Italic ours)

In line with the foregoing pronouncement, the June 24, 2016 Decision of the CA should be modified by convicting Pendoy of the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610, instead of rape by sexual assault. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate penalty shall be taken from the penalty next lower in degree, *i.e., prision mayor* in its medium period to *reclusion temporal* in its minimum period, or anywhere from eight (8) years and one (1) day to fourteen (14) years and eight (8) months, while the maximum term shall be that which could be properly imposed under the law, which is seventeen (17) years and one (1) day to twenty (20) years of *reclusion temporal* maximum. This Court deems it proper to impose on petitioner Pendoy the indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum.

The Court affirms that Pendoy should suffer the penalty of *reclusion perpetua* for Rape in accordance with paragraph 1(a) of Article 266-A in relation to Article 266-B of the RPC, as amended by R.A. No. 8353.

Coming now to the pecuniary liabilities, the Court finds that the award of civil indemnity and moral damages for the crime of Rape should be increased to ₱75,000.00 each in line with the ruling in *People v. Jugueta*.[27] In addition, the Court awards the victim AAA with exemplary damages of ₱75,000.00 as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.[28] For the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610, the Court, likewise, finds it apt to the award exemplary damages in addition to civil indemnity and moral damages, the amount of which should all be fixed at ₱50,000.00 each in line with existing jurisprudence.[29] Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded to be reckoned from the date of the finality of this judgment until fully paid.[30]

WHEREFORE, the petition is **DENIED**. The Decision of the Court of Appeals dated June 24, 2016 in CA-G.R. CEB CR No. 02486 is hereby **AFFIRMED** with **MODIFICATIONS**.

1) Petitioner Roel Pendoy *y* Posadas is found **GUILTY** beyond reasonable doubt of Rape and is sentenced to suffer the penalty of *Reclusion Perpetua*. He is **ORDERED** to **PAY** the victim AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 by way of exemplary damages.

2) Petitioner Roel Pendoy *y* Posadas is found **GUILTY** beyond reasonable doubt of Lascivious Conduct under Section 5(b) of R.A. No. 7610 and is sentenced to suffer the indeterminate penalty of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. He is **ORDERED** to **PAY** the victim AAA the amounts of

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[27] 783 Phil. 806 (2016).

[28] *People v. Layco, Sr.*, 605 Phil. 877, 882 (2009).

[29] *People v. Tulagan, supra* note 26.

[30] *People v. Romobio*, G.R. No. 227705, October 11, 2017.

₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages.

Petitioner is also **ORDERED** to **PAY** interest at the rate of six percent (6%) *per annum* from the time of finality of this Decision until fully paid, to be imposed on the civil indemnity, moral damages and exemplary damages.

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Inting, JJ.*, concur.

FIRST DIVISION

[G.R. No. 228255. June 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARY JANE CADIENTE *y* QUINDO @ JANE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In a successful prosecution for violation of Section 5, Article II of RA 9165, the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. What is material is proof that the transaction actually occurred, coupled with the presentation before the court of the *corpus delicti*. What is more, the prosecution must also establish the integrity of the dangerous drug, because the dangerous drug is the very *corpus delicti* of the case.

2. ID.; ID.; SECTION 21 OF R.A. NO. 9165; MANDATORY PROCEDURE IN THE CUSTODY AND DISPOSITION

OF CONFISCATED, SEIZED AND/OR SURRENDERED DANGEROUS DRUGS; PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED OR CONFISCATED DANGEROUS DRUGS; THREE REQUIRED WITNESSES; JUSTIFIABLE REASONS FOR NON-COMPLIANCE WITH THE REQUIRED WITNESSES.— Section 21, Article II of RA 9165 spells out the mandatory procedural safeguards in a buy-bust operation x x x. Moreover, the Implementing Rules and Regulations (IRR) have further marked out in detail the proper procedure to be observed by the PDEA relating to the custody and disposition of confiscated, seized and/or surrendered dangerous drugs under Section 21(1), Article II of RA 9165 x x x. In *People v. Lim*, the Court stressed the importance of the three witnesses, namely, any elected public official, the representative from the media, and the DOJ representative, at the time of the physical inventory and photograph of the seized items. In the event of their absence, the Court held: It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove[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.**

3. ID.; ID.; ID.; ID.; ID.; ID.; THE ABSENCE OF THE REQUIRED WITNESSES DOES NOT *PER SE* RENDER THE CONFISCATED ITEMS INADMISSIBLE, PROVIDED THE PROSECUTION ESTABLISHES NOT ONLY THE REASONS FOR THEIR ABSENCE, BUT ALSO THAT EARNEST EFFORTS HAD BEEN EXERTED IN

SECURING THEIR PRESENCE; THE CONVICTION OF THE APPELLANT CANNOT BE UPHELD WHERE THE PROSECUTION FAILED TO EXPLAIN THE REASONS FOR THE PROCEDURAL LAPSES, AND TO PROVE THE JUSTIFIABLE GROUNDS FOR FAILURE TO COMPLY.— x x x [T]here must be evidence of earnest efforts to secure the attendance of the necessary witnesses. In *People v. Ramos*, the Court ruled: x x x. It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or **a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. x x x. In other words, jurisprudence requires that, in the event that the presence of the essential witnesses was not obtained, the prosecution must establish not only the reasons for their absence, but also that earnest efforts had been exerted in securing their presence. The prosecution must explain the reasons for the procedural lapses, and the justifiable grounds for failure to comply must be proven, since the Court cannot presume what these grounds were or whether they even existed. In this case, the prosecution failed to prove both requisites. While the inventory and photograph of the seized *shabu* were done in the presence of a *barangay* captain, who is an elected public official, there was no mention that the same was conducted in the presence of a representative from media and the DOJ. The signatures of the representative from the media and the representative from the DOJ do not even appear in the Inventory Receipt. And no reason at all has been advanced for the complete failure of the arresting officers to secure the attendance of these required witnesses. On top of these, there is nothing on record to indicate that the arresting team exerted a genuine and sufficient attempt to secure their presence. In the absence of the representative from the media and from the DOJ during the physical inventory and the photographing of the seized *shabu*, the evils of switching, "planting'" or contamination of the evidence create serious lingering doubts as to its integrity and evidentiary value. In the context of these circumstances, the conviction of the appellant cannot be upheld.

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.*:

Appellant Mary Jane Cadiente *y* Quindo @ Jane appeals from the April 29, 2016 Decision[1] of the Court of Appeals (CA) in CA-GR. CR-HC No. 07261 that affirmed the December 10, 2014 Decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 135, in Criminal Case No. 14-1089, finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) No. 9165.

Factual Antecedents

Appellant was charged with violation of Sections 5 and 11, Article II of RA 9165. The accusatory portions of the Informations are quoted as follows:

Criminal Case No. 14-1089:
Violation of Section 5, Article II of RA 9165

On the 11th day of July 2014, in the city of Makati, Philippines, accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away one (1) plastic sachet weighing zero point zero eight [0.08] gram of white crystalline substance containing Methylamphetamine Hydrochloride (*Shabu*), a dangerous drug, in consideration of Php500.00.

CONTRARY TO LAW.[3]

Criminal Case No. 14-1090:
Violation of Section 11, Article II of RA 9165

On the 9th day of July 2014, in the city of Makati, Philippines, accused, without the necessary license or prescription and without

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[1] CA *rollo*, pp. 111-124; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Romeo F. Barza and Danton Q. Bueser.

[2] Records, pp. 173-179; penned by Presiding Judge Josephine M. Advento-Vito Cruz.

[3] *Id*. at 2.

being authorized by law, did then and there willfully, unlawfully and feloniously have in [her] direct custody and possession one (1) piece of small heat sealed transparent plastic sachet weighing zero point one four [0.14] gram of white crystalline substance presented and marked as "RAG-1", containing of [sic] Methylamphetamine Hydrochloride (*Shabu*) a dangerous drug.

CONTRARY TO LAW.[4]

During her arraignment, appellant pleaded not guilty to both offenses. Thereafter, trial ensued.

Version of the Prosecution

On July 9, 2014, a confidential informant reported to the office of the Station Anti-Illegal Drugs Special Operations Task Group of the Makati police that appellant and her husband were peddling prohibited drugs in Barangay Rizal, Makati. Acting on said information, P/Chief Insp. Gaylord Tamayo formed a team and held a briefing for the conduct of a buy-bust operation. PO2 Rexell Gabelo (PO2 Gabelo) was designated as poseur-buyer and given a 500-peso bill as marked money. The planned buy-bust operation was coordinated with the Southern Police District and the Philippine Drug Enforcement Agency (PDEA).

Upon the arrival of the buy-bust team at the target area, PO2 Gabelo and the confidential informant saw the appellant standing along a street. They approached and talked with appellant for the sale of ₱500.00 worth of *shabu*. PO2 Gabelo gave the first pre-arranged signal to the other members of the buy-bust team watching from their vantage points that he had identified their target. He then handed appellant the marked money as payment for a sachet of *shabu*, which appellant took from her wallet; PO2 Gabelo thereafter gave the second pre-arranged signal that the transaction had been consummated. SPO1 Randy L. Obedoza (SPO1 Obedoza), who was assigned as a back-up in the buy-bust operation, rushed toward the scene of the crime and assisted PO2 Gabelo in arresting appellant. Recovered from appellant was the marked money, a one hundred peso bill, another sachet

[4] *Id*. at 6.

of *shabu* and a disposable lighter. When a crowd started to gather, the buy-bust team decided to conduct the inventory of the seized items at the nearest *barangay* hall of Rizal, Makati. However, they transferred to the *barangay* hall of Pembo, Makati after waiting in vain for five hours for the arrival of an elected public official. The marking and inventory of the seized items were then conducted in the presence of appellant and the *barangay* captain of Brgy. Pembo. Photographs were also taken during the inventory.

The buy-bust team then proceeded to the police office and turned over the custody of appellant and the seized items to the duty investigator, PO3 Laurence Charmino (PO3 Charmino). In turn, PO3 Charmino prepared the letter-request for the drug test of the seized *shabu*, which SPO1 Obedoza brought to the police crime laboratory together with the seized *shabu*. The forensic chemist, P/Sr. Insp. Rendielyn L. Sahagun, received the same and conducted laboratory examinations, and confirmed that the sachet sold by appellant during the buy-bust operation, marked with the initials "RAG", and the sachet recovered from appellant's possession during the lawful search of her body and marked as "RAG-1", with a weight of 0.08 gram and 0.14 gram, respectively, were positive for, and indeed contained *shabu*.

Version of the Defense

At around 1 a.m. of July 7, 2014, appellant was inside her house with her husband and her four-year-old daughter, when five armed men suddenly barged inside and ransacked the same. She did not resist their illegal act for fear of physical abuse. The armed men then took her and her family to the police office where they were detained for two days, and not given food. Her husband and her daughter were later released and told to return with ₱50,000.00 as payment for her freedom. When her husband failed to bring the money, false charges were filed against her.

Ruling of the Regional Trial Court

On December 10, 2014, the RTC rendered a Decision finding appellant guilty beyond reasonable doubt for violation of Section

5, Article II of RA 9165. It ruled that the State had succeeded in establishing all the elements of the offense for illegal sale of *shabu*. However, the RTC held that there was reasonable doubt to acquit appellant for violation of Section 11, Article II of RA 9165 because SPO1 Obedoza, who allegedly recovered the sachet of *shabu* from appellant's possession, failed to identify the same during his cross-examination.

Thus, the dispositive portion of the Decision of the RTC reads:

> WHEREFORE, judgment is hereby rendered:
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> 1. In Criminal Case No. 14-1089, finding the accused MARY JANE CADIENTE *y* QUINDO @ "Jane", GUILTY BEYOND REASONABLE DOUBT for Violation of Section 5 of Article II of R.A. 9165, judgment is hereby rendered sentencing her to suffer life imprisonment and to pay a fine of ₱500,000.00;
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> 2. In Criminal Case No. 14-1090, there being reasonable doubt, accused MARY JANE CADIENTE *y* QUINDO @ "Jane" is hereby ACQUITTED for Violation of Section 11[,] Article II of R.A. 9165; and
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> Let the zero point zero eight (0.08) gram and zero point fourteen (0.14) gram of methylamphetamine hydrochloride (*shabu*) be turned over to the PDEA for proper disposition.
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> SO ORDERED.[5]

Ruling of the Court of Appeals

On April 29, 2016, the CA affirmed the RTC's Decision. Rejecting appellant's plea that the prosecution did not adduce evidence that the requirements of Section 21, Article II of RA 9165 had been met, the CA declared that the failure of the buy-bust team to comply strictly with the procedure mandated by Section 21, Article II of RA 9165, particularly, in ensuring the presence of a representative from the media and the Department of Justice (DOJ) during the physical inventory and the photographing of the confiscated *shabu*, did not render the arrest

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[5] Records, p. 179.

of appellant illegal or make the *shabu* inadmissible in evidence. The CA held that the buy-bust team had substantially complied with this procedural requisite as it was able to preserve the integrity and evidentiary value of the seized *shabu* by establishing an unbroken link in the chain of custody of evidence.

Thus, the CA disposed of the appeal in the following manner:

> WHEREFORE, premises considered, the Decision dated December 10, 2014 of the Regional Trial Court, Branch 135 of Makati City finding accused-appellant Mary Jane Cadiente *y* Quindo @ Jane GUILTY BEYOND REASONABLE DOUBT for Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002, is hereby AFFIRMED.
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> SO ORDERED.[6]

Hence, this appeal, which is prosecuted chiefly upon appellant's postulation that the buy-bust team failed to comply with the procedural requirements under Section 21, Article II of RA 9165, particularly in regard to the non-attendance of a representative from the media and the DOJ at the time of the physical inventory and the photographing of the seized *shabu*. In consequence, the State has miserably failed to establish the integrity of the dangerous drug itself. Hence, it is appellant's constitutional right to be acquitted of the indictment against her.

Our Ruling

There is merit in the appeal.

In a successful prosecution for violation of Section 5, Article II of RA 9165, the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. What is material is proof that the transaction actually occurred, coupled with the presentation before the court of the *corpus delicti*.[7] What is more, the

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[6] CA *rollo*, p. 123.

[7] *People v. Caiz*, G.R. No. 215340, July 13, 2016, 797 SCRA 26, 40-41.

prosecution must also establish the integrity of the dangerous drug, because the dangerous drug is the very *corpus delicti* of the case.[8]

Section 21, Article II of RA 9165 spells out the mandatory procedural safeguards in a buy-bust operation, thus —

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

Moreover, the Implementing Rules and Regulations (IRR) have further marked out in detail the proper procedure to be observed by the PDEA relating to the custody and disposition of confiscated, seized and/or surrendered dangerous drugs under Section 21(1), Article II of RA 9165, thus —

> (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

[8] *Id.* at 41.

> to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

In *People v. Lim*,[9] the Court stressed the importance of the three witnesses, namely, any elected public official, the representative from the media, and the DOJ representative, at the time of the physical inventory and photograph of the seized items. In the event of their absence, the Court held:

> It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
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> (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official 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.**[10] (Emphasis in the original)

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

[10] *Id.*

More than that, there must be evidence of earnest efforts to secure the attendance of the necessary witnesses. In *People v. Ramos*,[11] the Court ruled:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or **a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[12] (Emphasis in the original)

In other words, jurisprudence requires that, in the event that the presence of the essential witnesses was not obtained, the prosecution must establish not only the reasons for their absence, but also that earnest efforts had been exerted in securing their presence.[13] The prosecution must explain the reasons for the procedural lapses, and the justifiable grounds for failure to comply must be proven, since the Court cannot presume what these grounds were or whether they even existed.[14]

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

[12] *Id.*

[13] *People v. Pascua*, G.R. No. 227707, October 8, 2018.

[14] *People v. Ramos*, *supra* note 11.

In this case, the prosecution failed to prove both requisites. While the inventory and photograph of the seized *shabu* were done in the presence of a *barangay* captain, who is an elected public official, there was no mention that the same was conducted in the presence of a representative from media and the DOJ. The signatures of the representative from the media and the representative from the DOJ do not even appear in the Inventory Receipt. And no reason at all has been advanced for the complete failure of the arresting officers to secure the attendance of these required witnesses. On top of these, there is nothing on record to indicate that the arresting team exerted a genuine and sufficient attempt to secure their presence.

In the absence of the representative from the media and from the DOJ during the physical inventory and the photographing of the seized *shabu*, the evils of switching, "planting'" or contamination of the evidence create serious lingering doubts as to its integrity and evidentiary value. In the context of these circumstances, the conviction of the appellant cannot be upheld.

WHEREFORE, the appeal is **GRANTED**. The April 29, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07261 is **REVERSED and SET ASIDE**. Appellant Mary Jane Cadiente *y* Quindo @ Jane is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention, unless she is confined for another lawful cause.

Let a copy of this Decision be furnished the Superintendent, Correctional Institute for Women, Mandaluyong City, for immediate implementation. The said Superintendent is **DIRECTED** to report the action taken to this Court, within five (5) days from receipt of this Decision.

SO ORDERED.

Bersamin, C.J., Jardeleza, and *Gesmundo, JJ.*, concur.

Carandang, J., on leave.

THIRD DIVISION

[G.R. No. 228260. June 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELMER MOYA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS.—** It is indisputable that appellant is the brother of AAA and that AAA testified that she and appellant had carnal knowledge through force and intimidation on July 27, 2008 (Criminal Case No. 6263), making the appellant guilty of Qualified Rape. To sustain a conviction for qualified rape, the following elements must concur: a) the victim is a female over 12 years, but under 18 years of age; b) 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; and c) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she was deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A YOUNG GIRL'S REVELATION THAT SHE HAD BEEN RAPED, COUPLED WITH HER VOLUNTARY SUBMISSION TO MEDICAL EXAMINATION AND WILLINGNESS TO UNDERGO PUBLIC TRIAL WHERE SHE COULD BE COMPELLED TO GIVE OUT THE DETAILS OF AN ASSAULT ON HER DIGNITY, CANNOT BE SO EASILY DISMISSED AS MERE CONCOCTION.—** x x x [A]AA testified that she was sexually assaulted on August 14, 2008 (Criminal Case No. 6265) when appellant inserted his finger into her vagina x x x. To corroborate the x x x testimony, the result of AAA's medical examination shows the presence of a deep healed laceration at 9 o'clock position and a shallow healed laceration at 3 o'clock position, which is consistent with AAA's statement that appellant inserted his penis into her vagina. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness

to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.

3. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610); SEXUAL ABUSE UNDER SECTION 5, ARTICLE III OF R.A. NO. 7610; ELEMENTS; PRESENT.— Appellant was also charged in all the Informations with violation of Section 5(b), Article III of R.A. No. 7610 x x x. The following elements of sexual abuse under Section 5, Article III of R.A. No. 7610 must be established: 1. The accused commits the act of sexual intercourse or lascivious conduct. 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse. 3. The child, whether male or female, is below 18 years of age. All the elements are present in this case.

4. ID.; ID.; LASCIVIOUS CONDUCT UNDER SECTION 5(B) OF R.A. NO. 7610; LASCIVIOUS CONDUCT, DEFINED; APPELLANT'S ACT OF COVERING THE VICTIM'S MOUTH AND UNDRESSING HER IS PUNISHED AS LASCIVIOUS CONDUCT; TOUCHING OF OTHER DELICATE PARTS OTHER THAN THE PRIVATE ORGAN OR KISSING A YOUNG GIRL WITH MALICE ARE PUNISHED AS ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE REVISED PENAL CODE, IN RELATION TO R.A. NO. 7610, OR LASCIVIOUS CONDUCT UNDER SECTION 5 OF R.A. NO. 7610.— The CA, however, is correct in ruling that in Criminal Case Nos. 6264 and 6266, the prosecution failed to prove the guilt of appellant for the crime of rape. Based on AAA's testimony on what transpired on July 20, 2008 and August 3, 2008, nothing indicates that there was carnal knowledge or that the private organ of appellant penetrated the private organ of AAA x x x. However, appellant is still guilty of Lascivious Conduct under Section 5(b) of R.A. No. 7610. Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases defines "lascivious conduct" as follows: [T]he 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[.] The testimony of AAA clearly recounted the lascivious conduct committed by appellant through the latter's covering of AAA's mouth and undressing her. In *People v. Salvador Tulagan,* this Court has emphasized that other forms of acts of lasciviousness or lascivious conduct committed against a child, such as touching of other delicate parts other than the private organ or kissing a young girl with malice, are still punished as acts of lasciviousness under Article 336 of the RPC, in relation to R.A. No. 7610, or lascivious conduct under Section 5 of R.A. No. 7610.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT SHOWING THAT THE TRIAL COURT JUDGE OVERLOOKED, MISUNDERSTOOD, OR MISAPPLIED SOME FACTS OR CIRCUMSTANCES OF WEIGHT WHICH WOULD AFFECT THE RESULT OF THE CASE, HIS ASSESSMENT OF CREDIBILITY DESERVES THE COURT'S HIGHEST RESPECT.— The evidence presented by the prosecution has convincingly established the guilt of the appellant on all cases beyond reasonable doubt. The credibility given by the trial court to AAA is an important aspect of evidence which the appellate court can rely on because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct and attitude during the direct and cross-examination by counsel. There is no showing that the trial court judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, his assessment of credibility deserves this Court's highest respect.

6. ID.; ID.; ID.; DISCREPANCIES REFERRING ONLY TO MINOR DETAILS AND COLLATERAL MATTERS DO NOT AFFECT THE VERACITY OR DETRACT FROM THE ESSENTIAL CREDIBILITY OF A WITNESS' DECLARATIONS, AS LONG AS THESE ARE COHERENT AND INTRINSICALLY BELIEVABLE ON THE WHOLE.— As to appellant's contention that the testimony of AAA is full of inconsistencies and, hence, should not be given credence, this Court has ruled that discrepancies referring only to minor details and collateral matters do not affect the veracity

or detract from the essential credibility of a witness' declarations, as long as these are coherent and intrinsically believable on the whole. Furthermore, it is an accepted doctrine in rape cases that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.

7. ID.; ID.; DEFENSE OF DENIAL AND ALIBI; BARE ASSERTIONS THEREOF CANNOT OVERCOME THE CATEGORICAL TESTIMONY OF THE VICTIM.— Anent appellant's defense of denial and alibi, 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. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.

8. CRIMINAL LAW; QUALIFIED RAPE; PENALTY OF *RECLUSION PERPETUA*; IMPOSED.— As to the penalties imposed, the CA was correct in imposing the penalty of *reclusion perpetua,* without eligibility for parole, in Criminal Case No. 6263, for the crime of Qualified Rape.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN A CRIMINAL CASE 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 RAISED AS ERRORS BY THE PARTIES.— [The] modification of the penalty is but a mere consequence of this Court's review of an appeal in a criminal case. Settled is the rule that an appeal in a criminal case 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 raised as errors by the parties. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

10. ID.; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610); LASCIVIOUS CONDUCT UNDER SECTION 5(B) OF R.A. NO. 7610; PROPER PENALTY IS *RECLUSION PERPETUA* IN THE ABSENCE OF A MITIGATING CIRCUMSTANCE TO OFFSET THE AGGRAVATING CIRCUMSTANCE OF MINORITY AND RELATIONSHIP.— In imposing the penalties in Criminal Case Nos. 6264 and 6266 under R.A. No. 7610, the CA also erred in applying the penalty provided for in the crime of Acts of Lasciviousness under Article 336 of the RPC which is *prision correccional.* In *People v. Armando Chingh y Parcia,* this Court expounded the need to impose the penalty provided under R.A. No. 7610, instead of the one provided under the RPC, thus: The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article [336], in relation to Section 5 (b), Article 111 of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. This is undeniably unfair to the child victim. To be sure, 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 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." x x x. As such, appellant should be meted the penalty of *reclusion perpetua* in Criminal Case Nos. 6264 and 6266. This is so because the penalty imposable for Lascivious Conduct under Section 5(b) of R.A. No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. In this case, the maximum penalty should be imposed due to the presence of the aggravating circumstance of relationship, the victim being the sister of the perpetrator, and without any mitigating circumstance to offset such. There is no need, however, to qualify the sentence to *reclusion perpetua* with the phrase "without eligibility for parole" because, under A.M. No. 15-08-02-SC, in cases where the death penalty is not warranted, it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole.

11. ID.; QUALIFIED RAPE AND LASCIVIOUS CONDUCT; CIVIL LIABILITIES OF ACCUSED-APPELLANT.— As to the award of damages, a modification must be made per *People v. Jugueta* and *People v. Tulagan*. Where the penalty imposed is *reclusion perpetua* instead of death due to R.A. No. 9246, the amounts of damages shall be as follows: Civil Indemnity - ₱l00,000.00 Moral Damages - ₱l00,000.00 Exemplary Damages - ₱l00,000.00. Thus, in Criminal Case No. 6263, where appellant is found guilty beyond reasonable doubt of the crime of Qualified Rape, he is ordered to pay the victim the amounts of ₱l00,000.00 as civil indemnity, ₱l00,000.00 as moral damages, and ₱l00,000.00 as exemplary damages. While in Criminal Case Nos. 6264, 6265 and 6266, appellant is ordered to pay the victim civil indemnity, moral damages and exemplary damages in the amount of ₱75,000.00 each.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is to resolve the appeal of appellant Elmer Moya that seeks to reverse and set aside the Decision[1] dated October 22, 2015 of the Court of Appeals (*CA*) affirming with modifications the Decision[2] dated April 8, 2013 of the Regional Trial Court (*RTC*), Branch 10, Balayan, Batangas, finding the appellant guilty beyond reasonable doubt of Rape and Qualified Rape under Article 266-A, in relation to Article 266-B of the Revised Penal Code (*RPC*); and violation of Section 5(b), Article III of Republic Act (*R.A.*) No. 7610.

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[1] *Rollo*, pp. 2-22; penned by Associate Justice Maria Elisa Sempio Diy, and concurred in by Associate Justices Ramon M. Bato, Jr. and Ramon Paul L. Hernando.

[2] CA *rollo*, pp. 37-46; penned by Presiding Judge Cristino E. Judit.

The facts follow.

On July 20, 2008, AAA,[3] the victim, then thirteen (13) years old (born on July 25, 1995) and the sister of appellant, was sleeping in the other room of appellant's house. AAA was awakened when appellant entered the room. Appellant then placed his hand on AAA's mouth and started to undress her by removing her shorts and underwear. AAA could not shout for help since appellant had placed his hand on her mouth.[4]

Thereafter, on July 27, 2008, at around 8:30 p.m., the same incident took place. Appellant placed his hand on AAA's mouth and started to undress her. Afterwards, appellant inserted his penis into AAA's vagina and ejaculated. AAA did not tell anyone about the incident because she was afraid that no one would believe her. Appellant likewise threatened AAA by telling her that she would be killed if someone finds out about the incident.[5]

Again, on August 3, 2008, at around 8:00 p.m., appellant entered the room of AAA and the former placed his hand on the mouth of the latter. Appellant undressed AAA and, thereafter, appellant ejaculated.[6]

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

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

[5] *Id.* at 6.

[6] *Id.*

Then on August 14, 2008, at around 8:30p.m., AAA was in the house of appellant and was awakened when appellant entered her room. Appellant then placed his hand on AAA's face and proceeded to undress her. Thereafter, appellant inserted his finger into AAA's vagina.[7]

On October 21, 2008, Police Superintendent Roy A. Camarillo, MD, MBA, Medico-Legal Officer, examined AAA. The medico-legal report indicated the following findings and conclusion:

FINDINGS:

Fairly nourished, normally developed, conscious, coherent, ambulatory female subject. Breasts are budding. Abdomen is soft & flat.

There's scanty growth of pubic hair. *Labia majora* are full, convex and coaptated with light brown and non-hypertrophied *labia minora* presenting in between. On separating the same is disclosed cresentic type of hymen, thin, with PRESENCE OF DEEP HEALED LACERATION at 9 o'clock position and SHAL[L]OW HEALED LACERATION at 3 o'clock position. The perihymenal, urethra, periurethral area and fossa navicularis have no evident injury noted at the time of examination. There is no discharge noted.

CONCLUSION:

MEDICAL EXAMINATION SHOWS BLUNT HEALED TRAUMA TO THE HYMEN.

THERE ARE NO EXTRA-GENITAL INJURIES NOTED AT THE TIME OF EXAMINATION.[8]

Hence, four (4) separate Informations were filed against appellant, thus:

Criminal Case No. 6263

That on or about the 27th day of July, 2008, at around 8:00 o'clock in the evening, at [redacted], Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and

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[7] *Id.*

[8] Records, Vol. 1, p. 10.

there willfully, unlawfully and feloniously lie with and have carnal knowledge with one [redacted], a thirteen (13) year old minor, accused's sister, against her will and consent, which acts debased, degraded or demeaned her intrinsic worth and dignity, as a human being.

Contrary to law.[9]

Criminal Case No. 6264

That on or about the 20th day of July 2008, at around 8:00 o'clock in the evening, at [redacted], Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge with one [redacted], a thirteen (13) year old minor, accused's sister, against her will and consent, which acts debased, degraded or demeaned her intrinsic worth and dignity, as a human being.

Contrary to law.[10]

Criminal Case No. 6265

That on or about the 14th day of August 2008, at around 8:00 o'clock in the evening, at [redacted], Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully unlawful and feloniously lie with and have carnal knowledge with one [redacted], a thirteen (13) year old minor, accused's sister, against her will and consent, which acts debased, degraded or demeaned her intrinsic worth and dignity, as a human being.

Contrary to law.[11]

Criminal Case No. 6266

That on the 3rd day of August 2008, at around 8:00 o'clock in the evening, at [redacted], Province of Batangas, Philippines, and

[9] *Id.* at 1.

[10] Records, Vol. 2, p. 1.

[11] Records, Vol. 3, p. 1.

within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously lie with and have carnal knowledge with one [redacted], a thirteen (13) year old minor, accused's sister, against her will and consent, which acts debased, degraded or demeaned her intrinsic worth and dignity, as a human being.

Contrary to law.[12]

During arraignment, appellant pleaded not guilty to all the charges against him; and after the pre-trial conference, trial on the merits ensued.

Appellant interposed the defense of denial and alibi. According to him, he was not even at his house on the dates of the alleged incidents. Appellant claimed that he was out fishing, together with his co-fisherman and uncle, in Calatagan, Batangas, which is estimated to be more than one (1) kilometer away from his house. The same was corroborated by BBB, appellant and AAA's aunt.[13]

The RTC found appellant guilty beyond reasonable doubt of the crime of Rape under Article 266-A(1), in relation to Article 266-B, 1st paragraph of the RPC, as amended by R.A. No. 8353, and in relation further to Article III, Section 5(b) of R.A. No. 7610, and Section 3(g) of its Implementing Rules and Regulations; sentenced him to suffer, on each count, the penalty of *reclusion perpetua*, without eligibility for parole; and ordered him to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages, thus:

In view of the foregoing and by proof beyond reasonable doubt, the Court hereby render[s] judgment as follows:

1. In Criminal Case No. 6263, the Court finds accused Elmer Moya guilty beyond reasonable doubt of the crime of Rape as charged and hereby sentences him to suffer the penalty of *Reclusion Perpetua* without eligibility for parole, and

[12] Records, Vol. 4, p. 1.

[13] *Rollo*, p. 7.

indemnify victim [redacted] the amount of Php50,000.00 as civil indemnity, Php75,000.00 as moral damages and Php25,000.00 as exemplary damage[s].

2. In Criminal Case No. 6264, the Court finds accused Elmer Moya guilty beyond reasonable doubt of the crime of Rape as charged and hereby sentences him to suffer the penalty of *Reclusion Perpetua* without eligibility for parole, and to indemnify victim [redacted] the amount of Php50,000.00 as civil indemnity, Php75,000.00 as moral damages and Php25,000.00 as exemplary damages.

3. In Criminal Case No. 6265, the Court finds accused Elmer Moya guilty beyond reasonable doubt of the crime of Rape as charged and hereby sentences him to suffer the penalty of *Reclusion Perpetua* without eligibility for parole, and to indemnify victim [redacted] the amount of Php50,000.00 as civil indemnity, Php75,000.00 as moral damages and Php25,000.00 as exemplary damages.

4. In Criminal Case No. 6266, the Court finds accused Elmer Moya guilty beyond reasonable doubt of the crime of Rape as charged and hereby sentences him to suffer the penalty of *Reclusion Perpetua* without eligibility for parole, and to indemnify victim [redacted] the amount of Php50,000.00 as civil indemnity, Php75,000.00 as moral damages and Php25,000.00 as exemplary damages.

SO ORDERED.[14]

According to the RTC, the victim, AAA, spontaneously and without hesitation, identified appellant as the malefactor; and although the victim's testimony suffered some lapses and inconsistencies, the same was understandable, taking into account the nature of the crime committed at her young age. The trial court also held that the incident of rape is corroborated by the medico-legal findings.

The CA affirmed the decision of the RTC with modifications. In Criminal Case No. 6263, appellant was sentenced by the CA to suffer the penalty of *reclusion perpetua*, without eligibility

[14] Records, Vol. 1, pp. 105-106.

for parole, and ordered him to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. In Criminal Case Nos. 6264 and 6266, appellant was found guilty of violation of Section 5(b), Article III of R.A. No. 7610 and sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, and ordered to pay ₱20,000.00 as civil indemnity, ₱15,000.00 as moral damages, as well as a ₱15,000.00 fine. In Criminal Case No. 6265, appellant was found guilty of Qualified Rape by Sexual Assault under Article 266-A, in relation to 266-B of the RPC and sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor*; as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, and ordered him to pay AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, thus:

WHEREFORE, premises considered, the appeal is hereby PARTIALLY GRANTED. The Decision dated April 8, 2013 rendered by Branch 10, Regional Trial Court (RTC) of Balayan, Batangas is hereby AFFIRMED with the following MODIFICATIONS:

1. In Criminal Case No. 6263, [Elmer Moya] is found GUILTY of qualified rape through sexual intercourse under Article 266-A in relation to 266-B of the Revised Penal Code. [Elmer Moya] is hereby sentenced to suffer 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.] 6264, [Elmer Moya] is found GUILTY of violation of Section 5(b), Article III of Republic Act 7610. [Elmer Moya] is meted to suffer the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, and ordered to pay ₱20,000.00 as civil indemnity and ₱15,000.00 as moral damages to AAA, as well as a ₱15,000.00 fine.

3. In Criminal Case No. 6265, [Elmer Moya] is found GUILTY of qualified rape by sexual assault under Article 266-A in relation to 266-B of the Revised Penal Code. [Elmer Moya] is hereby

sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor* as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, and ordered to pay AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

4. In Criminal Case [No.] 6266, [Elmer Moya] is found GUILTY of violation of Section 5(b), Article III of Republic Act 7610. [Elmer Moya] is meted to suffer the indeterminate penalty of x x x six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, and ordered to pay ₱20,000.00 as civil indemnity and ₱15,000.00 as moral damages to AAA, as well as a ₱15,000.00 fine.

SO ORDERED.[15] (Citation omitted.)

According to the CA, in Criminal Case No. 6265, *prision mayor* is the penalty prescribed for rape by sexual assault under Article 266-B of the RPC, and the penalty is increased to *reclusion temporal* if the rape is committed with any of the ten (10) aggravating circumstances mentioned in said article. The CA further ruled that since the qualifying circumstances of relationship and minority are sufficiently alleged and proven, the penalty, therefore, is *reclusion temporal* which ranges from twelve (12) years and one (1) day to twenty (20) years, and applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. Hence, the CA imposed the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. The CA further reduced the civil indemnity and moral damages to ₱30,000.00, and increased the award of exemplary damages to ₱30,000.00, in accordance with existing jurisprudence.

In Criminal Case Nos. 6264 and 6266, the CA ruled that the penalty provided for in Acts of Lasciviousness, in relation to

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[15] *Rollo*, pp. 20-21.

Section 5(b), Article III of R.A. No. 7610, is *prision correccional*; and as the crime was committed by the brother of the victim, the alternative circumstance of relationship should be appreciated. The CA added that in crimes against chastity, such as Acts of Lasciviousness, relationship is always aggravating. With the presence of such aggravating circumstance and no mitigating circumstance, the CA imposed the indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to six (6) years of *prision correccional*, as maximum, in each case; and in line with current jurisprudence, the CA awarded AAA ₱20,000.00 as civil indemnity and ₱15,000.00 as moral damages. A fine of ₱15,000.00 for each case was likewise imposed.

In this present appeal, appellant insists that the prosecution was not able to prove his guilt beyond reasonable doubt. In his Appellant's Brief[16] dated December 26, 2013, appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT CONSIDERING EVERY CIRCUMSTANCE OR DOUBT FAVORING THE ACCUSED-[APPELLANT].

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT WAS PROVEN BEYOND REASONABLE DOUBT.[17]

Appellant questions the credibility of AAA, claiming that her testimony is unconvincing, incredible and inconsistent with common human experience. According to him, the generalized statements of AAA that she was raped repeatedly after the first incident were inadequate to establish his guilt.

The appeal is unmeritorious.

Article 266-A, in relation to Article 266-B of the RPC, as amended by Republic Act No. 7610 and Section 2(g) of its Implementing Rules and Regulations, provides the following:

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[16] CA *rollo*, pp. 22-35.

[17] *Id.* at 22.

Article 266-A. Rape: When And How Committed. – Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

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

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or oral orifice of another person.

Article 266-B Penalty. – x x x

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

From the above provisions of the law, rape can be committed in two ways:

1. Article 266-A, paragraph 1 refers to rape through sexual intercourse, also known as "organ rape" or "penile rape." The central element in rape through sexual intercourse is carnal knowledge, which must be proven beyond reasonable doubt.[18]

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[18] *People v. Soria*, 698 Phil. 676, 689 (2012).

2. Article 266-A, paragraph 2 refers to rape by sexual assault, also called "instrument or object rape" or "gender-free rape."[19] It must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1.[20]

In this case, it is indisputable that appellant is the brother of AAA and that AAA testified that she and appellant had carnal knowledge through force and intimidation on July 27, 2008 (Criminal Case No. 6263), making the appellant guilty of Qualified Rape. To sustain a conviction for qualified rape, the following elements must concur: a) the victim is a female over 12 years, but under 18 years of age; b) 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; and c) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she was deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority.[21] Likewise, AAA testified that she was sexually assaulted on August 14, 2008 (Criminal Case No. 6265) when appellant inserted his finger into her vagina, thus:

Q Could you please elaborate how Elmer raped you on August 14, 2008 at around 8:30 in the evening?
A He went inside my room where I was sleeping and he placed something on my face, sir.

Q And what was that something that was placed on your face?
A His hands, sir.

Q And after his hands was (*sic*) placed on your face, what happened next?
A He undressed me, sir.

Q And then what happened next after he undressed you?
A He also undressed my underwear and put his finger on (*sic*) my vagina, sir[.]

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[19] *People v. Abulon*, 557 Phil. 428, 454 (2007). (Citations omitted.)

[20] *People v. Soria, supra* note 18, at 687.

[21] *People v. Arcillas*, 692 Phil. 40, 50 (2012).

x x x x x x x x x

Q On (*sic*) July 2008, can you tell the Honorable Court, what happened at 8:00 in the evening at kuya Elmer's house?
A The same thing, Your Honor.

Q And the same thing that happened when he placed his hand on your [mouth] and you did nothing, is that correct?
A Yes, sir.

Q He also removed your clothes and inserted his penis into your vagina?
A Yes, sir.[22]

To corroborate the above testimony, the result of AAA's medical examination shows the presence of a deep healed laceration at 9 o'clock position and a shallow healed laceration at 3 o'clock position, which is consistent with AAA's statement that appellant inserted his penis into her vagina. A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[23]

Appellant was also charged in all the Informations with violation of Section 5(b), Article III of R.A. No. 7610, the provisions of which read as follows:

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

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[22] TSN, March 7, 2011, pp. 9-15.

[23] *People v. Tuballas*, 811 Phil. 201, 217 (2017).

(b) **Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject[ed] to other sexual abuse;** Provided, That when the [victim] is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period[.][24]

The following elements of sexual abuse under Section 5, Article III of R.A. No. 7610 must be established:

1. The accused commits the act of sexual intercourse or lascivious conduct.

2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse.

3. The child, whether male or female, is below 18 years of age.[25]

All the elements are present in this case. As earlier shown, appellant, on August 14, 2008 (Criminal Case No. 6265) inserted his finger in AAA's vagina, thus, satisfying the first element. This Court, in *People v. Ceferino Villacampa*,[26] explained the second element, thus:

> Next, the second element is that the act is performed with a child exploited in prostitution or subjected to other sexual abuse. To meet this element, the child victim must either be exploited in prostitution or subjected to other sexual abuse. In *Quimvel v. People*, the Court held that the fact that a child is under the coercion and influence of an adult is sufficient to satisfy this second element and will classify the child victim as one subjected to other sexual abuse. The Court held:
>
> To the mind of the Court, the allegations are sufficient to classify the victim as one "exploited in prostitution or subject[ed] to other

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[24] Emphasis supplied.

[25] *People v. Ceferino Villacampa*, G.R. No. 216057, January 8, 2018.

[26] *Id.*

sexual abuse." This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, which encompasses children who indulge in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.

Correlatively, Sec. 5(a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse. It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct. Hence, the law punishes not only child prostitution but also other forms of sexual abuse against children[.]

The Court further clarified that the sexual abuse can happen only once, and still the victim would be considered a child subjected to other sexual abuse, because what the law punishes is the maltreatment of the child, without regard to whether or not this maltreatment is habitual. The Court held:

> Contrary to the exposition, the very definition of "child abuse" under Sec. 3(b) of RA 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of. For it refers to the maltreatment, whether habitual or not, of the child. Thus, a violation of Sec. 5(b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront.[27]

In this case, having been established that AAA was subjected to sexual abuse, the second element has, therefore, been met. Anent the third element, the age of AAA at the time of the incidents is undisputed. The evidence[28] presented shows that AAA was born on July 25, 1995, making her thirteen (13) years old during the first alleged incident of sexual abuse and on the succeeding incidents, which were all alleged in the Informations

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[27] Citations omitted.

[28] Records. Vol. 1, p. 9.

filed against appellant. Appellant's relationship with AAA was also established when it was admitted by appellant in court that AAA is his sister.

The CA, however, is correct in ruling that in Criminal Case Nos. 6264 and 6266, the prosecution failed to prove the guilt of appellant for the crime of rape. Based on AAA's testimony on what transpired on July 20, 2008 and August 3, 2008, nothing indicates that there was carnal knowledge or that the private organ of appellant penetrated the private organ of AAA, thus:

COURT:

[Q] Now, when was the first time that you were raped?
A On July 20, Your Honor.

x x x x x x x x x

COURT:

Q When he entered your room, what did he do?
A He placed his hand on my mouth, Your Honor.

COURT:

Q What else did he do?
A He undressed me, Your Honor.

COURT:

Q What were you wearing on that time when he undressed you?
A T-shirt and shorts, Your Honor.

COURT:

Q When he removed your shorts, do you have an idea that [you] are going to [be raped] by kuya Elmer?
A No, Your Honor.

COURT:

Q Did he remove your panty?
A Yes, Your Honor.

x x x x x x x x x

Q Now, going on August 3, 2008, you stated that you were raped in your sworn statement on that night at around 8:00 o'clock in the evening, where [did this happen]?
A On the same place, sir.

Q In the house of kuya Elmer?
A Yes, sir.

Q And could you please tell the Honorable Court what happened in details about the raping incident?
A The same thing, sir.

Q What do you mean by the same thing?
A He again entered my room, he placed his hand on my mouth, he undressed me.

Q You said that you were undressed by the accused xxx that time, what was he wearing?
A White T-shirts (*sic*) and *tokong* shorts, sir.

Q Were you wearing panty xxx that time?

A Yes, sir.[29]

However, appellant is still guilty of Lascivious Conduct under Section 5(b) of R.A. No. 7610. Section 2(h) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases defines "lascivious conduct" as follows:

[T]he 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[.]

The testimony of AAA clearly recounted the lascivious conduct committed by appellant through the latter's covering of AAA's mouth and undressing her.

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[29] TSN, March 7, 2011, pp. 11-16.

In *People v. Salvador Tulagan*,[30] this Court has emphasized that other forms of acts of lasciviousness or lascivious conduct committed against a child, such as touching of other delicate parts other than the private organ or kissing a young girl with malice, are still punished as acts of lasciviousness under Article 336 of the RPC, in relation to R.A. No. 7610, or lascivious conduct under Section 5 of R.A. No. 7610, thus:

> Concededly, R.A. No. 8353 defined specific acts constituting acts of lasciviousness as a distinct crime of "sexual assault," and increased the penalty thereof from *prision correccional* to *prision mayor*. But it was never the intention of the legislature to redefine the traditional concept of rape. The Congress merely upgraded the same from a "crime against chastity" (a private crime) to a "crime against persons" (a public crime) as a matter of policy and public interest in order to allow prosecution of such cases even without the complaint of the offended party, and to prevent extinguishment of criminal liability in such cases through express pardon by the offended party. Thus, **other forms of acts of lasciviousness or lascivious conduct committed against a child, such as touching of other delicate parts other than the private organ or kissing a young girl with malice, are still punished as acts of lasciviousness under Article 336 of the RPC in relation to R.A. No. 7610 or lascivious conduct under Section 5 of R.A. No. 7610.**

Also, in *Tulagan*,[31] this Court has summarized, for easy reference, the proper designation of crimes and their corresponding imposable penalties, applying the provisions of paragraphs 1 and 2 of Article 266-A and Article 336 of the RPC, as amended by R.A. No. 8353, and Section 5(b) of R.A. No. 7610, thus:

> In sum, the following are the applicable laws and penalty for the crimes of acts of lasciviousness or lascivious conduct and rape by carnal knowledge or sexual assault, depending on the age of the victim, in view of the provisions of paragraphs 1 and 2 of Article 266-A and Article 336 of the RPC, as amended by R.A. No. 8353, and Section 5(b) of R.A. No. 7610:

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[30] G.R. No. 227363, March 12, 2019.

[31] *Id.*

Designation of the Crime & Imposable Penalty

Age of Victim: / **Crime Committed:**	Under 12 years old or demented	12 years old or below 18, or 18 under special circumstances[32]	18 years old and above
Acts of Lasciviousness committed against children exploited in prostitution or other sexual abuse	Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period.	Lascivious conduct[33] under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable
Sexual Assault committed against children exploited in prostitution or other sexual abuse	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No 7610: *reclusion temporal* in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable

[32] The "children" refers to a person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. [Section 3(a), R.A. No. 7610]

"Child" shall refer to a person below eighteen (18) years of age or one over said age and who, upon evaluation of a qualified physician, psychologist or psychiatrist, is found to be incapable of taking care of himself fully because of a physical or mental disability or condition or of protecting himself from abuse. [Section 2(a), Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

[33] "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth. of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person. [Section 2(h), Rules and Regulations on the Reporting and Investigation of Child Abuse Cases]

Sexual Intercourse committed against children exploited in prostitution or other sexual abuse	Rape under Article 266-A(1) of the RPC: *reclusion perpetua*, except when the victim is below 7 years old in which case death penalty shall be imposed[34]	Sexual Abuse[35] under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Not applicable
Rape by carnal knowledge	Rape under Article 266-A(1) in relation to Art. 266-B of the RPC: *reclusion perpetua*, except when the victim is below 7 years old in which case death penalty shall be imposed	Rape under Article 266-A(1) in relation to Art. 266-B of the RPC: *reclusion perpetua*	Rape under Article 266-A(1) of the RPC; *reclusion perpetua*
Rape by Sexual Assault	Sexual Assault under Article 266-A(2) of the RPC in relation to Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period	Lascivious Conduct under Section 5(b) of R.A. No. 7610: *reclusion temporal* in its medium period to *reclusion perpetua*	Sexual Assault under Article 266-A (2) of the RPC); *prision mayor*

For the crime of acts of lasciviousness or lascivious conduct, the nomenclature of the crime and the imposable penalty are based on the guidelines laid down in *Caoili*. For the crimes of rape by carnal knowledge and sexual assault under the RPC, as well as sexual intercourse committed against children under R.A. No. 7610, the designation of the crime and the imposable penalty are based on the

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[34] Subject to R.A. No. 9346 entitled "*An Act Prohibiting the Imposition of Death Penalty in the Philippines.*"

[35] "Sexual abuse" includes the employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children. [Section 3(g) of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases].

discussions in *Dimakuta, Quimvel* and *Caoili*, in line with the policy of R.A. No. 7610 to provide stronger deterrence and special protection to children from all forms of abuse, neglect, cruelty, exploitation, discrimination, and other conditions prejudicial to their development. It is not amiss to stress that the failure to designate the offense by statute, or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged clearly recite the facts constituting the crime charged, for what controls is not the title of the information or the designation of the offense, but the actual facts recited in the information. Nevertheless, the designation in the information of the specific statute violated is imperative to avoid surprise on the accused and to afford him the opportunity to prepare his defense accordingly. (Some citations omitted.)

Therefore, the evidence presented by the prosecution has convincingly established the guilt of the appellant on all cases beyond reasonable doubt. The credibility given by the trial court to AAA is an important aspect of evidence which the appellate court can rely on because of its unique opportunity to observe the witnesses, particularly their demeanor, conduct and attitude during the direct and cross-examination by counsel. There is no showing that the trial court judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, his assessment of credibility deserves this Court's highest respect.[36]

As to appellant's contention that the testimony of AAA is full of inconsistencies and, hence, should not be given credence, this Court has ruled that discrepancies referring only to minor details and collateral matters do not affect the veracity or detract from the essential credibility of a witness' declarations, as long as these are coherent and intrinsically believable on the whole.[37] Furthermore, it is an accepted doctrine in rape cases that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence.[38]

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[36] *People v. Dimaano*, 506 Phil. 630, 641 (2005).

[37] *People v. Laog*, 674 Phil. 444, 463 (2011), citing *People v. Suarez*, 496 Phil. 231 (2005).

[38] *People v. Aguilar*, 565 Phil. 233, 249 (2007).

Anent appellant's defense of denial and alibi, 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. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.[39]

As to the penalties imposed, the CA was correct in imposing the penalty of *reclusion perpetua*, without eligibility for parole, in Criminal Case No. 6263, for the crime of Qualified Rape. The CA, however, erred in imposing the indeterminate penalty of imprisonment of six (6) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day, as maximum, in Criminal Case No. 6265 for Rape by Sexual Assault under Article 266-A, in relation to Article 266-B of the RPC, and Section 5(b) of R.A. No. 7610, which, as discussed earlier, should be designated as the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610.

The imposable penalty for Lascivious Conduct is that provided for under Section 5(b) of R.A. No. 7610 or *reclusion temporal* in its medium period to *reclusion perpetua*. As mentioned earlier, the prosecution was able to prove the victim's minority, being thirteen (13) years old at the time of the incident, and her relationship with appellant, the latter being her brother; thus, based on the above-quoted provisions of the law, the proper penalty imposable is the maximum which, in this case, is *reclusion perpetua*, there being no mitigating circumstance to offset the aggravating circumstance present.

Such modification of the penalty is but a mere consequence of this Court's review of an appeal in a criminal case. Settled is the rule that an appeal in a criminal case 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

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[39] *People v. Abulon, supra* note 19, at 448.

those raised as errors by the parties.[40] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[41]

In imposing the penalties in Criminal Case Nos. 6264 and 6266 under R.A. No. 7610, the CA also erred in applying the penalty provided for in the crime of Acts of Lasciviousness under Article 336 of the RPC which is *prision correccional*. In *People v. Armando Chingh y Parcia*,[42] this Court expounded the need to impose the penalty provided under R.A. No. 7610, instead of the one provided under the RPC, thus:

> The Court is not unmindful to the fact that the accused who commits acts of lasciviousness under Article [336], in relation to Section 5 (b), Article III of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. This is undeniably unfair to the child victim. To be sure, 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 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."
>
> Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.[43] (Citation omitted.)

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[40] *People v. Erlinda Racho*, G.R. No. 227505, October 2, 2017, citing *Ramos v. People*, G.R. Nos. 218466 and 221425, January 23, 2017.

[41] *Id.*

[42] 661 Phil. 208 (2011).

[43] *Id.* at 222-223.

The matter has also been thoroughly discussed in *People v. Tulagan*,[44] thus:

> We are also not unmindful of the fact that the accused who commits acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b) of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period, than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*.
>
> In *People v. Chingh*, We noted that the said fact is undeniably unfair to the child victim, and it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. We held that despite the passage of R.A. No. 8353, R.A. No. 7610 is still a good law, which must be applied when the victims are children or those "persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition."
>
> In *Dimakuta*, We added that where the lascivious conduct is covered by the definition under R.A. No. 7610, where the penalty is *reclusion temporal* medium and the said act is, likewise, covered by sexual assault under Art. 266-A, paragraph 2 of the RPC, which is punishable by *prision mayor*, the offender should be liable for violation of Section 5(b), Article III of R.A. No. 7610, where the law provides the higher penalty of *reclusion temporal* medium, if the offended party is a child. But if the victim is at least eighteen (18) years of age, the offender should be liable under Art. 266-A, par. 2 of the RPC and not R.A. No. 7610, unless the victim is at least 18 years old and she is unable to fully take care of herself or protect herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, in which case, the offender may still be held liable of sexual abuse under R.A. No. 7610. The reason for the foregoing is that with respect to lascivious conduct, R.A. No. 7610 affords special protection and stronger deterrence against child abuse, as compared to R.A. No. [8353] which specifically amended the RPC provisions on rape.
>
> Finally, despite the enactment of R.A. No. 8353 more than 20 years ago in 1997, We had been consistent in our rulings in *Larin, Olivarez*, and *Garingarao, Quimvel* and *Caoili*, all of which uphold

[44] *Supra* note 30.

the intent of R.A. No. 7610 to provide special protection of children and stronger deterrence against child abuse. Judicial stability compels to stand by, but not to abandon, our sound rulings: [1] that Section 5(b), Article III of R.A. No. 7610 penalizes not only child prostitution, the essence of which is profit, but also other forms of sexual abuse wherein a child engages in sexual intercourse or lascivious conduct through coercion or influence; and [2] that it is inconsequential that the sexual abuse occurred only once. Our rulings also find textual anchor on Section 5, Article III of R.A. No. 7610, which explicitly states that a child is deemed "exploited in prostitution or subjected to other sexual abuse," when the child indulges in sexual intercourse or lascivious conduct for money, profit or any other consideration, or under the coercion or influence of any adult, syndicate or group, as well as on Section 3(b), Article I thereof, which clearly provides that the term "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes sexual abuse. (Citations omitted.)

As such, appellant should be meted the penalty of *reclusion perpetua* in Criminal Case Nos. 6264 and 6266. This is so because the penalty imposable for Lascivious Conduct under Section 5(b) of R.A. No. 7610 is *reclusion temporal* in its medium period to *reclusion perpetua*. In this case, the maximum penalty should be imposed due to the presence of the aggravating circumstance of relationship, the victim being the sister of the perpetrator, and without any mitigating circumstance to offset such. There is no need, however, to qualify the sentence to *reclusion perpetua* with the phrase "without eligibility for parole" because, under A.M. No. 15-08-02-SC, in cases where the death penalty is not warranted, it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole.

As to the award of damages, a modification must be made per *People v. Jugueta*[45] and *People v. Tulagan*.[46] Where the penalty imposed is *reclusion perpetua* instead of death due to R.A. No. 9246, the amounts of damages shall be as follows:

Civil Indemnity	-	₱100,000.00
Moral Damages	-	₱100,000.00
Exemplary Damages	-	₱100,000.00

[45] 783 Phil. 806 (2016).

[46] *Supra* note 30.

Thus, in Criminal Case No. 6263, where appellant is found guilty beyond reasonable doubt of the crime of Qualified Rape, he is ordered to pay the victim the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. While in Criminal Case Nos. 6264, 6265 and 6266, appellant is ordered to pay the victim civil indemnity, moral damages and exemplary damages in the amount of ₱75,000.00 each.

WHEREFORE, the appeal of appellant Elmer Moya is **DISMISSED.** The Decision dated October 22, 2015 of the Court of Appeals affirming with modifications the Decision dated April 8, 2013 of the Regional Trial Court, Branch 10, Balayan, Batangas is **AFFIRMED** with **MODIFICATIONS**. This Court finds the appellant guilty beyond reasonable doubt:

1) in Criminal Case No. 6263, of Qualified Rape under Article 266-A, in relation to Article 266-B, of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and is ordered to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, with the appellant paying an interest of 6% per annum on all damages awarded from the date of finality of this judgment until fully paid; and

2) in Criminal Case Nos. 6264, 6265 and 6266, of the crime of Lascivious Conduct under Section 5(b) of R.A. No. 7610 and is sentenced to suffer, on each case, the penalty of *reclusion perpetua*. He is further ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages on the same cases, with the appellant paying an interest of 6% per annum on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.

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

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[*] Additional member in lieu of Associate Justice Ramon Paul L. Hernando per Raffle dated June 10, 2019.

FIRST DIVISION

[G.R. No. 229859. June 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOJIT ARPON *y* PONFERRADA @ "MODIO",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS; ESTABLISHED.— In order to successfully prosecute the crime of murder, the following elements must be established: (a) that a person was killed; (b) the accused killed him or her; (c) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (d) the killing is not parricide or infanticide.

2. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; TREACHERY IS PRESENT WHEN AT THE TIME OF THE ATTACK, THE VICTIM WAS NOT IN A POSITION TO DEFEND HIMSELF, OR WHEN THE OFFENDER CONSCIOUSLY ADOPTED THE PARTICULAR MEANS OF ATTACK EMPLOYED.— Treachery, as defined in Article 14, paragraph 16 of the RPC, is present when at the time of the attack, the victim was not in a position to defend himself, or when the offender consciously adopted the particular means of attack employed. In the instant case, Rodolfo and Bernardo were walking side by side when they were accosted by accused-appellant who suddenly stabbed Rodolfo with a short bolo. Both Rodolfo and Bernardo were unarmed and were totally unaware of the impending assault from the accused-appellant.

3. ID.; ID.; TREACHERY IS PRESENT EVEN IF THE VICTIM HAD BEEN TALKING OR CONVERSING WITH HIS COMPANION WHEN HE WAS ATTACKED BY THE ACCUSED, WHERE THE VICTIM WAS CLUELESS ABOUT THE FATAL ATTACK THAT WAS TO BEFALL HIM.— Likewise untenable is the accused-appellant's contention that treachery should not have been appreciated to have attended the commission of the crime considering that Rodolfo was then accompanied by Bernardo. In *People v. Cagas*, the Court held that treachery was present when accused-appellant stabbed the

victim, even if the latter had been talking or conversing with his companion. The Court in said case placed emphasis on the fact that the victim was truly clueless about the fatal attack that was to befall him. The same situation obtains in the case at bar.

4. ID.; MURDER; PROOF OF MOTIVE FOR THE COMMISSION OF THE OFFENSE CHARGED DOES NOT SHOW GUILT AND ABSENCE OF PROOF OF SUCH MOTIVE DOES NOT ESTABLISH THE INNOCENCE OF THE ACCUSED AS MOTIVE IS NOT AN ESSENTIAL ELEMENT OF A CRIME, HENCE, NEED NOT BE PROVED.— Accused-appellant's argument that he should be acquitted since the prosecution had not established motive as to why he would attack and kill Rodolfo does not persuade because: [m]otive is not an essential element of a crime and hence the prosecution need not prove the same. As a general rule, proof of motive for the commission of the offense charged does not show guilt and absence of proof of such motive does not establish the innocence of [the] accused for the crime charged such as murder. The history of crimes shows that murders are generally committed from motives comparatively trivial. Crime is rarely rational. In murder, the specific intent is to kill the victim.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DELAY IN REVEALING THE IDENTITY OF THE PERPETRATORS OF A CRIME DOES NOT NECESSARILY IMPAIR THE CREDIBILITY OF A WITNESS, ESPECIALLY WHERE SUFFICIENT EXPLANATION IS GIVEN, AS NO STANDARD FORM OF BEHAVIOR CAN BE EXPECTED FROM PEOPLE WHO HAD WITNESSED A STRANGE OR FRIGHTFUL EXPERIENCE.— The accused-appellant makes capital of the fact that Bernardo failed to report the incident to the authorities, suggesting the possibility of a prior confrontation between Rodolfo and Arpon — a happenstance that negates treachery. This argument is neither here nor there. Case law teaches that — Delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given. No standard form of behavior can be expected from people who had witnessed a strange or frightful experience. Jurisprudence recognizes that witnesses are naturally reluctant to volunteer information about a criminal case or are unwilling to be involved in criminal investigations because of varied

reasons. Some fear for their lives and that of their family; while others shy away when those involved in the crime are their relatives or townmates. And where there is delay, it is more important to consider the reason for the delay, which must be sufficient or well-grounded, and not the length of delay.

6. ID.; MURDER; PROPER IMPOSABLE PENALTY.— Anent the penalty, no aggravating circumstance other than the qualifying circumstance of treachery having attended the murderous assault, the RTC correctly imposed the penalty of *reclusion perpetua* which the CA properly affirmed. Nonetheless, the amount of damages must be increased in light of prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal[1] from the September 26, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. CEB-CR HC No. 02013 which affirmed the November 13, 2014 Decision[3] of the Regional Trial Court (RTC) of Carigara, Leyte, Branch 13, in Criminal Case No. RTC-2010-071-CR.

The Facts

Accused-appellant Jojit Arpon *y* Ponferrada @ "Modio" (Arpon) and Dindo Lanante (Lanante) were charged with murder in an Information[4] which reads:

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[1] CA *rollo*, pp. 78-79.

[2] *Id*. at 71-77; penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap.

[3] Records, pp. 120-132; penned by Presiding Judge Emelinda R. Maquilan.

[4] *Id.* at 3; dated July 23, 2010.

That on or about the 27th day of May 2010, in the Municipality of Barugo, Leyte, Philippines, within the jurisdiction of this Honorable Court, the said accused, conspiring and mutually helping each other, did then and there willfully, unlawfully and feloniously, with intent to kill and treachery, attack one Rodulfo[5] Moriel *y* Robenta, stabbing the latter without any warning with the use of bladed weapons, inflicting mortal wounds, thereby causing the direct and immediate death of the said victim. Contrary to law.[6]

A warrant of arrest was issued for their apprehension.[7] On September 3, 2010, Lanante was arrested.[8] While he was arraigned on September 30, 2010, the case against him was provisionally dismissed upon motion[9] by the prosecution and execution of an affidavit of desistance[10] of the mother of the victim, Melita R. Moriel (Melita); meanwhile, the case against Arpon was archived.[11] Arpon was eventually arrested two years after or on September 20, 2012 and ordered committed on September 24, 2012.[12] When arraigned on November 13, 2012, he pleaded not guilty.[13]

Pre-trial was conducted and terminated; trial ensued thereafter.[14]

The Version of the Prosecution

The evidence for the prosecution revealed that, at 3:00 a.m. on May 27, 2010, the victim, Rodolfo R. Moriel (Rodolfo) and

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[5] Also spelled as Rodolfo in some parts of the records.

[6] *Id*.

[7] *Id*. at 19; dated August 26, 2010.

[8] *Id*. at 120.

[9] *Id*. at 49.

[10] *Id*. at 50.

[11] *Id*. at 52-53; Order dated April 7, 2011 issued by Presiding Judge Crisostomo L. Garrido.

[12] *Id*. at 56.

[13] *Id*. at 59; Order dated November 13, 2012 issued by Presiding Judge Emelinda R. Maquilan.

[14] *Id*. at 66-68; Pretrial Order dated March 5, 2013.

Bernardo S. Insigne (Bernardo) were headed home walking side by side (from *Barangay* Guindaohan, Barugo, Leyte where they attended the vespers, to *Barangay* Sagkahan, Carigara, Leyte where they resided – a 30 minute-walk) when they were accosted by accused-appellant Arpon.[15] Using a short bladed weapon, Arpon stabbed Rodolfo on the left chest.[16] Rodolfo tried to run, but he was stabbed for a second time on the right chest by Arpon until he fell to the ground.[17] Fearing for his own life, Bernardo fled the scene. On the same day, Bernardo went to the police accompanied by Melita and reported the incident.

Rodolfo died due to hypovolemic shock resulting from acute blood loss caused by three multiple stab wounds – two of which were deemed fatal.[18] His family incurred ₱40,000.00 as burial and funeral expenses.[19]

The Version of the Defense

Arpon testified that he went to *Barangay* Guindaohan on May 26, 2010.[20] He, along with his friend, Kevin Ponferrada, stayed at the house of Meldy Lucelo,[21] the mother-in-law of

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[15] TSN, March 14, 2013, pp. 3-4.

[16] *Id.* at 4.

[17] *Id.* at 14-15.

[18] TSN, June 20, 2013, p. 6; Records, p. 17. The findings in the Post Mortem Examination Report prepared by Dr. Lourdes Avila Calzita reveal three stab wounds as follows:

1. Stab wound on the chest, located 1 inch below the sternal notch, measuring 1x0.5 inch subcutaneous deep.
2. Stab wound on the chest, measuring 1x0.5 inch, located at the level of right nipple, penetrating thoracic cavity wounding the right lung.
3. Stab wound 1x0.5 inch, located at left posterior thoracic region, penetrating thoracic cavity wounding the heart, left lung, and large blood vessels.

CAUSE OF DEATH:

Hypovolemic Shock due to Acute Blood Loss due to Multiple Stab Wounds

[19] TSN, August 8, 2013, p. 3.

[20] TSN, March 10, 2014, p. 3.

[21] *Id.*

his brother, Edjel Arpon, from 8:00 p.m. on May 26, 2010 to 4:00 a.m. on May 27, 2010.[22]

The Ruling of the Regional Trial Court

The RTC found Arpon guilty as charged. It gave credence to the positive identification of the prosecution eye witness, Bernardo, who was only two yards away from Rodolfo when the latter was stabbed, over Arpon's defense of alibi.[23] It noted that the defense failed to show any ill motive on the part of Bernardo to testify against Arpon whom the former knew prior to the incident.[24] It likewise brushed aside the trivial inconsistencies in Bernardo's testimony in light of the complete narration of the principal occurrence and positive identification of the perpetrator.[25]

On the qualifying circumstance of treachery, the RTC noted that Arpon – who came out of nowhere – deliberately, suddenly, and unexpectedly attacked Rodolfo – who was then unarmed and completely unaware of the danger to his life.[26]

The dispositive portion of the Decision reads:

> WHEREFORE, finding accused JOJIT ARPON *y* PONFERRADA, GUILTY, beyond reasonable doubt, of the crime of MURDER, this Court hereby sentences him [to] a penalty of *RECLUSION PERPETUA.*
>
> Further, accused is hereby ordered to pay the heirs of the victim, civil indemnity, in the amount of Seventy Five Thousand (Php75,000.[00]) Pesos, moral damages in the amount of Seventy Five Thousand (Php75,000.00) Pesos, and temperate damages in the amount of Twenty Five Thousand (Php25,000.00) Pesos.
>
> No costs.

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[22] *Id.*

[23] Records, p. 128.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 130.

SO ORDERED.[27]

Arpon filed his appeal.[28] In his Brief,[29] he specifically assailed the credibility of Bernardo for his failure to report the incident not only to his parents but also to Rodolfo's parents.[30] He also banked on the inconsistencies in Bernardo's written and verbal testimony. He pointed out that Bernardo initially claimed arriving at *Barangay* Guindaohan at 10:00 a.m. but later changed it to 10:00 p.m. and that the latter originally stated in his affidavit that Rodolfo was attacked by Arpon and Lanante but eventually declared in open court that he only saw Arpon stab Rodolfo.[31] He also argued that treachery was not present because the victim was not alone at that time but accompanied by his friend and both could have easily subdued the attacker.[32] Finally, he insisted that the court should have upheld his testimony rather than the confusing and inconsistent testimony of the prosecution eye witness.[33]

On the other hand, the plaintiff-appellee averred that the RTC did not err in convicting accused-appellant whose guilt was proven beyond reasonable doubt;[34] that no standard behavior can be expected from people who had just witnessed a frightful experience;[35] that assuming that there had been inconsistencies in Bernardo's testimony, these only referred to minor details which did not impair his credibility.[36] Plaintiff-appellee likewise contended that the RTC correctly appreciated the circumstance

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[27] *Id*. at 131-132.

[28] *Id*. at 135-136; dated December 11, 2014.

[29] CA *rollo*, pp. 10-22; dated August 7, 2015.

[30] *Id*. at 16.

[31] *Id*. at 17.

[32] *Id*. at 19.

[33] *Id*. at 20.

[34] *Id*. at 53.

[35] *Id*. at 55.

[36] *Id*. at 56.

of treachery considering the time and manner of the attack which clearly indicated that the killing was deliberately and carefully planned to ensure the death of Rodolfo.[37] Finally, it maintained that the RTC did not err in discrediting the defense of alibi in light of accused-appellant's revelation that he was in the vicinity of the crime scene.[38]

The Ruling of the Court of Appeals

The CA affirmed *in toto* the ruling of the RTC. It held that Bernardo's failure to immediately inform his and Rodolfo's parents about the incident did not render his testimony undeserving of faith and credit.[39] Moreover, the CA held that the inconsistencies, if any, pertained only to collateral matters, and not to the elements of the crime.[40] It concurred with the RTC in giving more credence to the positive identification of the perpetrator by the prosecution witness, who had no ill motive to testify, over the alibi and denial of accused-appellant.[41] Finally, it declared that treachery attended the commission of the crime in light of the circumstances on record.[42]

Hence, the present appeal.[43] In compliance with the directive to file a supplemental brief, if it so desired,[44] plaintiff-appellee submitted a Manifestation[45] in which it stated that it would be adopting the Brief [46] submitted earlier before the CA and would

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[37] *Id*. at 58.

[38] *Id*. at 59.

[39] *Id*. at 75.

[40] *Id.*

[41] *Id*. at 76.

[42] *Id.*

[43] *Rollo*, pp. 11-12.

[44] *Id*. at 16-17 (Resolution dated April 25, 2017).

[45] *Id*. at 24-25; Manifestation In Lieu of Supplemental Brief, August 24, 2017.

[46] CA *rollo*, pp. 50-61; December 16, 2015.

be dispensing with the filing of Supplemental Brief before this Court.[47]

Accused-appellant, through counsel, submitted his Supplemental Brief,[48] wherein he insisted that no motive was proven by the prosecution as to why he would attack and kill Rodolfo.[49] He claimed that this failure to establish motive would make anyone suspect, including Bernardo; hence, possibly the ill motive on the part of Bernardo to fabricate a story and implicate Arpon.[50] He further claimed that treachery was not present, because Rodolfo was then accompanied by Bernardo.[51] He finally claimed that Bernardo's testimony was of doubtful veracity because the latter failed to immediately report the incident.[52]

Our Ruling

The appeal has no merit.

In order to successfully prosecute the crime of murder, the following elements must be established: (a) that a person was killed; (b) the accused killed him or her; (c) the killing was attended by any of the qualifying circumstances mentioned in Article 248[53] of the Revised Penal Code (RPC); and (d) the killing is not parricide or infanticide.[54]

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[47] *Rollo*, p. 24.

[48] *Id*. at 24-27; Supplemental Brief dated August 18, 2017.

[49] *Id*. at 25.

[50] *Id.*

[51] *Id.*

[52] *Id*. at 26.

[53] Article 248 of the Revised Penal Code provides:

Art. 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;

[54] *Ramos v. People*, 803 Phil. 775, 783 (2017).

Here, the fact that Rodolfo was killed and that accused-appellant killed him were both sufficiently established by the prosecution. Upon this point, the testimony of Bernardo is clear and categorical:

Q Will you please tell the Honorable Court the incident that transpired on said time and said place?
A We were accosted and he was stabbed.

Q Who was stabbed?
A Rodolfo Moriel.

Q Who stabbed Rodolfo Moriel?
A Jojit Arpon.

Q How far were you from Rodolfo Moriel when he was stabbed by Jojit Arpon?
A About an armslength.

Q Do you know this Jojit Arpon prior to the stabbing incident?
A Yes, sir.

Q Why do you know this person of Jojit Arpon?
A Because I already saw him.

Q Saw him where?
A *Brgy*. Balire.

x x x x x x x x x

Q How were you able to identify Jojit Arpon when he stabbed Rodolfo Moriel?
A Because the moon at that time was shining brightly.

Q What weapon did Jojit Arpon utilize in stabbing Rodolfo Moriel?
A Short bolo.

Q Can you still recall what part of the body of Rodolfo was hit when Jojit Arpon stabbed him?
A Witness at this juncture is pointing [to] his left chest.

Q How many times did you see Jojit Arpon stab Rodolfo?
A Three times.

Q In what particular part of the body of Rodolfo was hit when he was stabbed for the second time by Jojit Arpon?

A Right chest.

Q How about the last one, where was he hit if you could still recall?

A I cannot recall anymore because after he died I ran.

x x x x x x x x x

Q When the second stabbing blow was delivered by Jojit Arpon how far were you then?

A Not so far.[55]

Given the foregoing categorical testimony, there is no doubt that treachery attended the commission of the crime.

Treachery, as defined in Article 14, paragraph 16[56] of the RPC, is present when at the time of the attack, the victim was not in a position to defend himself, or when the offender consciously adopted the particular means of attack employed.[57]

In the instant case, Rodolfo and Bernardo were walking side by side when they were accosted by accused-appellant who suddenly stabbed Rodolfo with a short bolo. Both Rodolfo and Bernardo were unarmed and were totally unaware of the impending assault from the accused-appellant.

Accused-appellant's argument that he should be acquitted since the prosecution had not established motive as to why he would attack and kill Rodolfo does not persuade because:

[m]otive is not an essential element of a crime and hence the prosecution need not prove the same. As a general rule, proof of motive for the

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[55] TSN, March 14, 2013, pp. 4-5.

[56] ART. 14. *Aggravating Circumstances.* — The following are aggravating circumstances:

x x x x x x x x x

16. That the act be committed with treachery (*alevosia*).

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

[57] *People v. Pulgo*, G.R. No. 218205, July 5, 2017, 830 SCRA 220.

commission of the offense charged does not show guilt and absence of proof of such motive does not establish the innocence of [the] accused for the crime charged such as murder. The history of crimes shows that murders are generally committed from motives comparatively trivial. Crime is rarely rational. In murder, the specific intent is to kill the victim.[58] (citations omitted)

Likewise untenable is the accused-appellant's contention that treachery should not have been appreciated to have attended the commission of the crime considering that Rodolfo was then accompanied by Bernardo. In *People v. Cagas*,[59] the Court held that treachery was present when accused-appellant stabbed the victim, even if the latter had been talking or conversing with his companion.[60] The Court in said case placed emphasis on the fact that the victim was truly clueless about the fatal attack that was to befall him.[61] The same situation obtains in the case at bar.

The accused-appellant makes capital of the fact that Bernardo failed to report the incident to the authorities, suggesting the possibility of a prior confrontation between Rodolfo and Arpon – a happenstance that negates treachery. This argument is neither here nor there.

Case law teaches that –

Delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given. No standard form of behavior can be expected from people who had witnessed a strange or frightful experience. Jurisprudence recognizes that witnesses are naturally reluctant to volunteer information about a criminal case or are unwilling to be involved in criminal investigations because of varied reasons. Some fear for their lives and that of their family; while others shy away when those involved in the crime are their relatives or townmates.

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[58] *People v. Delim*, 444 Phil. 430, 448-449 (2003).

[59] 477 Phil. 338, 349 (2004).

[60] *Id.*

[61] *Id.*

And where there is delay, it is more important to consider the reason for the delay, which must be sufficient or well-grounded, and not the length of delay.[62]

Anent the penalty, no aggravating circumstance other than the qualifying circumstance of treachery having attended the murderous assault, the RTC correctly imposed the penalty of *reclusion perpetua* which the CA properly affirmed. Nonetheless, the amount of damages must be increased in light of prevailing jurisprudence.[63]

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The September 26, 2016 Decision of the Court of Appeals in CA-G.R. CEB-CR-HC No. 02013 is hereby **AFFIRMED** with **MODIFICATIONS**. Accused-appellant Jojit Arpon *y* Ponferrada @ "Modio" is hereby declared **GUILTY** beyond reasonable doubt of murder defined under Article 248 of the Revised Penal Code. He is hereby sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the heirs of Rodolfo Moriel the following amounts: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; (c) ₱75,000.00 as exemplary damages; (d) ₱50,000.00 as temperate damages; and (e) legal interest at the rate of 6% *per annum* from the finality of this Decision until fully paid.

SO ORDERED.

Bersamin, C.J., Jardeleza, and *Gesmundo, JJ.*, concur.

Carandang, J., on leave.

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[62] *People v. Berondo*, 601 Phil. 538, 544-545 (2009).

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

THIRD DIVISION

[G.R. No. 233750. June 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEL MARTIN *y* PEÑA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE TRIAL COURT'S FINDINGS OF FACT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS ARE ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL, EXCEPT WHERE FACTS OF WEIGHT AND SUBSTANCE, WITH DIRECT AND MATERIAL BEARING ON THE FINAL OUTCOME OF THE CASE, HAVE BEEN OVERLOOKED, MISAPPREHENDED OR MISAPPLIED.— [T]he Court draws attention to the unique nature of an appeal in a criminal case: the appeal throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned. Prevailing jurisprudence uniformly hold that the trial court's findings of fact, especially when affirmed by the CA, are, as a general rule, entitled to great weight and will not be disturbed on appeal. However, this rule admits of exceptions and does not apply where facts of weight and substance, with direct and material bearing on the final outcome of the case, have been overlooked, misapprehended or misapplied.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— [M]artin was charged with and convicted of the crime of illegal sale of dangerous drugs as defined and penalized under R.A. No. 9165, which demands the establishment of the following elements for a conviction: (1) the identity of the buyer and the seller; (2) the object of the sale and its consideration; and (3) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence

in court and is shown to be the same drugs seized from the accused.

3. **ID.; ID.; SECTION 21, ARTICLE II OF RA NO. 9165; CHAIN OF CUSTODY PROCEDURE; THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK IN THE CHAIN OF CUSTODY FROM THE MOMENT THAT THE ILLEGAL DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME.—** To determine whether there was a valid buy-bust operation and whether proper procedures were undertaken by the police officers in the conduct thereof, it is incumbent upon the courts to make sure that the details of the operation are clearly and adequately established through relevant, material and competent evidence. The prosecution, on the other hand, must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution must show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.

4. **ID.; ID.; ID.; ID.; FIRST LINK IN THE CHAIN OF CUSTODY; MARKING OF THE SEIZED ITEMS; MARKING OF THE SEIZED ITEMS SHOULD BE DONE IN THE PRESENCE OF THE APPREHENDED VIOLATOR, AND IMMEDIATELY UPON CONFISCATION, AND A CONFUSION AS TO WHO HAD POSSESSION OF THE SEIZED ITEMS AFTER THEY WERE SEIZED AND MARKED CONSTITUTES A BREAK IN THE FIRST LINK OF THE CHAIN.—** A perusal of the records shows that the prosecution witnesses had conflicting statements as to who had possession of the seized items after they were seized and marked — a crucial link in the chain of custody. x x x. Contrary to the ruling of the trial court, the Court cannot categorize these discrepancies as merely trivial. The testimonies of PO1 Suriaga and PO2 Magpantay are material to the determination of custody of the marked confiscated dangerous drugs after they were

marked. PO1 Suriaga testified that after affixing his signature on the sachet, he handed it to PO2 Magpantay but the latter did not confirm this on direct examination. There being confusion as to who had possession of the seized items after they were marked, it constitutes a break in the first link of the chain. As held in *People v. Martinez, et al.,* the first stage in the chain of custody rule is "for greater specificity, marking means the placing by the apprehending officer or the poseur buyer of his/her initials and signature on the items seized." Thereafter, the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody. "Marking" of the seized items, to truly ensure that they were the same items that enter the chain and were eventually the ones offered in evidence, should be done (1) in the presence of the apprehended violator; and (2) immediately upon confiscation – in order to protect innocent persons from dubious and concocted searches and to shield the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft. The testimony of the witness, testifying on the first link in the chain of custody of marking to the next custodian, is now suspect.

5. ID.; ID.; ID.; ID.; SECOND LINK IN THE CHAIN CUSTODY; PERSONS WHO HANDLED THE CONFISCATED ITEMS FOR THE PURPOSE OF DULY MONITORING THE AUTHORIZED MOVEMENTS OF THE ILLEGAL DRUGS AND/OR DRUG PARAPHERNALIA FROM THE TIME THEY ARE SEIZED FROM THE ACCUSED UNTIL THE TIME THEY ARE PRESENTED IN COURT MUST BE CLEARLY IDENTIFIED.— As to the second link in the chain of custody, there was no credible prosecution witness who testified as to whether or not there was compliance with the chain of custody rule. First, the police investigator to whom the seized items were handed to was not clearly identified, as admitted by PO1 Suriaga himself on direct examination x x x. Since the identity of the investigating officer was not clearly established, it constitutes as a gap in the second link – *the turnover of the seized shabu by the apprehending officer to the investigating officer*. This procedural lapse or defect cannot

be overlooked lest the Court blatantly disregard the very safeguards enshrined in R.A. No. 9165. The rule on chain of custody expressly demands the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. Moreover, as a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Indeed, it is from the testimony of every witness, who handled the evidence from which a reliable assurance can be derived, that the evidence presented in court is one and the same as that seized from the accused. Here, the Court finds that the apprehending officers failed to properly preserve the integrity and evidentiary value of the confiscated *shabu*. There are just too many breaks and gaps to the effect that a chain of custody could not be established at all. Failure of the prosecution to offer testimony to establish a substantially complete chain of custody of the *shabu* and the inappropriate manner of handling the evidence prior to its offer in court diminishes the government's chance of successfully prosecuting a drug case.

6. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE CHAIN OF CUSTODY PROCEDURE SHALL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OF THE DRUGS WHEN SUCH NON-COMPLIANCE IS ATTENDED BY JUSTIFIABLE GROUNDS, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED BY THE APPREHENDING TEAM.— Apart from the missing links, there was also failure to comply with the required number of witnesses who must be

present during the conduct of the inventory. Time and again, it has been laid down as doctrinal that non-compliance with Section 21 of R.A. No. 9165 shall not render void and invalid the seizure and custody of the drugs when: (a) such non-compliance is attended by justifiable grounds; and (b) the integrity and evidentiary value of the seized items are properly preserved by the apprehending team. There must be proof that these two requirements were met before such non-compliance may be said to fall within the scope of the proviso.

7. ID.; ID.; ID.; ID.; THREE WITNESSES REQUIRED TO BE PRESENT DURING THE INVENTORY AND TAKING OF PHOTOGRAPHS OF THE SEIZED ITEMS; RATIONALE FOR THE REQUIREMENTS; NOT COMPLIED WITH.— Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph 1 provides a list of the witnesses required to be present during the inventory and taking of photographs and the venue where these should be conducted x x x. In 2014, R.A. No. 106404 amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2) x x x. Since the offense subject of this appeal was committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations should apply. Section 21 requires the presence of three witnesses during the physical inventory of the seized items, *i.e.,* **(1) an elected public official, (2) a representative from the DOJ, and (3) a representative from the media.** The Court, in *People v. Mendoza,* explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or "planting" of evidence, *viz.* Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of [R.A.] No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti,* and thus adversely

affected the trustworthiness of the incrimination of the accused. From the records, it is clear that only Ramirez was present to witness the conduct of the inventory. There were no representatives from the DOJ and the media. The photographs of the seized item allegedly taken during the inventory were likewise not presented in evidence. In addition, the prosecution did not offer any justifiable ground to explain its noncompliance with the requirements set forth in Section 21. These glaring procedural lapses militate against its claim that the integrity and evidentiary value of the seized item had been preserved.

8. ID.; ID.; ID.; ID.; MINOR PROCEDURAL LAPSES OR DEVIATIONS FROM THE PRESCRIBED CHAIN OF CUSTODY MAY BE CONDONED PROVIDED THAT THE ARRESTING OR APPREHENDING OFFICERS ARE ABLE TO JUSTIFY THEIR FAILURE TO COMPLY WITH THE SAME, AND THAT IT MUST BE ALLEGED THAT THEY PUT IN THEIR BEST EFFORT TO ENSURE COMPLIANCE BUT WERE PREVENTED FROM DOING SO BY CIRCUMSTANCES BEYOND THEIR CONTROL.— The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody may be condoned provided that the arresting or apprehending officers are able to justify their failure to comply with the same. It must be **alleged** that they put in their best effort to ensure compliance but were prevented from doing so by circumstances beyond their control. The justifiable ground for noncompliance **must be proven as a fact.** The prosecution cannot simply invoke the saving clause found in Section 21 — that the integrity and evidentiary value of the seized items have been preserved – without justifying its failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves.

9. ID.; ID.; ID.; ID.; THE PROSECUTION'S FAILURE TO JUSTIFY THE ARRESTING OFFICERS' NONCOMPLIANCE WITH THE REQUIREMENTS FOUND IN SECTION 21 OF R.A. NO. 9165, SPECIFICALLY, THE PRESENCE OF THE THREE REQUIRED WITNESSES DURING THE

ACTUAL INVENTORY OF THE SEIZED ITEMS, IS FATAL TO ITS CASE, AS ANY INDICIUM OF DOUBT IN THE EVIDENCE OF THE PROSECUTION THAT OUTS INTO QUESTION THE FUNDAMENTAL PRINCIPLE OF CREDIBILITY AND INTEGRITY OF THE *CORPUS DELICTI* MAKES AN ACQUITTAL A MATTER OF COURSE.— The prosecution's failure to justify the arresting officers' noncompliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to its case. The unjustified absence of these witnesses during the inventory constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of invoking the saving clause. The Court, on various occasions, has reversed judgments rendered by lower courts and set an accused free on the basis of unexplained gaps and lapses in the chain of custody, primarily those pertaining or related to the handling of the seized drugs. Any indicium of doubt in the evidence of the prosecution that outs into question the fundamental principle of credibility and integrity of the *corpus delicti* makes an acquittal a matter of course. x x x [I]t cannot be gainsaid that it is mandated by no less than the Constitution that an accused in a criminal case shall be presumed innocent until the contrary is proved.

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

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

This is an appeal[1] from the Decision[2] of the Court of Appeals (CA) in CA-GR. CR-HC No. 07385 promulgated on May 18,

[1] CA *rollo*, pp. 299-300.

[2] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Normandie B. Pizarro and Jhosep Y. Lopez, concurring; *id*. at 277-291.

2017, which affirmed the Decision[3] dated February 11, 2015 of the Regional Trial Court (RTC) of Tanauan City, Batangas, Branch 83, in Criminal Case No. CR-11-08-5719, finding accused-appellant Romel Martin *y* Peña (Martin) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. In Criminal Case No. 11-08-5719, Martin was sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The Facts

In an Information[4] dated August 26, 2011, Martin was charged with violation of Section 5, Article II of R.A. No. 9165, the accusatory portion of which reads:

> That on or about the 3rd day of August, 2011, at about 4:30 o'clock in the afternoon, at *Barangay* 2, Poblacion, City of Tanauan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully. unlawfully and feloniously sell, deliver and give away one (1) small heat-sealed transparent plastic sachet with [marking] "HAS-1" containing methamphetamine hydrochloride, commonly known as "*shabu*," with an aggregate weight of 0.04 gram, a dangerous drug.
>
> Contrary to law.[5]

Version of the Prosecution

On August 3, 2011, the Tanauan Police received a call from an anonymous resident who reported about the rampant trading, buying and selling, and usage of prohibited drugs in the area. There was an alleged report about a pot session that was happening on Collantes Street, *Barangay* 2 in Tanauan City which is part of the vicinity where roving operations were being conducted.[6]

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[3] Rendered by Presiding Judge Marjorie T. Uyengco-Nolasco; *id.* at 55-63.

[4] *Id.* at 21.

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

[6] *Id.* at 22.

Police Officer 2 Mafriel Magpantay (PO2 Magpantay) and PO1 Harold Suriaga (PO1 Suriaga) were recalled from their current field posts to join the operations team as they were briefed by Police Senior Inspector John Ganit Rellian (PS/Insp. Rellian) where they proceeded to their target operation.[7]

At about 4:30 p.m., when they reached the subject area, the police operative team, comprised of 10 personnel including PO2 Magpantay and PO1 Suriaga, alighted from the mobile patrol car, and started walking with caution to the inner alleys.[8]

When they reached the interior of the location, they saw an elevated nipa hut where Martin, Sheryl Pelago (Pelago) and Bernardo Malocloc (Malocloc) were standing. Upon seeing them, the entrapment team positioned themselves at a distance of 1 1/2 to 2 meters below the floor of the nipa hut. They were about 9 m away from the subject persons.[9]

From this vantage point, they witnessed the three who gave the impression of conducting an ongoing transaction where Martin handed over a plastic sachet containing *shabu* to Malocloc who received the plastic pack and for which the latter handed over bills which were eventually pocketed by the former.[10]

Upon seeing this, the police officers effected the arrest. Malocloc was apprehended from where one plastic sachet containing methamphetamine hydrochloride was marked with the initials "HAS-1."[11]

Martin and Pelago fled crossing the other house in front of the hut, with the entrapment team pursuing them. PS/Insp. Rellian commanded them to come out of their hiding for which they finally surrendered. PO1 Suriaga frisked Martin, yielding two more small, elongated plastic sachets with white crystalline

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[7] *Id*. at 56.

[8] *Id*. at 23.

[9] *Id*. at 278-279.

[10] *Id*. at 23-24.

[11] *Id*. at 24.

content and six 100-peso bills which were eventually marked with "HAS-2" and "HAS-3." The money bills obtained from the body search were then marked with "HAS-5" to "HAS-10."[12]

Photographs of the marked items were taken and inventory was conducted by PO2 Magpantay in the presence of *Barangay* Captain Lourdes R. Ramirez (Ramirez) who thereafter signed the same. There were no representatives from the media and the Department of Justice (DOJ) during the inventory.[13]

After the inventory, Martin, Pelago and Malocloc were transferred to the Tanauan Police Station.[14]

PO2 Ana Violeta G. Jaime (PO2 Jaime) served as custodian of the confiscated items for purposes of processing and transmitting to the crime laboratory. It was PO3 Rowell M. Maala, another investigator along with PO2 Magpantay, who had arranged for the requests for the laboratory examinations of the marked confiscated items, as well as the tests for the prohibited drugs. These were, in turn, transmitted to the Philippine National Police (PNP) Regional Crime Laboratory Service Office 4, in Camp Vicente Lim, Calamba City, Laguna. The seized items were then received by the PNP Crime Laboratory at 12:30 a.m. on August 4, 2011.[15]

Forensic Chemist Police Chief Inspector Donna Villa Huelgas examined the said items and prepared Chemistry Report No. D-420-11, yielding positive results for methamphetamine hydrochloride, *viz.*:

> Qualitative examination conducted on specimens A1, B1, C1 and D1 to D9 gave POSITIVE result from the tests for the presence of Methamphetamine hydrochloride, a dangerous drug.[16]

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[12] *Id.*

[13] *Id.* at 58.

[14] *Id.*

[15] *Id.* at 279-280.

[16] *Id.* at 280.

Version of the Defense

Martin denied the accusations against him.

He alleged that he was in his residence on Collantes Street when Pelago arrived with her ill daughter, Rio Shane (Rio). After having lunch, he left to go to the market.[17]

On or about 3:30 p.m., Martin went home to sleep. Pelago and Rio were watching television when police officers arrived and arrested six persons including a certain August Punzalan who lived at the adjacent house of Martin's. When they saw Pelago by the window, police officers approached the neighboring house and asked for the whereabouts of Martin. Pelago replied that Martin was asleep and that she would wake him up.[18]

Pelago then woke up Martin who curiously asked her why police officers were looking for him. Martin opened the door and immediately saw two police officers in uniform.[19]

During trial, Martin testified that the two police officers he saw that day were not the same ones who testified against him, namely, PO1 Suriaga and PO2 Magpantay. According to Martin, the two unidentified police officers brought him to the terrace of the house and thereafter frisked him. He claimed that during the search, nothing illegal was taken from him and that Pelago and Rio were even ordered by the police officers to leave the house so the latter could search its interiors, which likewise yielded negative results.[20]

On February 11, 2015, the RTC rendered a Decision[21] finding Martin guilty beyond reasonable doubt for violation of Section 5, Article II of R.A. No. 9165. The RTC gave full credence to the testimonies of PO2 Magpantay and PO1 Suriaga who

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[17] *Id*. at 24.

[18] *Id.*

[19] *Id.*

[20] *Id*. at 25.

[21] *Id*. at 55-63.

conducted the buy-bust operation against Martin and rejected Martin's defense of denial. The RTC reiterated the oft-stated rule that a defense of denial, which is unsupported and unsubstantiated by clear and convincing evidence, becomes negative and self-serving, deserving no weight in law and cannot be given evidentiary value over convincing, straightforward and probable testimony on affirmative matters.

The trial court, likewise, held that there was substantial compliance with the requirements set forth in Section 21 of R.A. No. 9165. Hence, it ruled that the integrity and evidentiary value of the dangerous drugs were preserved. The dispositive portion of the RTC decision reads:

> WHEREFORE**,** in light of the foregoing, the court finds the accused, **ROMEL MARTIN *y* PE[Ñ]A, GUILTY** beyond reasonable doubt of the crime of **VIOLATION OF SECTION 5, ARTICLE II OF REPUBLIC ACT NO. 9165**, in Criminal Case No. 11-08-5719.
>
> Hence, the accused is sentenced to LIFE IMPRISONMENT and to pay a FINE OF FIVE HUNDRED THOUSAND PESOS (PhP500,000.00).
>
> Further, let the *shabu* marked as Exhibit "J", with submarkings, subject of this case be immediately transmitted to the Philippine Drug Enforcement Agency (PDEA) for the latter's appropriate disposition.
>
> No pronouncement as to the costs.
>
> SO ORDERED.[22] (Emphases in the original)

Dissatisfied with the RTC's ruling, Martin appealed to the CA, but in its Decision[23] on May 18, 2017, the CA affirmed the RTC's judgment of conviction. The CA held that the prosecution successfully discharged its burden of establishing the elements of Illegal Sale of Dangerous Drugs. It, likewise, held that while there may have been procedural lapses in handling the seized items, the same would not *ipso facto* result in the unlawful arrest of Martin nor render inadmissible in evidence

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[22] *Id*. at 63.

[23] *Id*. at 277-291.

the said items as long as the integrity and evidentiary value of the seized items are properly preserved and the chain of custody is established. The CA disposed as follows:

WHEREFORE, premises considered, the instant appeal is **DENIED**. The assailed Decision dated 11 February 2015 is hereby **AFFIRMED**.

SO ORDERED.[24] (Emphases in the original)

The Issue

The pivotal issue to be resolved is whether or not the CA committed a reversible error in affirming Martin's conviction for violation of Section 5, Article II of R.A. No. 9165.

Ruling of the Court

After a careful perusal of the records, the Court is convinced that there is merit to the appeal and deems it proper to acquit Martin for violation of Section 5, Article II of R.A. No. 9165.

At the outset, the Court draws attention to the unique nature of an appeal in a criminal case: the appeal throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned.[25] Prevailing jurisprudence uniformly hold that the trial court's findings of fact, especially when affirmed by the CA, are, as a general rule, entitled to great weight and will not be disturbed on appeal.[26] However, this rule admits of exceptions and does not apply where facts of weight and substance, with direct and material bearing on the final outcome of the case, have been overlooked, misapprehended or misapplied.[27]

Here, Martin was charged with and convicted of the crime of illegal sale of dangerous drugs as defined and penalized under

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[24] *Id.* at 291.

[25] *People v. Kamad*, 624 Phil. 289, 310 (2010).

[26] *People v. Milan*, 370 Phil. 493, 499 (1999).

[27] *People v. Robles*, 604 Phil. 536, 543 (2009).

R.A. No. 9165, which demands the establishment of the following elements for a conviction: (1) the identity of the buyer and the seller; (2) the object of the sale and its consideration; and (3) the delivery of the thing sold and the payment therefor. What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the accused.[28]

To determine whether there was a valid buy-bust operation and whether proper procedures were undertaken by the police officers in the conduct thereof, it is incumbent upon the courts to make sure that the details of the operation are clearly and adequately established through relevant, material and competent evidence.

The prosecution, on the other hand, must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution must show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.[29]

The Rule on Chain of Custody was not observed; substantial gaps in the chain

A perusal of the records shows that the prosecution witnesses had conflicting statements as to who had possession of the seized items after they were seized and marked — a crucial link in the chain of custody.

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[28] *People v. Ismael*, 806 Phil. 21, 29 (2017).

[29] *People of the Philippines v. Ronaldo Paz y Dionisio @ "Jeff,"* G.R. No. 229512, January 31, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014); *People v. Alivio, et al.*, 664 Phil. 565, 580 (2011); and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

PO1 Suriaga testified that after affixing his initials on the plastic sachets which had *shabu* content, he was able to transfer possession to PO2 Magpantay. On the contrary, PO2 Magpantay never mentioned in his testimony or even in his Sworn Statement that after the arrest, there was an instance that he received from PO1 Suriaga the plastic sachets seized from Martin and Malocloc.

On direct examination, PO1 Suriaga testified as follows:

Pros. Torrecampo
Q: After he was arrested, what did he do?
PO1 Suriaga
A: We searched Romel Martin.

Q: Who conducted the search?
A: I myself, ma'am.

Q: What part of the body did you [search]?
A: His waistline and the shorts he was wearing at that time.

Q: What was he wearing on top?
A: T-shirt, ma'am.

Q: What was the result of the search?
A: I was able to confiscate two (2) plastic sachets.

Q: Where?
A: From his pocket.

Q: What pocket?
A: His left front pocket ma'am.

Q: What did you find?
A: [T]he money was handed to him by Mr. [Malocloc].

Q: What denomination of money did you find?
A: Six (6) pieces of One Hundred (Php100.00) Peso hundred bill[s] with a total amount of Php600.00.

Q: Where did you find?
A: At the right front pocket.

Q: What else did you find?
A: None, ma'am.

Q: What did you do with the two pieces (2) plastic sachets?
A: I also placed my markings.

Q: What markings?
A: My initials "HAS", ma'am. The two (2) pieces which I got from Romel Martin, I placed the markings "HAS-2" and "HAS-3".

Q: What happened to the money that you found in the right pocket?
A: I also placed my markings, ma'am.

Q: What markings did you place?
A: "HAS-5" to "HAS-10", ma'am.

Q: Which part of the money did you [place] the initials? Back portion or front portion?
A: I could no longer recall, ma'am.

Q: Now, those items that you found, will you be able to identify if that will be shown to you?
A: Yes, ma'am.

Q: Now, you said earlier that you were able to find one transparent plastic sachet from Mr. [Malocloc] and you conducted the search in the person of the accused, Romel Martin?
A: Yes, ma'am.

Q: Where was the item that you found from Mr. [Malocloc] while you were conducting the search?
A: With PO2 Magpantay, ma'am.

Q: In what point in time did you hand-over the plastic sachet you confiscated from [Malocloc] while you were conducting the search?
A: When I conducted the body search on Romel Martin, that was also the time I handed it to PO2 Magpantay.

Court:

Q: So, that was before the body search you conducted to Romel Martin?
A: Yes, Ma'am.

Q: It was already marked when it was given?

A: Yes, ma'am.[30] (Emphasis in the original)

However, PO2 Magpantay provided contrasting testimonies from those made by PO1 Suriaga:

Pros. Torrecampo
Q: And when you arrived at the house across the nipa hut, what did you do next, if any?

PO2 Magpantay
A: Sir Rellian, because the door was already locked, talked to the person inside and ordered him to go out, ma'am.

Q: And Officer Rellian told the persons inside to go out, what happened next, if any?
A: After few minutes, the two persons, the man and the woman, came out of the house, ma'am.

Q: Who are these persons who went out of the house?
A: The man along with the woman, who handed the plastic sachet to another man, ma'am.

Q: What happened next after they came out of the house?
A: PO1 Suriaga immediately frisked the man who handed the plastic sachet to another man, ma'am.

Court:
Q: And this you are referring to is Romel Martin?
A: Yes, your Honor.

Court:
Proceed Fiscal.

Pros. Torrecampo
Q: Where were you, Mr. Witness, when Police Officer Suriaga was frisking him?

PO2 Magpantay
A: I was beside him, ma'am.

Q: So what was the result of the search, Mr. Witness?
A: PO1 Suriaga recovered two (2) plastic sachets and money, but I don't know in what part of his body were those items recovered, ma'am.

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[30] CA *rollo*, pp. 45-46.

Q: How about the plastic sachets? Where did he recover it, Mr. Witness?
A: Also from Romel Martin, because we are not allowed to frisk a woman.

Court:
Q: Did you see from what particular part of the body of Romel Martin were the two plastic sachets recovered by Suriaga?
A: It was in the pocket of Romel Martin but I don't know from which pocket, your Honor.

Q: You are not sure whether it is in the front, back, left or right side pocket?
A: I am not sure your Honor, because while PO1 Suriaga was frisking him, I was with the man who was earlier arrested.

Q: How about the money?
A: He also recovered money but I am not sure from where it was recovered.

Q: But it is also from the pocket?
A: Yes, your Honor.

Court:
Proceed.

Pros. Torrecampo
Q: After the said plastic sachets and money were confiscated from this accused, what happened next, if any?

PO2 Magpantay
A: It was marked by PO1 Suriaga, ma'am.

x x x x x x x x x

Q: Where did he mark the confiscated items?
A: In the area, ma'am.

Q: Was it outside or inside the house where these two persons went earlier?
A: Outside the house, ma'am.

Q: Where were you while Suriaga was marking these items?
A: I was beside him, ma'am.

Q: Did you see him actually marked the confiscated items?
A: Yes, ma'am.

x x x x x x x x x

Q: And what markings did he place, if you know?
A: His initials "HAS", ma'am.

Q: How about your other companion police officers, Rellian and Salayo while Suriaga was marking the confiscated items?
A: They were also there, ma'am.

Q: So what happened, Mr. Witness, to the person to whom the plastic sachet was given earlier in the nipa hut?
A: He was beside us. We did not leave him because he might leave, ma'am.

Q: What did you do with the man, Mr. Witness, the one to whom the plastic sachet was given earlier?
A: *Iyon pong* plastic sachet *na nakuha sa kanya at iyong* plastic sachets *na nakuha kay* Martin *ay sabay na minarkahan ni* PO1 Suriaga.

Court:
Q: Were you able to find out the identity of the other man and the woman so that it will be easier for us which one to tell by name?
A: *Ang babae po ay si* Sheryl.

Pros. Torrecampo
Q: And do you know her last name?
A: I am not sure if Pelayo or Pelagio, and the other man we arrested in the *kubo* is Bernardo [Malocloc], ma'am.

Q: Again, Mr. Witness, who marked the subject items confiscated from Bernardo [Malocloc]?
A: PO1 Suriaga, ma'am.

Q: Do you know the markings placed by the said officer on the said item?
A: He placed his initials "HAS", but I can't remember what is the number, ma'am.

Q: How about the items confiscated from Romel Martin?
A: Aside from the money, we were able to confiscate two (2) plastic sachets, ma'am.

Q: What is the description again of the two (2) plastic sachets recovered from Romel Martin?

A: Two (2) heat-sealed plastic sachets containing [white] crystalline [substance], your Honor.

Pros. Torrecampo

Q: So what happened next, if any, Mr. Witness, after the marking of these two confiscated items outside the house?

A: We brought the three (3) arrested persons back to the "*kubo*" and Sir [Rellian] texted the other members of the team who served as security to proceed to the "*kubo*", ma'am.

x x x x x x x x x

xxx According to PO1 Suriaga, the said plastic sachet was marked after he confiscated the same and that he handed the marked plastic sachet to PO2 Magpantay before he frisked appellant Romel Martin. PO2 Magpantay, aside from not mentioning that he came into the possession of the plastic sachets, testified that all three (3) plastic sachets were marked simultaneously by PO1 Suriaga after the latter police officer was done frisking Romel Martin and had allegedly recovered the other two (2) plastic sachets of *shabu*.[31]

Contrary to the ruling of the trial court, the Court cannot categorize these discrepancies as merely trivial. The testimonies of PO1 Suriaga and PO2 Magpantay are material to the determination of custody of the marked confiscated dangerous drugs after they were marked. PO1 Suriaga testified that after affixing his signature on the sachet, he handed it to PO2 Magpantay but the latter did not confirm this on direct examination. There being confusion as to who had possession of the seized items after they were marked, it constitutes a break in the first link of the chain.

As held in *People v. Martinez, et al.*,[32] the first stage in the chain of custody rule is "for greater specificity, marking means the placing by the apprehending officer or the poseur buyer of his/her initials and signature on the items seized."[33] Thereafter,

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

[32] 652 Phil. 347 (2010).

[33] *Id.* at 377.

the seized items shall be placed in an envelope or an evidence bag unless the type and quantity of the seized items require a different type of handling and/or container. The evidence bag or container shall accordingly be signed by the handling officer and turned over to the next officer in the chain of custody. "Marking" of the seized items, to truly ensure that they were the same items that enter the chain and were eventually the ones offered in evidence, should be done (1) in the presence of the apprehended violator; and (2) immediately upon confiscation – in order to protect innocent persons from dubious and concocted searches and to shield the apprehending officers as well from harassment suits based on planting of evidence and on allegations of robbery or theft. The testimony of the witness, testifying on the first link in the chain of custody of marking to the next custodian, is now suspect.[34]

The Court, likewise, explained in *People v. Gonzales*[35] that:

> The importance of x x x prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.[36] (Citation omitted)

The prosecution, likewise, failed to present PO2 Jaime, who allegedly stood as custodian of the items for processing and their subsequent transmittal to the crime laboratory.

As to the second link in the chain of custody, there was no credible prosecution witness who testified as to whether or not there was compliance with the chain of custody rule. *First*, the

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[34] *Id.* at 368.

[35] 708 Phil. 121 (2013).

[36] *Id.* at 131.

police investigator to whom the seized items were handed to was not clearly identified, as admitted by PO1 Suriaga himself on direct examination, *viz*.:

> Q: Who was the duty investigator at that time?
> A: I could not recall, ma'am.
>
> Court: Let us clarify, you have possession of the items seized before you reached the police station and you turning it over to the investigator?
>
> Witness: Yes, ma'am.
>
> Court: But you cannot remember who is the duty investigator at that time?
>
> Witness: As far as I remember it is PO3 Maala, your honor.[37]

It can only be surmised from the Request for laboratory examination submitted to the crime laboratory that the document was signed by Chitadel Carandang Gaoiran (Gaoiran) in behalf of Police Superintendent Manuel Yson Manalo. The pertinent portion of the transcript on PO1 Suriaga's testimony reads:

> Q: There are signatures on the lower left hand corner on the above-printed name, P/Supt[.] Manuel Yson Manalo and P[O]3 Rowell Maala both on Exhibits "C" and "D". Whose signatures are that? (sic)
> A: Those are the signatures of PO3 Maala, and in behalf of P/Supt[.] Manuel Yson Manalo it was signed by our Deputy, Chitadel Carandang Gaoiran.
>
> Q: Why do you know that these are their signatures?
> A: I was just beside them when they affixed their signatures.[38]

Interestingly, Gaoiran's testimony was never presented as evidence for the prosecution.

Since the identity of the investigating officer was not clearly established, it constitutes as a gap in the second link – *the turnover of the seized shabu by the apprehending officer to the*

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[37] CA *rollo*, pp. 106-107.

[38] *Id*. at 114.

investigating officer. This procedural lapse or defect cannot be overlooked lest the Court blatantly disregard the very safeguards enshrined in R.A. No. 9165.

The testimony of the Forensic Chemist, likewise, did not prove who received the confiscated *shabu* when these were transmitted to the crime laboratory. It was not clear who the custodian of the specimen *shabu* was and who possessed the seized items after chemical tests were made which yielded positive for dangerous drugs and the manner by which these were safeguarded and stored before they were offered in evidence.

The rule on chain of custody expressly demands the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. Moreover, as a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[39] Indeed, it is from the testimony of every witness, who handled the evidence from which a reliable assurance can be derived, that the evidence presented in court is one and the same as that seized from the accused.[40]

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[39] *People vs. Enad*, 780 Phil. 346, 358 (2016).

[40] *Lopez v. People*, 617 Phil. 109, 120 (2009).

Here, the Court finds that the apprehending officers failed to properly preserve the integrity and evidentiary value of the confiscated *shabu*. There are just too many breaks and gaps to the effect that a chain of custody could not be established at all. Failure of the prosecution to offer testimony to establish a substantially complete chain of custody of the *shabu* and the inappropriate manner of handling the evidence prior to its offer in court diminishes the government's chance of successfully prosecuting a drug case.

Unjustified non-compliance with the procedure laid down in Section 21 of R.A. No. 9165 is fatal to the prosecution's case

Apart from the missing links, there was also failure to comply with the required number of witnesses who must be present during the conduct of the inventory.

Time and again, it has been laid down as doctrinal that non-compliance with Section 21 of R.A. No. 9165 shall not render void and invalid the seizure and custody of the drugs when: (a) such non-compliance is attended by justifiable grounds; and (b) the integrity and evidentiary value of the seized items are properly preserved by the apprehending team. There must be proof that these two requirements were met before such non-compliance may be said to fall within the scope of the proviso.[41]

In *People v. Relato*,[42] the Court explained that in a prosecution for sale and possession of methamphetamine hydrochloride (*shabu*) prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the **State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing**

[41] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[42] 679 Phil. 268 (2012).

or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[43]

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph 1 provides a list of the witnesses required to be present during the inventory and taking of photographs and the venue where these should be conducted, to wit:

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

In 2014, R.A. No. 10640[44] amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-

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

[44] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Approved on July 15, 2014.

drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2), to wit:

> **SEC. 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof**: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under **justifiable grounds**, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring Ours)

A comparison of the cited provisions shows that the amendments introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs from three to two — an elected public official AND a representative of the National Prosecution Service (DOJ) OR the media. These witnesses must be present during the inventory stage and are, likewise, required to sign the copies

of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. It is, likewise, worthy to note that failure of the arresting officers to justify the absence of the required witnesses, *i.e.*, the representative from the media or the DOJ and any elected official, constitutes as a substantial gap in the chain of custody.

Since the offense subject of this appeal was committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21 and its Implementing Rules and Regulations should apply. Section 21 requires the presence of three witnesses during the physical inventory of the seized items, *i.e.*, **(1) an elected public official, (2) a representative from the DOJ, and (3) a representative from the media**. The Court, in *People v. Mendoza*,[45] explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or "planting" of evidence, *viz.*:

> Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of [R.A.] No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[46]

From the records, it is clear that only Ramirez was present to witness the conduct of the inventory. There were no representatives from the DOJ and the media. The photographs of the seized item allegedly taken during the inventory were likewise not presented in evidence. In addition, the prosecution did not offer any justifiable ground to explain its noncompliance with the requirements set forth in Section 21. These glaring procedural lapses militate against its claim that the integrity and evidentiary value of the seized item had been preserved.

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[45] 736 Phil. 749 (2014).

[46] *Id.* at 764.

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody may be condoned provided that the arresting or apprehending officers are able to justify their failure to comply with the same. It must be **alleged** that they put in their best effort to ensure compliance but were prevented from doing so by circumstances beyond their control. The justifiable ground for noncompliance **must be proven as a fact**. The prosecution cannot simply invoke the saving clause found in Section 21 — that the integrity and evidentiary value of the seized items have been preserved — without justifying its failure to comply with the requirements stated therein. Even the presumption as to regularity in the performance by police officers of their official duties cannot prevail when there has been a clear and deliberate disregard of procedural safeguards by the police officers themselves.

The Court's ruling in *People v. Umipang*[47] is instructive on the matter:

> Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were "recognized and explained in terms of x x x justifiable grounds." There must also be a showing "that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason." However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. **This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.**

For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses

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[47] 686 Phil. 1024 (2012).

committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, "as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt."

As a final note, we reiterate our past rulings calling upon the authorities "to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society." The need to employ a more stringent approach to scrutinizing the evidence of the prosecution — especially when the pieces of evidence were derived from a buy-bust operation – "redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors."[48] (Citations omitted and emphasis supplied)

The prosecution's failure to justify the arresting officers' noncompliance with the requirements found in Section 21, specifically, the presence of the three required witnesses during the actual inventory of the seized items, is fatal to its case. The unjustified absence of these witnesses during the inventory constitutes a substantial gap in the chain of custody. Such absence cannot be cured by the simple expedient of invoking the saving clause.

The Court, on various occasions, has reversed judgments rendered by lower courts and set an accused free on the basis of unexplained gaps and lapses in the chain of custody, primarily those pertaining or related to the handling of the seized drugs. Any indicium of doubt in the evidence of the prosecution that outs into question the fundamental principle of credibility and integrity of the *corpus delicti* makes an acquittal a matter of course.

Finally, it cannot be gainsaid that it is mandated by no less than the Constitution[49] that an accused in a criminal case shall

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[48] *Id*. at 1053-1054.

[49] Article III, Section 14(2) of the Constitution mandates:

Sec. 14. x x x

be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Lalaine Guadayo y Royo*,[50] the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated May 18, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07385, which affirmed the judgment of the Regional Trial Court of Tanauan City, Batangas, Branch 83, in Criminal Case No. CR-11-08-5719, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Romel Martin *y* Peña is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has undertaken.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Hernando*, and *Inting, JJ.*, concur.

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(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[50] G.R. No. 210610, January 11, 2018.

SECOND DIVISION

[G.R. No. 234207. June 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARLON CRISTOBAL *y* AMBROSIO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURES; WARRANTLESS SEARCH OF THE ACCUSED DECLARED ILLEGAL AS THE SAME WAS CONDUCTED AFTER THE ACCUSED WAS STOPPED FOR TRAFFIC VIOLATIONS PENALIZED BY A FINE ONLY.— The CA manifestly overlooked the undisputed fact that the seized items were confiscated from Cristobal as he was being issued a traffic violation ticket. His violations consisted of (1) not wearing a helmet while driving a motorcycle, and (2) being unable to show the original receipt (OR) and certificate of registration (CR) of the motorcycle he was riding. Cristobal's first violation – failure to wear a helmet while riding a motorcycle – is punishable by RA 10054, or the Motorcycle Helmet Act of 2009. x x x. It is clear from x x x provision that a violation of the law requiring the use of helmets while driving a motorcycle is only punishable by **fine**. Meanwhile, Cristobal's second violation – failure to furnish the OR and CR of the motorcycle – is likewise punishable only by fine. Land Transportation Office (LTO) Department Order (DO) No. 2008-39, or the "Revised Schedule of LTO Fines and Penalties for Traffic and Administrative Violations," provides that the offense of "failure to carry certificate of registration or official receipt of registration" is punishable only with a fine of One Hundred Fifty Pesos (₱150.00). Stated simply, the police officers involved in this case conducted an illegal search when they frisked Cristobal on the basis of the foregoing violations. It was not, as it could not have been, even believing the story of the police officers, a search incidental to a lawful arrest as there was no, as there could not have been any, lawful arrest to speak of.

2. ID.; ID.; ID.; "STOP AND FRISK" SEARCHES WHEN ALLOWED; INTENSIVE SEARCH OF THE ACCUSED ON

THE BASIS OF THE POLICE OFFICERS' SUSPICION OVER THE ACCUSED AS THE LATTER TRIED TO FLEE WHILE HE WAS BEING ISSUED A TICKET FOR HIS TRAFFIC VIOLATION NOT A VALID "STOP AND FRISK" SEARCH.— Neither could the search on Cristobal be justified as a valid "stop and frisk" search. The RTC, in its Decision, ruled that the search was valid because it was a "stop and frisk" situation, justified by the police officers' suspicion over Cristobal as the latter supposedly tried to flee as he was being issued a traffic violation ticket. Even if this version of events were true, *i.e.*, that Cristobal tried to run away while he was being issued a ticket for his traffic violation, the same did not justify the ***intensive*** search conducted on him. x x x. Even if the Court accepts wholesale the police officers' version of the facts, the search that led to the supposed discovery of the seized items had nevertheless become unlawful the moment they continued with the search despite finding no weapon on Cristobal's body. It must be pointed out that "stop and frisk" searches developed in jurisprudence to serve a certain purpose. x x x. Verily, the "stop and frisk" doctrine was developed in jurisprudence, and searches of such nature were allowed despite the Constitutionally-enshrined right against unreasonable searches and seizures, because of the recognition that law enforcers should be given the legal arsenal to prevent the commission of offenses. It must be emphasized, however, that these "stop and frisk" searches are **exceptions** to the general rule that warrants are necessary for the State to conduct a search and, consequently, intrude on a person's privacy. In the words of the Court in *People vs. Cogaed*, this doctrine of "stop and frisk" "should be balanced with the need to protect the privacy of citizens in accordance with Article III, Section 2 of the Constitution." "Stop and frisk" searches should thus be allowed only in the specific and limited instances contemplated in *Terry*: (1) it should be allowed only on the basis of the police officer's reasonable suspicion, in light of his or her experience, that criminal activity may be afoot and that the persons with whom he/she is dealing may be armed and presently dangerous; (2) the search must only be a *carefully limited search of the outer clothing*; and (3) conducted for the purpose of discovering weapons which might be used to assault him/her or other persons in the area.

3. ID.; ID.; ID.; SEARCH INCIDENTAL TO A LAWFUL ARREST; THERE MUST FIRST BE A LAWFUL ARREST BEFORE A SEARCH CAN BE MADE, AND THE PROCESS CANNOT BE REVERSED; THE POLICE OFFICERS' ACT OF PROCEEDING TO SEARCH ACCUSED'S BODY, DESPITE THEIR OWN ADMISSION THAT THEY WERE UNABLE TO FIND ANY WEAPON ON HIM, CONSTITUTES AN INVALID AND UNCONSTITUTIONAL SEARCH; CONSEQUENTLY, EVIDENCE OBTAINED AND CONFISCATED ON THE OCCASION OF SUCH UNREASONABLE SEARCHES AND SEIZURES ARE DEEMED TAINTED AND SHOULD BE EXCLUDED FOR BEING THE PROVERBIAL FRUIT OF A POISONOUS TREE.— [I]n the present case, the police officers' act of proceeding to search Cristobal's body, **despite their own admission that they were unable to find any weapon on him**, constitutes an invalid and unconstitutional search. In this connection, the Court, in *Sindac vs. People*, reminds: Section 2, Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision.** To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding.** In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree. One of the recognized exceptions to the need for a warrant before a search may be affected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made — the process cannot be reversed**. Thus, any item seized through an illegal search, as in this case, cannot be used in **any** prosecution against the person as mandated by Section 3(2), Article III of the 1987 Constitution. As there is no longer any evidence against Cristobal in this case, he must perforce be acquitted.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by the accused-appellant Marlon Cristobal *y* Ambrosio (Cristobal) assailing the Decision[2] dated June 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08134, which affirmed the Decision[3] dated December 14, 2015 of the Regional Trial Court of Pasig City, Branch 154 (RTC) in Criminal Case No. 18885-D-PSG, finding Cristobal guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts

An Information was filed against Cristobal for violating Section 11 of RA 9165, the accusatory portion of which reads:

On or about November 21, 2013, in Pasig City, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession

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[1] See Notice of Appeal dated July 17, 2017, *rollo*, pp. 12-14.

[2] *Rollo*, pp. 2-11. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Ricardo R. Rosario and Maria Filomena D. Singh, concurring.

[3] CA *rollo*, pp. 11-23. Penned by Presiding Judge Achilles A.A.C. Bulauitan.

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

and under his custody and control seven (7) heat-sealed transparent plastic sachet[s] each containing the following, to wit:

a. 0.83 gram	*e. 0.97 gram*
b. 0.70 gram	*f. 0.84 gram*
c. 1.05 gram[s]	*g. 0.75 gram*
d. 0.82 gram	

having a total weights (sic) of 5.96 grams, of white crystalline substance, which after qualitative examination, was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drug, in violation of the said law.

Contrary to law[.][5]

When arraigned, Cristobal pleaded not guilty to the charge. Thereafter, pre-trial and trial on the merits ensued.

The prosecution's version, as summarized by the CA, is as follows:

On November 21, 2013, PO2 Rexy Ramos (PO2 Ramos) of the *PS2, Pulis sa Barangay 28*, *Brgy*. Rosario, Pasig City, together with other police officers were conducting "*Oplan Sita*" in a checkpoint along Ortigas Extension corner GSIS Road.

At around 6 o'clock in the evening, PO2 Ramos flagged down accused-appellant who was driving a motorcycle without a helmet. He ordered accused-appellant to alight from his motorcycle then asked for the original receipt (OR) and certificate of registration (CR) of the said motorcycle. Since accused-appellant failed to show either of the said documents, PO2 Ramos asked for his driver's license. While PO2 Ramos was preparing the traffic citation ticket for traffic violation of accused-appellant, the latter ran away but the other police officers in the vicinity were quick to apprehend him. He was brought back to the checkpoint where he was searched by PO2 Ramos for deadly weapon but the latter found nothing. However, PO2 Ramos noticed that accused-appellant's pocket was bulging. PO2 Ramos ordered him to remove that object from his pocket which accused-appellant obliged by pulling-out a small plastic bag therefrom. When PO2 Ramos opened the same, he found seven (7) plastic sachets containing white crystalline substance which he suspected as *shabu*.

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[5] *Rollo*, p. 3.

PO2 Ramos immediately arrested accused-appellant and informed him of his constitutional rights. In the presence of accused-appellant, PO2 Ramos signed and marked the seven (7) plastic sachets as: 1RDR/Marlon 11/21/13, 2RDR/Marlon 11/21/13, 3RDR/Marlon 11/21/13, 4RDR/Marlon 11/21/13, 5RDR/Marlon 11/21/13, 6RDR/Marlon 11/21/13, and 7RDR/Marlon 11/21/13.

Still in possession of the seized items, PO2 Ramos and his companions brought accused-appellant to their office. Thereat, PO2 Ramos summoned a *barangay kagawad* to witness the inventory. *Kagawad* Noel Bernabe (*Kagawad* Bernabe) arrived and an inventory of the seized items was done in his presence and in the presence of accused-appellant. Then, PO2 Dennis N. Singuillo (PO2 Singuillo) prepared the indorsement for the transfer of accused-appellant to their headquarters at *Brgy*. Caniogan. Thereat, PO2 Ramos prepared the *Chain of Custody Form*. At around 8:40 o'clock in the evening, he turned over the seized items to PO3 Miguel Torallo (PO3 Torallo), Investigator of the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) of the Pasig Police Station.

At around past 12:00 o'clock in the morning of November 22, 2013, PO3 Torallo brought the confiscated items as well as the *Request for Laboratory Examination* to the Crime Laboratory Office in Mandaluyong for qualitative examination where [they were] received by PSI Anghelisa Santiago (PSI Santiago), a forensic chemist. The items tested positive for *Methamphetamine Hydrochloride*, a dangerous drug. After conducting the laboratory examination, PSI Santiago turned over the contraband to SPO3 Ramon Rabino, Jr. (SPO3 Rabino, Jr.), the evidence custodian at the Eastern Police District (EPD). SPO3 Rabino, Jr. released the seized items on April 10, 2014 for [their] presentation in Court.[6]

On the other hand, the evidence of the defense is based on the lone testimony of Cristobal, who testified as follows:

At around 6:00 o'clock in the evening of November 21, 2013, accused-appellant was riding his wife's motorcycle on his way to SM Hypermart in *Brgy*. Ugong, Pasig City. But before reaching his destination, he was flagged down by PO2 Ramos at a police checkpoint. After giving his driver's license, he was asked to produce the OR/CR of the motorcycle. When he was not able to produce the same,

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

PO2 Ramos ordered him to empty his pockets which he did. He brought out the contents of his pockets consisting of Eighteen Thousand Pesos (₱18,000.00) which was sent to him by his mother for his wedding. PO2 Ramos left him momentarily and went to the police mobile car and then returned to him and said "positive". PO2 Ramos frisked him on his waist but found nothing else in his body. Accused-appellant told PO2 Ramos that he can prove that he is the owner of the motorcycle if he will come with him to his house but PO2 Ramos only ignored him and ordered him to board the mobile car.

Accused-appellant was brought to the police precin[c]t at C. Raymundo St., corner Dr. Sixto Ave., Pasig City, where he was shown the *shabu* which according to the police thereat belong[ed] to him. He was nonetheless charged with Violation of Section 11 R.A. 9165 despite his denial thereof.[7]

Ruling of the RTC

After trial on the merits, in its Decision dated December 14, 2015, the RTC convicted Cristobal of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, in accordance with the foregoing, the Court finds the accused Marlon Cristobal *y* Ambrosio **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA No. 9165 for illegal possession of seven (7) plastic sachets of methamphetamine hydrochloride or *shabu* with a total weight of *5.96 grams* and he is hereby sentenced to imprisonment of twenty (20) years and one (1) day to life imprisonment and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00).

x x x x x x x x x

SO ORDERED.[8]

In finding Cristobal guilty, the RTC held that the search conducted against Cristobal may be justified under the "stop and frisk" doctrine, or otherwise called the *Terry search*. It held:

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[7] *Id*. at 5.

[8] CA *rollo*, p. 23.

The totality of the circumstances justified a stop and frisk search on the accused. The accused was stopped during a routine checkpoint for not wearing a helmet while riding a motorcycle. When required, he could not also produce the OR/CR of the motorcycle that he was using. While PO2 Ramos was writing on the OVR the violations committed by the accused the latter ran away but he was eventually apprehended by the police officers. Why the accused ran away while he was merely being issued a ticket for his violations naturally raised a reasonable suspicion to a police officer like PO2 Ramos. This behavior or conduct elicited suspicion that the accused was hiding something illegal. Thus, there was genuine reason for PO2 Ramos to search the accused for any weapon that might be used against him. As he searched the accused, PO2 Ramos noticed a bulge in the pocket of the accused. When PO2 Ramos ordered the accused to bring out the contents of his pockets the latter appeared hesitant (*atubili*). Thus, PO2 Ramos repeated the order and when the accused complied the plastic sachets of *shabu* were recovered from his possession. Given these circumstances, the Court holds that the warrantless search on the person of the accused was justified as a stop and frisk and the drugs recovered from his possession are admissible in evidence against him.[9]

The RTC also ruled that while the police officers were unable to strictly comply with the procedure outlined in Section 21, RA 9165, the evidentiary value of the seized items were nevertheless preserved.[10] Thus, it held Cristobal guilty of the crime charged.

Aggrieved, Cristobal appealed to the CA.

Ruling of the CA

In the questioned Decision dated June 29, 2017, the CA affirmed the RTC's conviction of Cristobal. It held that Cristobal's defense of denial and frame-up could not be given more credence over the positive testimonies of the police officers. It likewise held that non-compliance with the procedural requirements under Section 21, RA 9165 was not fatal to the

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[9] *Id.* at 18.

[10] *Id*. at 21.

prosecution of violation of Section 11, RA 9165, or Illegal Possession of Dangerous Drugs.

Hence, the instant appeal.

Issue

Proceeding from the foregoing, for resolution of the Court is the issue of whether the RTC and the CA erred in convicting Cristobal.

The Court's Ruling

The petition is meritorious.

The CA manifestly overlooked the undisputed fact that the seized items were confiscated from Cristobal as he was being issued a traffic violation ticket. His violations consisted of (1) not wearing a helmet while driving a motorcycle, and (2) being unable to show the original receipt (OR) and certificate of registration (CR) of the motorcycle he was riding. Cristobal's first violation – failure to wear a helmet while riding a motorcycle – is punishable by RA 10054, or the Motorcycle Helmet Act of 2009. Under the said law, any person who violates the said law should be punished as follows:

> SEC. 7. *Penalties.* — (a) Any person caught not wearing the standard protective motorcycle helmet in violation of this Act shall be punished with a fine of One thousand five hundred pesos (Php1,500.00) for the first offense; Three thousand pesos (Php3,000.00) for the second offense; Five thousand pesos (Php5,000.00) for the third offense; and Ten thousand pesos (Php10,000.00) plus confiscation of the driver's license for the fourth and succeeding offenses.

It is clear from the above provision that a violation of the law requiring the use of helmets while driving a motorcycle is only punishable by **fine**.

Meanwhile, Cristobal's second violation – failure to furnish the OR and CR of the motorcycle – is likewise punishable only by fine. Land Transportation Office (LTO) Department Order (DO) No. 2008-39, or the "Revised Schedule of LTO Fines and Penalties for Traffic and Administrative Violations," provides

that the offense of "failure to carry certificate of registration or official receipt of registration" is punishable only with a fine of One Hundred Fifty Pesos (₱150.00).

Stated simply, the police officers involved in this case conducted an illegal search when they frisked Cristobal on the basis of the foregoing violations. It was not, as it could not have been, even believing the story of the police officers, a search incidental to a lawful arrest as there was no, as there could not have been any, lawful arrest to speak of.

In the case of *Luz vs. People*,[11] a case strikingly similar to the present case, a man who was driving a motorcycle was flagged down for violating a municipal ordinance requiring drivers of motorcycles to wear a helmet. While the police officer was issuing him a ticket, the officer noticed that the man was uneasy and kept touching something in his jacket. When the officer ordered the man to take the thing out of his jacket, it was discovered that it was a small tin can which contained sachets of *shabu*. When the man was prosecuted for illegal possession of dangerous drugs, the Court acquitted the accused as the confiscated drugs were discovered through an unlawful search. Hence:

> We find the Petition to be impressed with merit, but not for the particular reasons alleged. In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors.
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> ***First*, there was no valid arrest of petitioner. When he was flagged down for committing a traffic violation, he was not, *ipso facto* and solely for this reason, arrested.**
>
> Arrest is the taking of a person into custody in order that he or she may be bound to answer for the commission of an offense. It is effected by an actual restraint of the person to be arrested or by that person's voluntary submission to the custody of the one making the arrest. Neither the application of actual force, manual touching of

[11] 683 Phil. 399 (2012).

the body, or physical restraint, nor a formal declaration of arrest, is required. It is enough that there be an intention on the part of one of the parties to arrest the other, and that there be an intent on the part of the other to submit, under the belief and impression that submission is necessary.

Under R.A. 4136, or the Land Transportation and Traffic Code, the general procedure for dealing with a traffic violation is not the arrest of the offender, but the confiscation of the driver's license of the latter[.]

x x x x x x x x x

It also appears that, according to City Ordinance No. 98-012, which was violated by petitioner, the failure to wear a crash helmet while riding a motorcycle is penalized by a fine only. Under the Rules of Court, a warrant of arrest need not be issued if the information or charge was filed for an offense penalized by a fine only. It may be stated as a corollary that neither can a warrantless arrest be made for such an offense.[12] (Emphasis and underscoring supplied; italics in the original)

The case of *Luz* **squarely applies** in the present case. There was similarly no lawful arrest in this case as Cristobal's violations were only punishable by fine. There was thus no valid search incidental to a lawful arrest.

Neither could the search on Cristobal be justified as a valid "stop and frisk" search.

The RTC, in its Decision, ruled that the search was valid because it was a "stop and frisk" situation, justified by the police officers' suspicion over Cristobal as the latter supposedly tried to flee as he was being issued a traffic violation ticket.[13] Even if this version of events were true, *i.e.*, that Cristobal tried to run away while he was being issued a ticket for his traffic violation, the same did not justify the ***intensive*** search conducted on him. By the prosecution's own narration of the facts – in other words, by their own admission – after Cristobal was successfully apprehended after he ran away, "PO2 Ramos

[12] *Id.* at 406-409.

[13] CA *rollo*, p. 18.

searched the accused for any deadly weapon but **he found none**."[14] This is corroborated by Cristobal's narration in which he said that: "he was unable to produce the OR/CR as the key to open the motorcycle compartment was lost. PO2 Ramos suddenly told him to stand up and empty his pockets. He brought out the contents of his pockets, Eighteen Thousand Pesos (₱18,000.00), which was sent by his mother and was intended for his wedding. **PO2 Ramos then went to his police mobile, returned, said "positive", and frisked him on his waist. Nothing else was found in his possession.**"[15]

Even if the Court accepts wholesale the police officers' version of the facts, the search that led to the supposed discovery of the seized items had nevertheless become unlawful the moment they continued with the search despite finding no weapon on Cristobal's body. It must be pointed out that "stop and frisk" searches developed in jurisprudence to serve a certain purpose. In *Terry vs. Ohio*,[16] the Decision of the United States Supreme Court from which our local "stop and frisk" doctrine was based, it was clearly stated:

> x x x At the time he seized petitioner and searched him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized. The policeman carefully restricted his search to what was appropriate to the discovery of the particular items which he sought. Each case of this sort will, of course, have to be decided on its own facts. We merely hold today that[,] **where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where[,] in the course of investigating this behavior[,] he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial**

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[14] Brief for the Appellee, *id*. at 80; emphasis and underscoring supplied.

[15] Brief for the Accused-Appellant, *id*. at 45; emphasis and underscoring supplied.

[16] 392 U.S. 1 (1968).

stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a *carefully limited search of the outer clothing* of such persons in an attempt to discover weapons which might be used to assault him. x x x[17] (Emphasis, underscoring, and italics supplied)

In *Manalili vs. Court of Appeals*,[18] the Court explained that in *Terry*,

x x x what justified the **limited search** was the more immediate interest of the police officer in taking steps to assure himself that the person with whom he was dealing was not armed with a weapon that could unexpectedly and fatally be used against him.

It did not, however, abandon the rule that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, excused only by *exigent* circumstances.[19] (Emphasis, underscoring and italics supplied)

Verily, the "stop and frisk" doctrine was developed in jurisprudence, and searches of such nature were allowed despite the Constitutionally-enshrined right against unreasonable searches and seizures, because of the recognition that law enforcers should be given the legal arsenal to prevent the commission of offenses.[20] It must be emphasized, however, that these "stop and frisk" searches are **exceptions** to the general rule that warrants are necessary for the State to conduct a search and, consequently, intrude on a person's privacy. In the words of the Court in *People vs. Cogaed*,[21] this doctrine of "stop and frisk" "should be balanced with the need to protect the privacy of citizens in accordance with Article III, Section 2 of the Constitution."[22]

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[17] *Id.* at 30-31.

[18] 345 Phil. 632 (1997).

[19] *Id.* at 644-645.

[20] *People vs. Cogaed*, 740 Phil. 212, 229 (2014).

[21] *Id.*

[22] *Id.* at 229-230.

"Stop and frisk" searches should thus be allowed only in the specific and limited instances contemplated in *Terry*: (1) it should be allowed only on the basis of the police officer's reasonable suspicion, in light of his or her experience, that criminal activity may be afoot and that the persons with whom he/she is dealing may be armed and presently dangerous; (2) the search must only be a *carefully limited search of the outer clothing*; and (3) conducted for the purpose of discovering weapons which might be used to assault him/her or other persons in the area.

Applying the foregoing in the present case, the police officers' act of proceeding to search Cristobal's body, **despite their own admission that they were unable to find any weapon on him**, constitutes an invalid and unconstitutional search.

In this connection, the Court, in *Sindac vs. People*,[23] reminds:

> Section 2, Article III of the 1987 Constitution mandates that **a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision**. To protect the people from unreasonable searches and seizures, Section 3 (2), Article III of the 1987 Constitution provides that **evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding**. In other words, evidence obtained and confiscated on the occasion of such unreasonable searches and seizures are deemed tainted and should be excluded for being the proverbial fruit of a poisonous tree.
>
> One of the recognized exceptions to the need for a warrant before a search may be affected is a search incidental to a lawful arrest. **In this instance, the law requires that there first be a lawful arrest before a search can be made — the process cannot be reversed**.[24]

Thus, any item seized through an illegal search, as in this case, cannot be used in **any** prosecution against the person as mandated by Section 3(2), Article III of the 1987 Constitution.

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[23] 794 Phil. 421 (2016).

[24] *Id.* at 428.

As there is no longer any evidence against Cristobal in this case, he must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated June 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08134 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Marlon Cristobal *y* Ambrosio is **ACQUITTED** of the crime charged, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

SECOND DIVISION

[G.R. No. 234630. June 10, 2019]

OFFICE OF THE CITY MAYOR OF ANGELES CITY, PAMPANGA, MAYOR EDGARDO D. PAMINTUAN, *petitioner, vs.* **DR. JOSEFINO E. VILLAROMAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REVISED RULES ON THE ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS), SECTION 93 (A) (1), RULE 19 THEREOF; AN EMPLOYEE CANNOT BE VALIDLY DROPPED FROM THE ROLLS FOR FAILING TO REPORT FOR WORK AT HIS/HER REASSIGNED STATION IF HIS/HER REASSIGNMENT THEREAT IS VOID, EXCEPT WHEN HE/SHE NEITHER REPORTED FOR WORK AT HIS/HER ORIGINAL WORKSTATION, NOR FILED LEAVE APPLICATIONS DURING THE PERIOD HE/SHE WAS CONTESTING HIS/HER REASSIGNMENT ORDER.— Section 93 (a) (1), Rule 19 of the Revised Rules on the Administrative Cases in the Civil Service (RRACCS) provides that a public officer or employee shall be dropped from the rolls if he was on AWOL for at least thirty (30) days. AWOL means that the employee is leaving or abandoning his post without justifiable reason and without notifying his employer. In the present case, a perusal of Memorandum 17/03 shows that respondent's dropping from the rolls was premised on his failure to report for duty at the Mayor's office pursuant to a reassignment order, which was subsequently declared void for amounting to constructive dismissal based on the CSC Rules on Reassignment. Jurisprudence is clear that a government employee could not have incurred absences in his reassigned station if his reassignment thereat was void, as in this case. Thus, the Court finds that respondent could not be validly dropped from the rolls merely for failing to report for work at the Mayor's office. This notwithstanding, respondent should still be considered on AWOL, and therefore validly dropped from the rolls because he neither: (*a*) reported for work at his original post at the OCV; nor (*b*) filed leave applications during the period he was contesting his reassignment to the Office of the Mayor.

2. ID.; ID.; ID.; ID.; AN EMPLOYEE CANNOT JUST DECIDE IN WHAT OFFICE HE/SHE WILL WORK, AND HIS/HER PERFORMANCE OF WORK IN THE STATION WITHOUT AUTHORITY OR JUSTIFIABLE REASON

CANNOT BE COUNTED AS ATTENDANCE AT WORK; THUS, HE/SHE COULD BE CONSIDERED ON AWOL FOR LEAVING OR ABANDONING HIS/HER ASSIGNED POST FOR MORE THAN THIRTY (30) DAYS, AND THEREFORE BE VALIDLY DROPPED FROM THE ROLLS.— In several cases wherein government employees were given void reassignments to different workstations and thereafter dropped from the rolls for failing to report thereat, the Court did not consider those employees on AWOL because they either *(a)* reported to their original workstations while contesting their reassignment orders or (*b)* filed leave applications for the period that they failed to report for work at the reassigned station, even though those applications were later denied or no leave applications were filed for subsequent periods. None of these circumstances were extant in this case. Instead, in this case, respondent, without any proper authority or justifiable reason therefor, chose to report for work at the ICTD, which, contrary to the CA' s ruling, is an office separate from the OCV and discharges functions different from the latter. While the ICTD is concerned with information and communications technology, the OCV deals with animal-related activities and policies. To work for a specific public office, it is necessary that the same be by virtue of a valid personnel action made according to the proper procedure. Surely, an employee cannot just decide in what office or department he or she will work. Hence, given the lack of authority or justifiable reason, respondent's performance of work in the ICTD cannot be counted as attendance at work. Consequently, he is considered on AWOL for his failure to report for work for more than thirty (30) days, and therefore, correctly dropped from the rolls under Memorandum No. 33/12.

APPEARANCES OF COUNSEL

Andres Padernal & Paras Law Offices for respondent.
City Legal Office, Angeles City, Pampanga for petitioner.

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 February 27, 2017 and the Resolution[3] dated September 18, 2017 of the Court of Appeals (CA) in CA-GR. SP No. 142879, which affirmed with modifications the Decision[4] dated July 30, 2015 of the Civil Service Commission (CSC).

The Facts

Respondent Dr. Josefino E. Villaroman (repondent) held a permanent position as head of the Office of the City Veterinarian (OCV) of Angeles City, Pampanga.[5] On December 2, 2014, petitioner Office of the City Mayor of Angeles City, headed by then Mayor Edgardo Pamintuan (petitioner), issued Memorandum No. 33/12,[6] which reassigned respondent to his office and directed respondent to report to the Mayor's secretary for specific assignments.[7] In a Letter[8] dated December 15, 2014,[9] respondent requested that he be restored to his original post but to no avail.[10] Claiming that his reassignment amounted to

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[1] *Rollo*, pp. 3-12.

[2] *Id*. at 15-20. Penned by Associate Justice Mario V. Lopez with Associate Justices Rosmari D. Carandang (now a member of the Court) and Myra V. Garcia-Fernandez, concurring.

[3] *Id.* at 21.

[4] *Id*. at 25-34. Signed by Commissioners Robert S. Martinez and Nieves L. Osorio. Attested by Director IV Dolores B. Bonifacio.

[5] Respondent was appointed as the City Veterinarian, which is considered to be a Department Head position. See *id*. at 4.

[6] Dated December 2, 2014. CA *rollo*, p. 52.

[7] See *rollo*, pp. 15 and 25.

[8] CA *rollo*, pp. 53-54.

[9] "December 13, 2014" in the CSC Decision.

[10] See *rollo*, pp. 15 and 28.

constructive dismissal, respondent filed a petition[11] to annul Memorandum No. 33/12 before the Civil Service Commission (CSC).[12]

On March 9, 2015, petitioner issued Memorandum Order No. 17/03[13] dropping respondent's name from the roll of employees on two grounds: (*a*) his absence without official leave (AWOL) at the Mayor's office for more than 30 days, specifically from December 4, 2014 to March 9, 2015; and (*b*) his failure to submit his performance evaluation reports.[14] Moreover, respondent was not given productivity incentive benefits and his name was deleted from the March 1-15, 2015 payroll.[15]

Aggrieved, respondent amended his appeal memorandum[16] to include issues regarding the validity of the dropping of his name from the rolls, the non-payment of productivity bonus, and the deletion of his name from the payroll.[17] He argued that the dropping from the rolls was unwarranted because he did not abandon his work, but was given an invalid reassignment. This notwithstanding, he still reported for work not, however at his original post at the OCV but at the Information and Communication Technology Department (ICTD),[18] which he claimed was directly connected to the OCV.[19]

For its part, petitioner contended that instead of complying with Memorandum No. 33112, respondent refused to report to

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[11] Dated January 20, 2015. CA *rollo*, pp. 61-69.

[12] See *rollo*, pp. 15-16 and 27-28.

[13] CA *rollo*, p. 76.

[14] See *id*. See also *rollo*, pp. 15-16, 25, and 31.

[15] See *id*. at 16 and 28.

[16] Dated March 17, 2015. CA *rollo*, pp. 77-88.

[17] See *rollo*, p. 28. See also Manifestation dated March 26, 2015; CA *rollo*, pp. 90-91.

[18] See CA *rollo*, p. 99.

[19] See *id*. at 18.

the Mayor's office and opted to log in and out of the ICTD,[20] which was definitely not connected to the OCV.[21] Petitioner further insisted that respondent was validly dropped from the rolls on the two grounds above-mentioned. Petitioner added that respondent is not entitled to productivity bonus because the latter failed to submit the requisite evaluation reports.[22]

The CSC's Ruling

In a Decision[23] dated July 30, 2015, the CSC ruled that respondent's **reassignment was void** for two reasons: (*i*) it amounted to **constructive dismissal** because he was not given any definite duties and responsibilities; and (*ii*) the order failed to limit the period of reassignment to one (1) year as required under the CSC Revised Rules on Reassignment.[24] Nevertheless, the CSC found that respondent was **validly dropped from the rolls** due to AWOL for more than thirty (30) working days

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[20] See petitioner's Comment dated May 15, 2015; CSC Folder, unnumbered pages.

[21] Petitioner alleged that ICTD is another department of the City Government located at the 2nd floor of the City Hall just beside the Mayor's office and a floor below the City Veterinary Office. See *rollo*, p. 4.

[22] See petitioner's Comment; CSC Folder, unnumbered pages.

[23] *Rollo*, pp. 25-34.

[24] See *id*. at 29-31 and 34. The relevant portions of Section 6 of the CSC Revised Rules on Reassignment (CSC Memorandum Circular No.2, series of 2005 [January 4, 2005]) are as follows:

Section 6. **Other Personnel Movements.** x x x

x x x x x x x x x

Reassignment shall be governed by the following rules:

x x x x x x x x x

3. Reassignment of employees with **station-specific** place of work indicated in their respective appointments shall be allowed only for a maximum period of one (1) year. x x x.

x x x x x x x x x

7. x x x x x x x x x

Reassignment that constitutes constructive dismissal may be any of the following:

and his name was validly deleted from the payroll for March 1-15, 2015, because he failed to present any evidence to prove that he rendered any service for the period from December 4, 2014 to March 9, 2015.[25] Finally, the CSC found no basis for the payment of the 2014 productivity incentive benefits to respondent due to his failure to submit any performance evaluation report from July 2010 to December 2014.[26]

Respondent moved for partial reconsideration,[27] which was, however, denied in a Resolution[28] dated October 9, 2015. Dissatisfied, he filed a petition for review[29] with the Court of Appeals (CA).

The CA's Ruling

In a Decision[30] dated February 27, 2017, the CA affirmed the CSC's decision with substantial modifications. It held that: (*a*) respondent's **reassignment was void**, and as a consequence thereof, he must be **reinstated**, without qualification, to his former position without loss of seniority rights and must be **paid back salaries** from the date he was dropped from the rolls on March 9, 2015 until his reinstatement; and (*b*) his claim for productivity incentive benefit shall be contingent upon the submission of his performance evaluation report and the ratings required under the civil service laws, rules, and regulations.[31]

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x x x x x x x x x

(c) reassignment to an existing office but the employee is not given any definite duties and responsibilities;

x x x x (Underscoring supplied)

[25] See *id*. at 31-32 and 34.

[26] See *id*. at 32-34.

[27] See Motion for Partial Reconsideration (Re: Decision dated 30 July 2015) dated September 4, 2015; CA *rollo*, pp. 102-107.

[28] *Id*. at 37-40.

[29] Dated November 16, 2015. *Id*. at 7-24.

[30] *Rollo*, pp. 15-20.

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

First, the CA ruled that respondent's reassignment amounted to constructive dismissal because he was not given any specific duties and responsibilities, which was proscribed under the CSC Revised Rules on Reassignment.[32] *Second*, it held that respondent was invalidly dropped from the rolls because, citing *Yenko v. Gungon* (*Yenko*),[33] an employee could not have incurred absences in the office where he was assigned since the reassignment thereat was void.[34] Besides, respondent's acts (*i.e.*, reporting for duty at the ICTD, which it found to be connected to the OCV, as well as repeatedly protesting his reassignment and seeking reinstatement to his former workstation) were inconsistent with any intention to go on AWOL or abandon his post.[35] *Lastly*, the CA held that since respondent continued reporting for work in the ICTD, there was no reason for him not to submit any performance evaluation form. Hence, he was allowed to submit the required form to avail of the productivity incentive benefit.[36]

Petitioner moved for reconsideration[37] but was denied in a Resolution[38] dated September 18, 2017; hence, this petition.

The Issue Before the Court

The core issue before the Court is whether or not respondent was validly dropped from the rolls.

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[32] See *id.* at 17.

[33] 612 Phil. 881 (2009).

[34] In *Yenko*, the Court held that an employee could not have incurred absences in the office where he was re-assigned since his reassignment was void, and as such, his eventual dismissal for non-attendance thereat was declared as invalid. See *id.* at 897-901. See also *rollo*, pp. 17-18.

[35] See *rollo*, p. 18.

[36] See *id.* at 18-19.

[37] See motion for reconsideration dated March 24, 2017; CA *rollo*, pp. 157-161.

[38] *Rollo*, p. 21.

The Court's Ruling

At the outset, it bears noting that since petitioner no longer questioned the rulings of the CSC and the CA as regards the invalidity of respondent's reassignment to the Mayor's office pursuant to Memorandum No. 33/12 and the CA's ruling on respondent's entitlement to productivity incentive benefits, the Court will no longer pass upon such issues. What remains to be resolved is **whether or not respondent could properly be considered on AWOL** as to warrant the dropping of his name from the rolls.

The petition is granted.

Section 93 (a) (1),[39] Rule 19 of the Revised Rules on the Administrative Cases in the Civil Service[40] (RRACCS) provides that a public officer or employee shall be dropped from the rolls if he was on AWOL for at least thirty (30) days. AWOL means that the employee is leaving or abandoning his post without justifiable reason and without notifying his employer.[41]

In the present case, a perusal of Memorandum 17/03 shows that respondent's dropping from the rolls was premised on his failure to report for duty at the Mayor's office pursuant to a reassignment order, which was subsequently declared void for amounting to constructive dismissal based on the CSC Rules on Reassignment. Jurisprudence is clear that a government

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[39] Section 93. Grounds and Procedure for Dropping from the Rolls. – x x x

a. Absence Without Approved Leave

1. An officer or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days shall be separated from the service or dropped from the rolls without prior notice. He/ She shall, however, be informed of his/her separation not later than five (5) days from its effectivity which shall be sent to the address appearing on his/her 201 files or to his/her last known address;

x x x x x x x x x

[40] CSC Resolution No. 1101502, promulgated on November 8, 2011.

[41] *Pablo Borbon Memorial Institute of Technology v. Vda. De Bool*, 505 Phil. 240, 246 (2005). See also *Petilla v. CA*, 468 Phil. 395, 408 (2004).

employee could not have incurred absences in his reassigned station if his reassignment thereat was void,[42] as in this case. Thus, the Court finds that respondent could not be validly dropped from the rolls merely for failing to report for work at the Mayor's office.

This notwithstanding, respondent should still be considered on AWOL, and therefore validly dropped from the rolls because he neither: (*a*) reported for work at his original post at the OCV; nor (*b*) filed leave applications during the period he was contesting his reassignment to the Office of the Mayor.

In several cases wherein government employees were given void reassignments to different workstations and thereafter dropped from the rolls for failing to report thereat, the Court did not consider those employees on AWOL because they either (*a*) reported to their original workstations while contesting their reassignment orders[43] or (*b*) filed leave applications for the period that they failed to report for work at the reassigned station, even though those applications were later denied or no leave applications were filed for subsequent periods.[44] None of these circumstances were extant in this case.

Instead, in this case, respondent, without any proper authority or justifiable reason therefor, chose to report for work at the ICTD, which, contrary to the CA's ruling, is an office separate from the OCV and discharges functions different from the latter. While the ICTD is concerned with information and communications technology, the OCV deals with animal-related activities and policies.[45] To work for a specific public office,

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[42] See *Yenko v. Gungon*, *supra* note 33, at 897-901.

[43] In *Yenko*, it was undisputed that the employee reported at the Municipal Assessor's Office, which was his original workstation, instead of the Public Safety and Order Office, where he was reassigned; see *id*. at 887-888.

[44] In *Petilla v. CA*, the Court held that the employee's "absence was based on his leave applications, albeit denied, and not on his deliberate refusal to heed the assignment orders."; *supra* note 41, at 408.

[45] See Section 489 of the 1991 Local Government Code for the functions of the city veterinarian.

it is necessary that the same be by virtue of a valid personnel action made according to the proper procedure.[46] Surely, an employee cannot just decide in what office or department he or she will work. Hence, given the lack of authority or justifiable reason, respondent's performance of work in the ICTD cannot be counted as attendance at work. Consequently, he is considered on AWOL for his failure to report for work for more than thirty (30) days, and therefore, correctly dropped from the rolls under Memorandum No. 33/12.

WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision dated February 27, 2017 and the Resolution dated September 18, 2017 of the Court of Appeals in CA-G.R. SP No. 142879 are hereby **REVERSED** and **SET ASIDE** for the reasons above-discussed. Respondent Dr. Josefino E. Villaroman was validly dropped from the rolls due to absence without official leave or AWOL.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa,* and *Lazaro-Javier., JJ* concur.

Reyes, J. Jr., on leave.

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[46] See *Bermudez v. Executive Secretary*, 370 Phil. 769, 776 (1999), wherein the Court held that an appointment "to a public office is the unequivocal act of designating or selecting by one having the authority therefor of an individual to discharge and perform the duties and functions of an office or trust." In this case, respondent failed to show that he was appointed to a position in the ICTD.

SECOND DIVISION

[G.R. No. 234686. June 10, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL FRIAS *y* SARABIA *alias* "NICKER,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST WITHOUT WARRANT; ARREST MADE AFTER AN ENTRAPMENT OPERATION IS CONSIDERED A VALID WARRANTLESS ARREST.— Section 5 of Rule 113 of the Rules on Criminal Procedure provides instances when warrantless arrest may be affected. x x x Here, appellant was arrested during an entrapment operation where he was caught in *flagrante delicto* selling and in possession of *shabu*. In ***People v. Rivera,*** the Court reiterated the rule that an arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest," in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court. A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction. Consequently, appellant's warrantless arrest as well as the incidental search effected by the PDEA agents on his person validly conformed with Section 5 of Rule 113 of the Rules on Criminal Procedure.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); BUY-BUST OPERATION; PRIOR SURVEILLANCE AND USE OF ULTRAVIOLET POWDER ON THE BUY-BUST MONEY ARE NOT REQUIRED.— It is settled that prior surveillance is not a requisite to a valid entrapment or buy-bust operation. Flexibility is a trait of good police work. For so long as the rights of the accused have not been violated in the process, the arresting officers may carry out its entrapment operations and the courts

will not pass on the wisdom thereof. Hence, whether or not PDEA's prior surveillance on appellant was proper, the same will not affect the validity of the subsequent entrapment operation in the absence of any showing that appellant's rights as accused was violated. Appellant also harps on the PDEA officers' failure to use ultraviolet powder on the buy-bust money. ***People*** *v.* ***Unisa*** clarified that there is nothing in RA 9165 or its Implementing Rules which requires the buy-bust money to be dusted with ultraviolet powder before it can be legally used in a buy-bust operation.

3. ID.; ID.; CHAIN OF CUSTODY RULE; NON-COMPLIANCE; THE FAILURE OF THE PROSECUTION TO ACKNOWLEDGE A DEFICIENCY AND OFFER EXPLANATION THEREFFOR WARRANTED THE AQUITTAL OF APPELANT.— [T]he core issue: did the PDEA Agents comply with the chain of custody rule in the handling of the dangerous drugs in question? [A]ppellant himself has not raised this issue in his present appeal. We, nonetheless, apply here the rule that appeal in a criminal case throws the whole case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appeal brief. x x x The case is governed by RA 9165 prior to its amendment in 2014. Section 21 of RA 9165 lays down the procedure in handling the dangerous drugs starting from their seizure until they are finally presented as evidence in court. This makes up the **chain of custody rule.** x x x As required, the physical inventory and photograph of the seized or confiscated drugs immediately after seizure or confiscation shall be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official. The saving clause under Section 21 (a) commands that non-compliance with the prescribed requirement shall not invalidate the seizure and custody of the items provided such non-compliance is justified and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. On this score, ***People v. Jugo*** specified the twin conditions for the saving clause to apply: [F]or 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. Moreover, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume

> what these grounds are or that they even exist. x x x [Here, it was not] mentioned, that a representative from the DOJ was present. [T]he prosecution failed to acknowledge this deficiency, let alone, offer any explanation therefor. In fact, the prosecution was conspicuously silent on this point. x x x [As no] justifiable reasons exist to excuse [the] deviation, it is the Court's duty to acquit appellant and overturn the verdict of conviction.

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 seeks to reverse the Decision[1] dated March 14, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 01973 affirming the conviction of appellant Michael Frias for violations of Section 5 and Section 11, Art. II of Republic Act 9165 (RA 9165)[2] and imposing on him the corresponding penalties.

The Proceedings Before the Trial Court

Appellant Michael Frias was charged in the following Informations:

Crim. Case No. 09-32569
(Violation of Section 11, Art. II of RA 9165; Illegal Possession of Dangerous Drugs)

That on or about the 15th day of July 2009, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to possess, prepare,

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[1] *Rollo*, pp. 4-15, Penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo L. Delos Santos, and Geraldine C. Fiel-Macaraig, concurring.

[2] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

administer or otherwise use any dangerous drug, did, then and there willfully, unlawfully and feloniously have in her possession and under his custody and control one (1) heat sealed transparent plastic (sachet) marked "MFS-2" containing methamphetamine hydrochloride (*shabu*), a dangerous drug, weighing 0.03 gram, a dangerous drug, without the corresponding license or prescription therefor, in violation of the aforementioned law

Act contrary to law.[3]

Crim. Case No. 09-32570
(Violation of Section 5, Art. II of RA 9165; Illegal Sale of Dangerous Drugs)

That on or about the 15th day of July 2009, in (the) City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did, then and there willfully, unlawfully and feloniously sell, deliver, give a way to a PDEA poseur buyer IO1 Novemar H. Pinanonang in a buy-bust operation one (1) small heat sealed transparent plastic sachet with markings MFS-1 containing 0.02 gram of white crystalline substance known as methamphetamine hydrochloride (*shabu*), in exchange for a price of Five Hundred Pesos (₱500.00) for which the police used one (1) ₱500.00 bill as marked money with Serial No. SN HE274907, in violation of the aforementioned law.

Act contrary to law.[4]

On arraignment, appellant pleaded not guilty to both charges.[5] Trial ensued.

Agents of the Philippine Drug Enforcement Agency (PDEA), namely: Novemar Pinanonang, Theonette Solar, and Von Rian Tecson testified for the prosecution. On the other hand, appellant Michael Frias himself, Marichu Suson, and Charlie Chavez testified for the defense.

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[3] Crim. Case No. 09-32569, Record, p. 1.

[4] Crim. Case No. 09-32570, Record, p. 1.

[5] Crim. Case No. 09-32569, Record, p. 22; Crim. Case No. 09-32570, Record, p. 18.

The Prosecution's Version

On July 9, 2009, PDEA agent Von Rian Tecson received a report from a confidential informant that appellant and his live-in partner Marichu Suson were selling *shabu* at *Purok* Mahigugmaon, *Brgy*. 22, Bacolod City. They did a surveillance and confirmed that persons were coming in and out of appellant's house in the area. A buy-bust team was immediately formed with Agent Tecson as team leader, Agent Pinanonang as poseur-buyer, Agent Solar as arresting officer, and the rest of the team as back up. They prepared the buy-bust money of ₱500.00 bill.[6]

The team proceeded to appellant's house in *Purok* Mahigugmaon, *Brgy*. 22, Bacolod City. The informant introduced Agent Pinanonang to appellant as potential buyer of *shabu*. Appellant asked if they got the money and simultaneously handed Agent Pinanonang a plastic sachet containing white crystalline substance. The latter, in turn, gave the buy-bust money to appellant. Thereafter, Agent Pinanonang removed his baseball cap to signal the back-up team to close in. Agent Pinanonang arrested and frisked appellant. He also recovered from appellant another plastic sachet containing *shabu* and the buy-bust money. As for Suson, Agent Solar frisked her too and recovered from her a plastic sachet also containing white crystalline substance. The items were marked and inventoried at the place of arrest and in the presence of media representatives Larry Trinidad and Raquel Gariando and *barangay* officials Delilah Ta-asan, Rafael Valencia, and Charlie Chavez. Agent Elmer Ebona took photographs of the items.[7]

Appellant and Suson were brought to the police station where their arrest was entered in the blotter. Agent Pinanonang took the plastic sachets to the PDEA safe house, prepared a request

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[6] TSN dated March 4, 2010, pp. 6-15; TSN dated February 3, 2011, pp. 5-15.

[7] TSN dated March 4, 2010, pp. 21-41; TSN dated February 3, 2011, pp. 17-27.

for their laboratory examination, and delivered them to Forensic Chemist Paul Jerome Puentespina for laboratory examination.[8]

Per Chemistry Report No. D-030-2009, Forensic Chemist Puentespina found the specimens positive for methamphetamine hydrochloride (*shabu*), a dangerous drug.[9]

The prosecution offered the following exhibits: Exhibit A – Police Blotter Report dated July 14, 2009; Exhibit B – ₱500.00 bill with Serial Number HE274907; Exhibit C – Pre-Operation Report dated July 15, 2009; Exhibit D – Certificate of Inventory dated July 15, 2009; Exhibit E – White long bond paper with attached pictures (taken during inventory); Exhibit F – Police Blotter Report dated July 15, 2009; Exhibit G – Request for Laboratory Examination dated July 15, 2009; and, Exhibit H – Chemistry Report No. D-030-2009 dated July 15, 2009.[10]

The Defense's Version

Appellant and Suson testified they were inside their bedroom when the PDEA agents suddenly barged in. The agents pointed long firearms to them and announced a raid. They were made to leave the room but the agents remained inside. The agents frisked them and found nothing. Appellant denied that he sold *shabu* to Agent Pinanonang. He also claimed he got coerced to sign the inventory of the confiscated items.[11]

Brgy. Captain Charlie Chavez confirmed that he witnessed the inventory and signed the certificate of inventory during the buy-bust operation.[12]

The defense did not offer any documentary evidence.

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[8] TSN dated March 4, 2010, pp. 41-45; TSN dated February 3, 2011, pp. 27-28.

[9] Crim. Case No. 09-32569, Record, p. 116.

[10] Crim. Case No. 09-32569, Record, pp. 106-116.

[11] TSN dated March 1, 2012, pp. 4-16; TSN dated July 26, 2012, pp. 3-15.

[12] TSN dated February 11, 2014, pp. 3-8.

The Trial Court's Ruling

By Decision[13] dated October 1, 2014, the trial court found appellant guilty as charged, *viz*:

> WHEREFORE, finding accused Michael Frias *y* Sarabia *alias* "Nicker" GUILTY beyond reasonable doubt of: (a) Violation of Section 5, Article II of Republic Act 9165 (Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs) in Criminal Case 09-32570; and (b) Violation of Section 11, Article II of the same law (Possession of Dangerous Drugs) in Criminal Case 09-32569, judgment is hereby rendered sentencing him to suffer: (1) Life imprisonment, and to pay a fine of Php500,000.00 in Criminal Case No. 09-32570; and (2) an indeterminate prison term of Twelve (12) Years and One (1) day, as minimum, to Fifteen (15) years, as maximum, and to pay a fine of Php300,000.00 in Criminal Case No. 09-32569. He is also to bear the accessory penalty provided by law. Costs against accused.[14]
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The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court when it allegedly overlooked three fatal omissions of the PDEA agents during the supposed buy-bust operation, *viz*: lack of ultra violet powder on the buy-bust money, lack of search warrant, and improper surveillance. Appellant also faulted the trial court when it gave credence to the purported inconsistent testimonies of PDEA Agent Solar pertaining to what she wore during the buy-bust operation.[15]

For its part, the People, through Assistant Solicitor General Ma. Cielo Se-Rondain and Senior State Solicitor Ma. Lourdes Alarcon-Leones, countered in the main: 1) the presumption of regularity in the performance of official in favor of the PDEA agents cannot prevail over appellant's unsubstantiated theory

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[13] CA *rollo*, pp. 38-49.

[14] *Id.* at 48.

[15] *Id.* at 28-37.

of frame up; 2) mere absence of ultraviolet powder on the buy-bust money does not invalidate the buy-bust operation; and, 3) the warrantless search on appellant's person was a valid incident to appellant's arrest in *flagrante delicto*.[16]

The Court of Appeals' Ruling

By Decision[17] dated March 14, 2017, the Court of Appeals affirmed the verdict of conviction and the corresponding penalties.

The Present Appeal

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

For the purpose of this appeal, both appellant and the People adopted, in lieu of supplemental briefs, their respective briefs filed before the Court of Appeals.[18]

Issue

Did the Court of Appeals err when it affirmed appellant's conviction for violations of Section 5 (illegal sale of dangerous drugs) and Section 11 (illegal possession of dangerous drugs), both of Art. II of RA 9165?

Ruling

At the outset, appellant assails the warrantless arrest and incidental search effected by PDEA agents on his person.

On this score, Section 5 of Rule 113 of the Rules on Criminal Procedure provides instances when warrantless arrest may be affected, thus:

Sec. 5. *Arrest without warrant; when lawful*. – A peace officer or a private person may, without a warrant, arrest a person:

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[16] *Id.* at 69-85.

[17] *Rollo*, pp. 4-16, See also CA *rollo*, pp. 93-105.

[18] The People's Manifestation, *rollo*, pp. 27-28, Appellant's Manifestation, *rollo*, pp. 30-32.

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

x x x x x x x x x

Here, appellant was arrested during an entrapment operation where he was caught in *flagrante delicto* selling and in possession of *shabu*. In ***People v. Rivera***, the Court reiterated the rule that an arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest," in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court. A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.[19]

Consequently, appellant's warrantless arrest as well as the incidental search effected by the PDEA agents on his person validly conformed with Section 5 of Rule 113 of the Rules on Criminal Procedure.[20]

Appellant further seeks to invalidate the verdict of conviction on ground that the prior surveillance done on him was improper.

We are not convinced. It is settled that prior surveillance is not a requisite to a valid entrapment or buy-bust operation. Flexibility is a trait of good police work. For so long as the rights of the accused have not been violated in the process, the arresting officers may carry out its entrapment operations and the courts will not pass on the wisdom thereof.[21] Hence, whether or not PDEA's prior surveillance on appellant was proper, the

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[19] 790 Phil. 770, 780 (2016).

[20] See *People v. Sembrano*, 642 Phil. 476, 488-489 (2010).

[21] *People v. Padua*, 639 Phil. 235, 254, (2010).

same will not affect the validity of the subsequent entrapment operation in the absence of any showing that appellant's rights as accused was violated.

Appellant also harps on the PDEA officers' failure to use ultraviolet powder on the buy-bust money. ***People v. Unisa*** clarified that there is nothing in RA 9165 or its Implementing Rules which requires the buy-bust money to be dusted with ultraviolet powder before it can be legally used in a buy-bust operation.[22] So must it be.

Appellant likewise points to the alleged failure of PDEA Agent Solar to specify what she wore during the buy-bust operation. This is too trivial a matter which does not in any way affect the veracity of the testimonies of the prosecution witnesses especially Agent Solar's positive identification of appellant as the person who sold *shabu* to Agent Pinanonang.

We now address the core issue: did the PDEA Agents comply with the chain of custody rule in the handling of the dangerous drugs in question?

Notably, appellant himself has not raised this issue in his present appeal. We, nonetheless, apply here the rule that appeal in a criminal case throws the whole case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appeal brief.[23]

Here, although appellant has not presented the issue pertaining to the chain of custody rule, the Court, ***motu proprio*** takes cognizance thereof and consequently, ascertains based on the record, whether the PDEA agents concerned duly complied with the mandatory chain of custody rule.

The case is governed by RA 9165 prior to its amendment in 2014. Section 21 of RA 9165 lays down the procedure in handling the dangerous drugs starting from their seizure until they are finally presented as evidence in court. This makes up the **chain of custody rule**.

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[22] 674 Phil. 89, 112 (2011).

[23] *People v. Saludes*, 451 Phil. 719, 728 (2003).

Section 21, paragraph 1 of RA 9165 reads:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

1. The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis supplied)

This provision is related to Sec. 21(a), Article II of the Implementing Rules of RA 9165, *viz.*:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: x x x 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; (Underscoring supplied)

x x x x x x x x x

Why is the chain of custody rule mandatory in every dangerous drugs case? ***People v. Enad*** pointedly addressed this question:

[S]ince the *corpus delicti* in dangerous drugs cases constitutes the dangerous drugs itself, proof beyond reasonable doubt that the seized item is the very same object tested to be positive for dangerous drugs and presented in court as evidence is essential in every criminal prosecution under RA 9165. Because the existence of the dangerous drug is crucial to a judgment of conviction, it is indispensable that the identity of the prohibited drug be established with the same unwavering exactitude as that requisite to make a finding of guilt to ensure that unnecessary doubts concerning the identity of the evidence are removed. To this end, the prosecution must establish the unbroken chain of custody of the seized item.[24]

x x x x x x x x x

As required, the physical inventory and photograph of the sized or confiscated drugs immediately after seizure or confiscation shall be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official.

The saving clause under Section 21 (a) commands that non-compliance with the prescribed requirement shall not invalidate the seizure and custody of the items provided such non-compliance is justified and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.

On this score, ***People v. Jugo*** specified the twin conditions for the saving clause to apply:

[F]or 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. Moreover, 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.[25]

Here, Agent Pinanonang testified:

Q: Who were present when you marked this specimen?
A: The *barangay* officials and members of the media.

[24] 780 Phil. 346, 357-358 (2016).

[25] G.R. No. 231792, January 29, 2018.

Q: Can you please name these *barangay* officials and members of the media?
A: *Kagawad* Charlie Chavez, *Kagawad* Delilah (Ta-asan), and *Kagawad* Rafael Valencia.

Q: By the way, where was Michael Frias during the marking?
A: At the crime scene.

x x x x x x x x x

Q: Who placed the marking MFS-2 on this (plastic sachet) item?
A: I myself.

x x x x x x x x x

Q: Who were present during the marking of this exhibit?
A: The *barangay* officials, the subject Michael Frias and the (members) of the media.

x x x x x x x x x

Q: There are signature over the names Larry Trinidad, DYHB, Racquel Gariando of RPN-DYKB, Delilah D. Ta-asan, Rafael Valencia and Charlie Chavez, do you know who these persons are and whose signatures appears over their names?
A: Yes, sir.

Q: Who are these persons?
A: They were the witnesses during the inventory.[26]

Based on the testimony of Agent Pinanonang, the marking, inventory, and photograph in this case were done in the presence of appellant, media representatives Larry Trinidad and Raquel Gariando and local elective officials Delilah Ta-asan, Rafael Valencia, and Charlie Chavez. He did not mention, however, that a representative from the DOJ was also present. Notably, the prosecution failed to acknowledge this deficiency, let alone, offer any explanation therefor. In fact, the prosecution was conspicuously silent on this point.

In ***People v. Seguiente***, the Court acquitted the accused because the prosecution's evidence was totally bereft of any showing that a representative from the DOJ was present during the

[26] TSN dated March 4, 2010, pp. 30-34.

inventory and photograph. The Court keenly noted, as in this case, that the prosecution failed to recognize this particular deficiency. The Court, thus, concluded that this lapse, among others, effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegation of frame up.[27]

In ***People v. Rojas***, the Court likewise acquitted the accused because the presence of representatives from the DOJ and the media was not obtained despite the buy-bust operation against the accused being supposedly pre-planned. The prosecution, too, did not acknowledge, let alone, explain such deficiency.[28]

Another. In the recent case of ***People v. Vistro***, the Court acquitted the accused in light of the arresting team's non-compliance with the three-witness rule during the physical inventory and photograph of dangerous drugs. The Court similarly made the observation that the first condition under the saving clause was not fulfilled, *i.e.* the prosecution failed to offer any justification for the absence of the representatives from the DOJ and the media.[29]

In all these cases, the Court invariably held that since the first condition was already inexplicably absent, there was no way the second condition could ever be present.

In any event, since compliance with the chain of custody rule is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the courts below, would not preclude this Court from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation therefrom. If no such reasons exist, then it is the

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[27] G.R. No. 218253, June 20, 2018.

[28] G.R. No. 222563, July 23, 2018.

[29] G.R. No. 225744, March 6, 2019.

Court's duty to acquit appellant and overturn the verdict of conviction.[30] So must it be.

ACCORDINGLY, the appeal is **GRANTED**. The Decision dated March 14, 2017 of the Court of Appeals is **REVERSED AND SET ASIDE**. Appellant Michael Frias is **ACQUITTED** of violations of Section 5 and Section 11, Article II of Republic Act 9165.

The Court further **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City: (a) to cause the immediate release of Michael Frias from custody unless he is being held for some other lawful cause; and (b) to inform the Court of the action taken within five days from notice.

SO ORDERED.

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

Reyes, J. Jr., J., on leave.

THIRD DIVISION

[G.R. No. 237039. June 10, 2019]

LEONARDO V. REVUELTA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; THE BILL OF RIGHTS; RIGHT TO A SPEEDY DISPOSITION OF A CASE; NOT LIMITED TO THE ACCUSED IN CRIMINAL PROCEEDINGS BUT EXTENDS

[30] *People v. Año*, G.R. No. 230070, March 14, 2018.

TO ALL PARTIES IN ALL CASES, BE IT CIVIL OR ADMINISTRATIVE IN NATURE, AS WELL AS IN ALL PROCEEDINGS, EITHER JUDICIAL OR QUASI JUDICIAL.— Section 16, Article III of the Constitution guarantees every person's right to a speedy disposition of his case before all judicial, quasi-judicial or administrative bodies. This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings, either judicial or quasi judicial. In this accord, any party to a case may demand expeditious action of all officials who are tasked with the administration of justice.

2. ID.; ID.; ID.; ID.; ID.; THE RIGHT TO A SPEEDY DISPOSITION OF CASES IS DEEMED VIOLATED ONLY WHEN THE PROCEEDINGS ARE ATTENDED BY VEXATIOUS, CAPRICIOUS, AND OPPRESSIVE DELAYS; OR WHEN UNJUSTIFIED POSTPONEMENTS OF THE TRIAL ARE ASKED FOR OR SECURED, OR EVEN WITHOUT CAUSE OR JUSTIFIABLE MOTIVE, A LONG PERIOD OF TIME IS ALLOWED TO ELAPSE WITHOUT THE PARTY HAVING HIS CASE TRIED; BALANCING TEST, EXPLAINED.— It must be noted, however, that the right to a speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for or secured, or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered.

3. ID.; ID.; ID.; ID.; IN CASE A FORMAL COMPLAINT WAS INITIATED BY A PRIVATE COMPLAINANT, THE FACT-FINDING INVESTIGATION CONDUCTED BY THE

OMBUDSMAN AFTER THE FILING OF THE COMPLAINT IS NECESSARILY INCLUDED IN COMPUTING THE AGGREGATE PERIOD OF THE PRELIMINARY INVESTIGATION, WHEREAS, THE FACT-FINDING INVESTIGATION CONDUCTED BEFORE THE FILING OF A FORMAL COMPLAINT, AS IN INVESTIGATIONS RELATING TO ANONYMOUS COMPLAINTS OR *MOTU PROPRIO* INVESTIGATIONS BY THE OMBUDSMAN, WILL NOT BE COUNTED IN DETERMINING THE ATTENDANCE OF DELAY; DURING THE FACT-FINDING INVESTIGATIONS AND PRIOR TO THE FILING OF A FORMAL COMPLAINT, THE PARTY INVOLVED CANNOT YET INVOKE THE RIGHT TO SPEEDY DISPOSITION OF HIS CASE SINCE HE IS NOT YET SUBJECTED TO ANY ADVERSE PROCEEDING.— [I]n *Elpidio Magante v. Sandiganbayan (Third Division), et al.*, a distinction was made between fact-finding investigations conducted before and after the filing of a formal complaint for the purpose of establishing the reckoning point for computing the start of delay. We ruled that in case a formal complaint was initiated by a private complainant, the fact-finding investigation conducted by the Ombudsman after the filing of the complaint is necessarily included in computing the aggregate period of the preliminary investigation. On the other hand, the fact-finding investigation conducted before the filing of a formal complaint, as in investigations relating to anonymous complaints or *motu proprio* investigations by the Ombudsman, will not be counted in determining the attendance of delay. During such fact-finding investigations and prior to the filing of a formal complaint, the party involved cannot yet invoke the right to speedy disposition of his case since he is not yet subjected to any adverse proceeding. x x x Here, it was only on September 21, 2011 when petitioner was required by the Office of the Ombudsman to submit his counter-affidavit. While the complaint against petitioner's co-accused Isaias Ubana II was initiated on March 16, 2009, petitioner became a party respondent only on September 12, 2011 when GIPO Allado requested his inclusion in the preliminary investigation conducted against Ubana II. Prior to his inclusion as respondent in the preliminary investigation, his right to speedy disposition of case cannot be invoked as he was not yet subjected to any adverse proceeding. Thus, the reckoning point for purposes of computing

inordinate delay should start on September 21, 2011. x x x [T]he Court finds there was no inordinate delay in the conduct and termination of preliminary investigation by the Ombudsman.

4. **ID.; ID.; ID.; ID.; THE FAILURE OF THE PETITIONER TO INVOKE HIS RIGHT TO A SPEEDY DISPOSITION OF HIS CASE DURING THE PRELIMINARY INVESTIGATION AMOUNTED TO A WAIVER OF SAID RIGHT.—** It should, likewise, be noted that petitioner did not assert his right to a speedy disposition of his case at the earliest possible time. In fact, petitioner took more than a year after the filing of the information in the Sandiganbayan before he invoked his right. Petitioner's failure to invoke his right to a speedy disposition of his case during the preliminary investigation amounted to a waiver of said right. In *Magante*, We categorically held that "it is the duty of the respondent to bring to the attention of the investigating officer the perceived inordinate delay in the proceedings of the formal preliminary investigation. Failure to do so may be considered a waiver of his/her right to speedy disposition of cases." This could also address the rumored "parking fee" allegedly being paid by some respondents so that delay can be set up as a ground for the dismissal of their respective cases.

5. **ID.; ID.; ID.; ID.; THE STATE, LIKE ANY OTHER LITIGANT, IS ENTITLED TO ITS DAY IN COURT, AND TO A REASONABLE OPPORTUNITY TO PRESENT ITS CASE.—** [W]e see no reason to disturb the findings and conclusions of the Sandiganbayan Sixth Division's assailed Resolutions dated September 6, 2017 and November 28, 2017. There was no inordinate delay committed by the Office of the Ombudsman that transgressed petitioner's right to a speedy disposition of his case. The Office of the Ombudsman cannot be faulted for giving petitioner and his co-respondents every opportunity to exhaust legal remedies afforded to them by law. It must be emphasized that the state, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case.

APPEARANCES OF COUNSEL

Amador P. Lanuza for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

PERALTA, *J.*:

Before *Us* is a Petition for *Certiorari* under Rule 65 of the Rules of Court, with prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, seeking the reversal of the Sandiganbayan's Resolutions dated September 6, 2017,[1] and November 28, 2017,[2] which respectively denied petitioner's Motion to Dismiss and Motion for Reconsideration.

Petitioner was charged before the Sandiganbayan for Violation of Section 3 (e) of Republic Act (R.A.) No. 3019 under an Information filed by the Office of Ombudsman on July 1, 2015. The Ombudsman's Information stemmed from the Complaint-Affidavit dated March 9, 2009 filed by private complainants Justiano N. Calvaria, Guillermo O. Maulawin, Jesus A. Astillo, Oscar A. Aguirre and Albelio C. Reyes.

On January 30, 2017, petitioner filed a Motion to Dismiss before the Sandiganbayan on the ground that the inordinate delay of more than six (6) years in resolving the complaint (from the time of the complaint to the filing of information) violated his constitutional rights to speedy disposition and resolution of cases, and to due process.

Summarized in the Sandiganbayan Sixth Division's assailed September 6, 2017 Resolution, the factual antecedents are as follows:

> On March 16, 2009, the Office of the Deputy Ombudsman for Luzon received a Complaint-Affidavit dated March 9, 2009 from Justiniano N. Calvario, Guillermo O. Maulawin, Jesus A. Astillo, Oscar A. Aguirre and Albelio C. Reyes (Complainants) charging Isaias Ubana, Municipal Mayor of Lopez, Quezon with Malversation, Falsification and Violation of R.A. No. 3019. Said complaint-affidavit alleged irregularities in the procurement and deliveries of glass wares and plastic wares to recipient *barangays* in the municipality. On March

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[1] *Rollo*, pp. 22-46.

[2] *Id.* at 48-54.

23, 2009, the complaint-affidavit was docketed for fact-finding investigation.

On April 9, 2009 and August 13, 2009, the Deputy Ombudsman for Luzon directed the Municipal Accountant of Lopez, Quezon and COA LGS-Cluster of Lucena, respectively, to submit documents relevant to the investigation. On August 28, 2009, the fact-finding investigation was terminated and the case was re-docketed as a criminal case.

On November 9, 2009, the said criminal case was assigned to Graft Investigation and Prosecution Officer (GIPO) J.S. Ong (Ong) for preliminary investigation. On November 23, 2009, GIPO J.S. Ong received the records of the case.

The preliminary investigation ensued against Ubana being the only respondent in the case. On November 16, 2009, the Deputy Ombudsman for Luzon issued a subpoena to accused Ubana for the submission of his counter-affidavit,

On December 17, 2009, the Deputy Ombudsman for Luzon unloaded the case to GIPO Albert Almojuela (Almojuela).

On January 5, 2010, accused Ubana filed a Motion for Extension of Time to Submit Counter-affidavit. On January 26, 2010, for the second time, accused Ubana sought an extension of time to submit his counter-affidavit. This was opposed by the complainants on February 3, 2010. On February 10, 2010, accused Ubana filed his third Motion for Extension of Time to Submit Counter-affidavit. After filing three (3) Motions for Extension of Time to Submit Counter-Affidavit, accused Ubana finally submitted his Counter-Affidavit dated February 18, 2010, or *three (3) months and two (2) days* from the date of issuance of the subpoena.

On April 18, 2011, the case was re-assigned to GIPO Expedito Allado, Jr. (Allado, Jr.), In a Memorandum dated September 12, 2011, GIPO Allado, Jr. sought the inclusion of accused Revuelta and Nieva, and co-respondents Abelia Norada Villasenor (Villasenor), Hermes Arche Argante (Argante), and Esmeraldo L. Erandio (Erandio) in the case.

On September 21, 2011, the Deputy Ombudsman for Luzon issued an order directing accused Revuelta and Nieva, and co-respondents Villasenor, Argante, and Erandio to submit their counter-affidavits.

Accused Revuelta and Nieva failed to submit their counter- affidavits despite personal receipt of the order to file the same. From the foregoing, the investigatory process against accused Revuelta and Nieva started only when they were impleaded as co-respondents in the case on September 12, 2011 or *two (2) years, five (5) months and twenty-six (26) days* after the filing of the complaint-affidavit, or o*ne (1) year, five (5) months and three (3) days* after the start of the preliminary investigation against accused Ubana.

Pending resolution of the case, complainants submitted the COA audit observation memorandum on September 25, 2011 and COA fact-finding investigation report on October 26, 2011. On September 25, 2012, the complainants sought the admission of said documents as additional evidence.

This prompted the Deputy Ombudsman for Luzon to re-evaluate the records. On March 4, 2013, the case was transferred to Ombudsman-Zero Backlog Unit (ZBU) for continuation of the preliminary investigation. The Ombudsman-ZBU then issued an Order dated July 15, 2013 directing the accused and their co-respondents to submit their comments on the said COA audit observation memorandum and fact-finding report submitted by the complainants.

Within the period July 24, 2013 to August 6, 2013, accused Ubana and Nieva and their co-respondents, filed separate motions seeking an extension of time to submit their comments. On August 27, 2013, accused Ubana and Nieva and their co-respondents, submitted their comments on the COA memorandum and report.

On August 30, 2013, the Ombudsman-ZBU directed COA to produce a certified copy of its report in the case. Dissatisfied with their 2011 reports, COA's Fraud Audit Office conducted another fact-finding investigation which resulted in a 2013 Fact-Finding Report. On September 6, 2013, complainants filed a motion for the immediate resolution of the case.

On August 18, 2014, a draft resolution finding probable cause for Violation of R.A. No. 3019 against accused Ubana, Nieva and Revuelta, and for Falsification against accused Ubana and Nieva, and dismissing the charges against respondents Villasenor, Argante and Erandio for lack of probable cause, was submitted for approval by Assistant Ombudsman Leilanie Bernadette C. Cabras (Cabras) to Ombudsman Conchita Carpio-Morales (Carpio-Morales). On August 20, 2014, Ombudsman Carpio-Morales approved the said draft resolution.

Thereafter, accused Ubana, Nieva and Revuelta sought a partial reconsideration of the same. This was denied by the Ombudsman on January 30, 2015. Thereafter, the OSP filed the informations in these cases before this Court on July 1, 2015, or *five (5) months, nineteen (19) days* after the denial of their motion for partial reconsideration.[3]

Based on the foregoing facts, the Sandiganbayan denied for lack of merit petitioner's Motion to Dismiss per its assailed Resolution dated September 6, 2017. The court *a quo*'s disquisitions, in so far as relevant to petitioner's claim of inordinate delay, run as follows:

The period from February 18, 2010 to September 21, 2011, or *one (1) year, seven (7) months and three (3) days*, should be attributed to the Deputy Ombudsman for Luzon. During this period, the case was unloaded from GIPO Almojuela to GIPO Allado, Jr., for reasons unstated. At this point, GIPO Allado, Jr. requested the inclusion in the case of accused Revuelta and Nieva, and co-respondents Villasenor, Argante, and Erandio. On September 21, 2011, the Deputy Ombudsman for Luzon issued orders to accused Revuelta and Nieva, and co-respondents Villasenor, Argante, and Erandio requiring the submission of their respective counter-affidavits. The Deputy Ombudsman for Luzon's actions were put on hold pending the submission by accused Nieva and Revuelta of their respective counter-affidavits. During this period, again, accused Ubana neither questioned any delay nor sought the separate resolution of his case.

However, the above period of *two (2) years, five (5) months and seventeen (17) days* from March 16, 2009 to September 21, 2011, should not be counted in the case of accused Revuelta and Nieva.

Prior to this period, accused Revuelta and Nieva **were not** subjects of any investigation related to alleged irregularities and ghost deliveries of glass wares and plastic wares to recipient *Barangays* in the Municipality of Lopez, Quezon. In fact, the complaint and preliminary investigation were first initiated against accused Ubana only.

Accused Revuelta and Nieva were only impleaded as co-respondents when the Deputy Ombudsman for Luzon ordered their inclusion in the case on September 12, 2011 upon the recommendation of GIPO Allado, Jr. Thereafter, on September 21, 2011, they were required

[3] *Id.* at 25-28. (Citations omitted)

by the Deputy Ombudsman for Luzon to submit their respective counter-affidavits. Thus, there is no proof that they endured any vexatious, capricious, and oppressive delay during this period because they had not undergone any investigative proceeding before September 12, 2011.

x x x x x x x x x.

The period from September 21, 2011 to September 6, 2013, or *one (1) year, eleven (11) months and sixteen (16) days*, should not be visited upon the Deputy Ombudsman for Luzon and the accused. The Complainants' late submission of additional documents, *i.e.*, the COA audit observation memorandum and fact-finding report, relative to the case was beyond the Deputy Ombudsman's control. The verification and further evaluation of these documents with the COA is inevitable. During this period, the COA was also given an opportunity to conduct another fact-finding investigation which resulted in their 2013 Fact-Finding Report. These incidents are beyond the control of the Deputy Ombudsman for Luzon and the accused.

The period from September 6, 2013 to August 20, 2014, or *eleven (11) months and fourteen (14) days*, is attributable to the Office of the Ombudsman. The period spent by the Deputy Ombudsman for Luzon in finishing the preliminary investigation and drafting the resolution in these cases is *eleven (11) months and twelve (12) days*. The Resolution dated August 18, 2014 recommending the filing of a case for Violation of R.A. No. 3019 against accused Ubana, Nieva and Revuelta, and for Falsification against accused Ubana and Nieva, and dismissing the charges against respondents Villasenor, Argante and Erandio for lack of probable cause, was approved by Ombudsman Carpio-Morales after *two (2) days*. There is no inordinate delay here because the Office of the Ombudsman spent less than a year in terminating the preliminary investigation from the date of the last pleading filed on September 6, 2013. This period is justified because the Office of the Ombudsman needed to ensure that the proper, correct, and strong cases are filed against the accused. In fact, the accused benefited from this lapse of time because the Deputy Ombudsman for Luzon found probable cause only for violation of R.A. 3019 and falsification and dismissed all the other criminal and administrative charges against them.

The period from August 20, 2014 to January 30, 2015, or *five (5) months and ten (10) days*, is attributed to the accused because of the exercise of their right to procedural due process. During this period, accused Ubana, Revuelta and Nieva sought to assail the finding of probable cause against them before the filing of the informations in Court. The Office of the Ombudsman cannot be faulted for granting them sufficient opportunity to exercise said right.

The period from January 30, 2015 to July 1, 2015, or *five (5) months and one (1) day,* is attributable to the Office of the Ombudsman. This period is, however, justified because the OSP reviewed the cases again and made sure that only those cases that could stand the rigors of trial would be filed. On the other hand, accused Nieva benefited from this lapse of time because the OSP filed an information for only one (1) count of falsification instead of the seven (7) counts recommended by the Office of the Deputy Ombudsman for Luzon.

Based on the foregoing, the total period of *six (6) months and twenty-three (23) days*, is attributed to accused Ubana, and the period of *five (5) months and ten (10) days,* to accused Nieva and Revuelta. This period should be excluded from the time spent by the Office of the Ombudsman to terminate the fact-finding and preliminary investigation, respectively, and for the OSP to file the corresponding informations in this Court.

The total period of two (2) years, four (4) and twenty-eight (28) days should also be excluded from the computation of the period attributed to the Office of the Ombudsman. As explained above, this period covers those incidents beyond the control of the Office of Ombudsman and the accused.

Subtracting the periods attributable to the accused and those beyond the control of the Office of the Ombudsman, the total period it took the Office of the Ombudsman to finish its fact-finding investigation and preliminary investigation, and for the OSP to file the corresponding informations is only *three (3) years, three (3) months and twenty-six (26) days* in the case of accused Ubana, while *eleven (11) months and five (5) days* in the case of accused Nieva and Revuelta.[4]

Petitioner's Motion for Reconsideration[5] dated September 22, 2017 was denied by the Sandiganbayan in its Resolution[6] dated November 28, 2017. Hence, petitioner filed this petition for *certiorari* ascribing grave abuse of discretion on the Sandiganbayan.

Petitioner asserts that there was inordinate delay in the conduct of preliminary investigation which lasted for more than six (6)

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[4] *Id.* at 33-35.

[5] *Id.* at 55-59.

[6] *Supra* note 2.

years counted from the time of filing of the complaint before the Office of the Ombudsman up to the filing of the information in the Sandiganbayan. He contends that the undue delay in the conduct and termination of the preliminary investigation and in the disposition of the case violated, his constitutional right to speedy trial and speedy disposition of case which covers not only the period of preliminary investigation, but includes even fact-finding investigations conducted prior thereto. Petitioner insists that it was the duty of the Ombudsman to act promptly and speedily resolve complaints even without invocation of such rights, and that failure to comply with such duty, without any justifiable reason, warrants a dismissal of the complaint against him. While he concedes that rights may be waived, he, however, argues that such waiver may not be inferred by mere failure on the part of the accused to assert and urge the expeditious disposition of his case and that such waiver may be considered only when the delay is attributable to the accused.

In its Comment,[7] the People, thru the Office of the Special Prosecutor (*OSP*), alleges that the instant Petition failed to identify and substantiate the specific circumstances during the proceedings before the Office of Ombudsman that allegedly made the lapse of period vexatious, capricious and oppressive to the petitioner. It argues that the Sandiganbayan not only embarked on a mere mathematical computation of the time involved but it also engaged in the delicate task of balancing all the facts and circumstances peculiar to the case in determining whether the period that lapsed was oppressive, capricious or vexatious to the petitioner. The OSP asserts that "speedy disposition" and "delay" are flexible and relative concepts which call for the application of the "*balancing test*" approach where the issue pertains to the right to speedy disposition of cases. Such test requires the consideration of such factors as: (a) length of delay; (b) reason for the delay; (c) assertion of the right or failure to assert it; and (d) prejudice caused by the delay.

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[7] *Rollo*, pp. 97-113.

The OSP insists that petitioner could not have suffered undue prejudice or vexed by the period of fact-finding investigation that started on March 16, 2009 since it was only on September 21, 2011 that he was included as respondent to the case or made to answer to the allegations in the complaint. It also contends that the Sandiganbayan did not commit grave abuse of discretion and acted well within its jurisdiction when it refused to adopt the cases cited by the petitioner in as much as the conditions or circumstances which impelled this Court to uphold the right of the accused to speedy disposition of cases are not present in this case.

Once again, the Court is confronted with the issue of whether the period spent from the filing of the complaint before the Office of the Ombudsman up to the time of filing of the information in the Sandiganbayan transgressed petitioner's constitutional right to a speedy disposition of his case.

We find the petition to be without merit.

Section 16, Article III of the Constitution guarantees every person's right to a speedy disposition of his case before all judicial, quasi-judicial or administrative bodies. This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings, either judicial or quasi judicial. In this accord, any party to a case may demand expeditious action of all officials who are tasked with the administration of justice.[8]

It must be noted, however, that the right to a speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for or secured, or even without cause or justifiable motive, a long period of time is

[8] *Inocentes v. People, et al.*, 789 Phil. 318, 333-334 (2016).

allowed to elapse without the party having his case tried.[9] Equally applicable is the balancing test used to determine whether a defendant has been denied his right to speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered.[10]

In *Tatad v. Sandiganbayan*,[11] the Court ordered the dismissal of the case not only because the complaint against petitioner was politically motivated but also because the three (3)-year delay from the day of the investigation was submitted for resolution up to the date of the filing of the information in court was violative of petitioner's right to speedy disposition of cases. The Court, likewise, ordered the dismissal of the case on the ground of inordinate delay in the cases of *Angchangco, Jr. v. Ombudsman*,[12] *Duterte v. Sandiganbayan*,[13] *Roque v. Office of the Ombudsman*,[14] *Lopez, Jr. v. Office of the Ombudsman*,[15] *Cervantes v. Sandiganbayan*,[16] *People v. SPO4 Anonas*,[17] and a lot more other cases. In these cases, however, the Court had not set a definite length of time as to what constitutes inordinate delay since "speedy disposition" is a relative and flexible concept that a mere mathematical reckoning of the period involved is not sufficient to determine the existence of inordinate delay.

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[9] *Coscolluela v. Sandiganbayan (First Division), et al.,* 714 Phil. 55, 61 (2013).

[10] *Gonzales v. Sandiganbayan*, 276 Phil. 323, 334 (1991).

[11] 242 Phil. 563, 576 (1988).

[12] 337 Phil. 68 (1997).

[13] 352 Phil. 557 (1998).

[14] 366 Phil. 568 (1999).

[15] 417 Phil. 39 (2001).

[16] 366 Phil. 602 (1999).

[17] 542 Phil. 539 (2007).

But in *Elpidio Magante v. Sandiganbayan (Third Division), et al.*,[18] a distinction was made between fact-finding investigations conducted before and after the filing of a formal complaint for the purpose of establishing the reckoning point for computing the start of delay. We ruled that in case a formal complaint was initiated by a private complainant, the fact-finding investigation conducted by the Ombudsman after the filing of the complaint is necessarily included in computing the aggregate period of the preliminary investigation. On the other hand, the fact-finding investigation conducted before the filing of a formal complaint, as in investigations relating to anonymous complaints or *motu proprio* investigations by the Ombudsman, will not be counted in determining the attendance of delay. During such fact-finding investigations and prior to the filing of a formal complaint, the party involved cannot yet invoke the right to speedy disposition of his case since he is not yet subjected to any adverse proceeding.

In *Cagang v. Sandiganbayan*,[19] the Court clarified the mode of analysis in situations where the right to speedy disposition of cases or the right to speedy trial is invoked, thus:

> *First*, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.
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> *Second*, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be

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[18] G.R. Nos. 230950-51, July 23, 2018.

[19] G.R. Nos. 206438 and 206458, July 31, 2018.

included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second,* that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

Here, it was only on September 21, 2011 when petitioner was required by the Office of the Ombudsman to submit his counter-affidavit. While the complaint against petitioner's co-accused Isaias Ubana II was initiated on March 16, 2009, petitioner became a party respondent only on September 12, 2011 when GIPO Allado requested his inclusion in the preliminary investigation conducted against Ubana II. Prior to his inclusion as respondent in the preliminary investigation, his right to speedy disposition of case cannot be invoked as he was not yet subjected to any adverse proceeding. Thus, the reckoning point for purposes of computing inordinate delay should start on September 21, 2011.

In this case, the Court finds there was no inordinate delay in the conduct and termination of preliminary investigation by the Ombudsman. While petitioner did not submit any counter-

affidavit nor file any comment to the COA reports despite personal receipts of the subpoena, his co-respondents filed several motions for extension of time to file comment on the COA memorandum and report. It was only on August 27, 2013, that petitioner's co-respondents filed their comments to the COA report.

Records show that Assistant Ombudsman Leilanie C. Cabras' Resolution dated August 18, 2014 was approved by Ombudsman Conchita Carpio-Morales on August 20, 2014. Petitioner and his co-respondents filed a motion for partial reconsideration of the Deputy Ombudsman for Luzon's resolution, which was denied by Ombudsman Carpio-Morales on January 12, 2015. The Information was filed with the Sandiganbayan on July 1, 2015. Thus, the length of period from September 21, 2011, when petitioner was required to submit counter-affidavit, up to the time of the filing of information before the Sandiganbayan cannot be construed as vexatious, capricious or oppressive to the petitioner. Due process considerations and other factors not attributable to the Office of the Ombudsman factored in on the length of time consumed before the filing of the information before the Sandiganbayan.

It should, likewise, be noted that petitioner did not assert his right to a speedy disposition of his case at the earliest possible time. In fact, petitioner took more than a year after the filing of the information in the Sandiganbayan before he invoked his right. Petitioner's failure to invoke his right to a speedy disposition of his case during the preliminary investigation amounted to a waiver of said right. In *Magante*,[20] We categorically held that "it is the duty of the respondent to bring to the attention of the investigating officer the perceived inordinate delay in the proceedings of the formal preliminary investigation. Failure to do so may be considered a waiver of his/her right to speedy disposition of cases." This could also address the rumored "parking fee" allegedly being paid by some respondents so that delay can be set up as a ground for the dismissal of their respective cases.[21]

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[20] *Supra* note 18.

[21] *Id.*

In light of the foregoing, We see no reason to disturb the findings and conclusions of the Sandiganbayan Sixth Division's assailed Resolutions dated September 6, 2017 and November 28, 2017. There was no inordinate delay committed by the Office of the Ombudsman that transgressed petitioner's right to a speedy disposition of his case. The Office of the Ombudsman cannot be faulted for giving petitioner and his co-respondents every opportunity to exhaust legal remedies afforded to them by law. It must be emphasized that the state, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case.[22]

WHEREFORE, premises considered, the Petition is **DISMISSED** for utter lack of merit. Costs against the petitioner.

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Inting, JJ.*, concur.

THIRD DIVISION

[G.R. Nos. 237106-07. June 10, 2019]

FLORENDO B. ARIAS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA THROUGH FALSIFICATION OF OFFICIAL/COMMERCIAL DOCUMENTS; ELEMENTS; ESTABLISHED.— All the elements of the crime of Estafa through Falsification of Official/ Commercial Documents were established by the prosecution beyond reasonable doubt. x x x The elements of the above crime

[22] *People v. Leviste*, 325 Phil. 525, 538 (1996).

are the following: 1. That there must be a false pretense, fraudulent act or fraudulent means; 2. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; 3. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and 4. That as a result thereof, the offended party suffered damage.

2. ID.; ID.; ID.; WHILE A CONVICTION FOR ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENTS REQUIRES THAT THE ELEMENTS OF BOTH ESTAFA AND FALSIFICATION EXIST, IT DOES NOT MEAN THAT THE CRIMINAL LIABILITY FOR ESTAFA MAY BE DETERMINED AND CONSIDERED INDEPENDENTLY OF THAT FOR FALSIFICATION, AS BOTH FELONIES ARE ANIMATED BY AND RESULT FROM ONE AND THE SAME CRIMINAL INTENT FOR WHICH THERE IS ONLY ONE CRIMINAL LIABILITY.— It must be emphasized that the falsified documents (Disbursement Vouchers, Reports of Waste Materials, Requisition for Supplies and/or Equipment and Certificates of Emergency Purchase) involved in this case are official or public documents. Public documents are: (a) the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines or of a foreign country; (b) documents acknowledged before a notary public except last wills and testaments; and (c) public records, kept in the Philippines, of private documents required by law to be entered therein. A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court. In considering whether the accused is liable for the complex crime of estafa through falsification of public documents, it would be wrong to consider the component crimes separately from each other. While there may be two component crimes (estafa and falsification of public documents), both felonies are animated by and result from one and the same criminal intent for which there is only one criminal

liability. That is the concept of a complex crime. In other words, while there are two crimes, they are treated only as one, subject to a single criminal liability. While a conviction for estafa through falsification of public documents requires that the elements of both estafa and falsification exist, it does not mean that the criminal liability for estafa may be determined and considered independently of that for falsification. The two crimes of estafa and falsification of public documents are not separate crimes but component crimes of the single complex crime of estafa and falsification of public documents. In this case, the prosecution was able to prove the elements of the crime.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; FINDINGS OF THE TRIAL COURT ON THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES ARE GENERALLY ACCORDED GREAT RESPECT AND FINALITY, UNLESS THERE APPEARS IN THE RECORD SOME FACT OR CIRCUMSTANCE OF WEIGHT WHICH THE LOWER COURT MAY HAVE OVERLOOKED, MISUNDERSTOOD OR MISAPPRECIATED AND WHICH, IF PROPERLY CONSIDERED, WOULD ALTER THE RESULTS OF THE CASE.—** Findings of the trial court on the credibility of witnesses and their testimonies are generally accorded great respect by an appellate court. Well-settled is the rule that findings of facts and assessment of credibility of witnesses are matters best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. For this reason, the trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.

4. **ID.; EVIDENCE; BEST EVIDENCE RULE; THE BEST EVIDENCE RULE APPLIES ONLY WHEN THE CONTENTS OF THE DOCUMENT IS THE SUBJECT OF THE INQUIRY, NOT WHERE THE ISSUE IS WHETHER SUCH DOCUMENT WAS ACTUALLY EXECUTED OR EXISTS, OR ON THE CIRCUMSTANCES RELEVANT TO OR SURROUNDING ITS EXECUTION.—** With regard to petitioner's contention as to the Best Evidence Rule, or, more

specifically, to the Sandiganbayan's admission on the prosecution's exhibits despite the non-presentation of the original documents, such is misplaced. Instructive on this point is the case of *Citibank, N.A. v. Sabeniano,* wherein this Court stated that: As the afore-quoted provision states, the best evidence rule applies only when the subject of the inquiry is the contents of the document. The scope of the rule is more extensively explained thus — But even with respect to documentary evidence, the best evidence rule applies only when the content of such document is the subject of the inquiry. Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible. Any other substitutionary evidence is likewise admissible without need for accounting for the original. Thus, when a document is presented to prove its existence or condition it is offered not as documentary, but as real, evidence. Parol evidence of the fact of execution of the documents is allowed. x x x. Here, petitioner's objection to the prosecution's documentary evidence, as stated in his Comment/Objections to Formal Offer of Exhibits, essentially relates to the materiality, relevance or purpose for which the documents were offered which had nothing to do with the contents thereof.

5. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019), SECTION (3) THEREOF; CAUSING INJURY TO THE GOVERNMENT OR GIVING ANY PRIVATE PARTY ANY UNWARRANTED BENEFITS; ELEMENTS; PRESENT.— As to petitioner's guilt for violation of Section 3(e) of R.A. No. 3019, such has been established beyond reasonable doubt. The elements of the above violation are: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference. All the above elements are present in this case.

6. ID.; ESTAFA THROUGH FALSIFICATION OF OFFICIAL/ COMMERCIAL DOCUMENTS; PROPER IMPOSABLE PENALTY.— In view, however, of R.A. No. 10951 (An Act

> Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based, and the Fines Imposed under the Revised Penal Code, amending for the Purpose Act No. 3815, otherwise known as "The Revised Penal Code"), a modification must be made as to the penalty imposed by the Sandiganbayan. x x x. Applying [Section 85 of R.A. No. 10951], the maximum term of the penalty that must be imposed should be within the maximum period of *prision correccional* maximum to *prision mayor* minimum, considering that the amount defrauded is ₱5,166,539.00 and the crime committed is a complex crime under Article 48 of the RPC, where the penalty of the most serious of the crimes should be imposed which, in this case, is the penalty for Estafa. Hence, applying the Indeterminate Sentence Law, the minimum term of the penalty should be within the range of the penalty next lower in degree or *prision correccional* minimum to *prision correccional* medium and the maximum term should be taken from the maximum period of *prision mayor* minimum. Thus, an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as the minimum term, to eight (8) years of *prision mayor* minimum, as the maximum term, is appropriate.

APPEARANCES OF COUNSEL

Edmund T. Espina for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition[1] for review on *certiorari* under Rule 45 of the Rules of Court, dated March 15, 2018, of petitioner Florendo B. Arias assailing the Sandiganbayan's Decision[2] promulgated on November 10, 2016, finding him guilty beyond reasonable doubt of the crime of Estafa Thru Falsification of Official/Commercial Documents in Criminal Case No. 28100,

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[1] *Rollo*, pp. 18-43.

[2] *Id.* at 73-133. Penned by Associate Justice Oscar C. Herrera, Jr., and concurred in by Associate Justices Jose R. Hernandez and Alex L. Quiroz.

and for Violation of Section 3(e) of Republic Act (*R.A.*) No. 3019, as amended, in Criminal Case No. 28253, and its Resolution[3] issued on January 15, 2018, denying his Motion for Reconsideration.

Culled from documentary and testimonial evidence, the antecedents of this case are summarized by the Sandiganbayan, as follows:

During the period March to December 2001, or sometime subsequent thereto, reimbursements were claimed and paid by DPWH in an amount totaling millions of pesos covering 409 transactions purportedly for the emergency repairs of 39 DPWH service vehicles. Of the 409 transactions, 274 transactions were made in the name of accused Martinez for which the total sum of ₱5,166,539.00, not ₱6,368,364.00, were claimed and paid as reimbursements. The spare parts were purportedly supplied by J-CAP Motorshop, owned by accused Capuz, and DEB Repair Shop and Parts Supply owned by accused Dela Cruz. The transactions are covered by Disbursement Vouchers with supporting documents to justify the release of checks, pertinent details of which are as follows:

1) Mitsubishi L-200 with Plate No. TSC 482 purportedly underwent 44 emergency repairs and reimbursements for 2 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-04-05261	Borje, M.	359433	4/10/01	22,170.00	DEB
2	101-01-04-01690	Borje, M.	359879	4/23/01	24,350.00	DEB
3	101-01-03-01687	Borje, M	360306	5/2/01	20,200.00	DEB
4	101-01-03-01692	Borje, M.	360307	5/2/01	24,660.00	DEB
5	101-01-03-01688	Borje, M.	360323	5/2/01	24,990.00	DEB
6	101-01-06-10012	Borje, M.	380120	6/7/01	10,675.00	DEB
7	101-01-06-10397	Borje, M.	381059	6/28/01	8,580.00	DEB
8	101-01-06-10400	Borje, M.	381306	7/4/01	19,200.00	DEB
9	101-01-06-11050	Borje, M.	381326	7/4/01	22,580.00	DEB
10	101-01-07-12059	Borje, M.	381664	7/10/01	11,080.00	DEB

[3] *Id.* at 44-50.

11	101-01-07-13313	Borje, M.	382465	7/25/01	6,560.00	DEB
12	101-01-07-13307	Borje, M.	382469	7/25/01	10,930.00	DEB
13	101-01-08-14639	Borje, M.	383426	8/14/01	3,750.00	DEB
14	101-01-08-15040	Borje, M.	383732	8/20/01	5,000.00	DEB
15	101-01-09-16371	Borje, M.	384492	9/4/01	7,060.00	DEB
16	101-01-11-22707	Valdez, C.	385615	12/3/01	24,450.00	GK & J
17	101-01-12-25096	Borje, M.	390386	12/21/01	8,160.00	DEB
18	102-01-02-01206	Borje, M.	1265854	2/26/01	24,556.00	DEB
19	102-01-02-12137	Borje, M[.]	1265847	2/28/01	22,050.00	DEB
20	102-01-01-00632	Borje, M.	1200464	2/15/01	23,120.00	DEB
21	102-01-01-00631	Borje, M.	1200468	2/15/01	21,900.00	DEB
22	102-01-02-12126	Borje, M.	1266081	3/12/01	24,640.00	DEB
23	102-01-02-12128	Borje, M.	1266083	3/12/01	19,800.00	DEB
24	102-01-02-12113	Borje, M.	1266086	3/12/01	13,800.00	DEB
25	102 01-02-121--	Borje, M.	1266093	3/12/01	24,900.00	DEB
26	102-01-03-01681	Borje, M.	1266218	3/20/01	20,450.00	DEB
27	102-01-03-02010	MARTINEZ,J.	1266301	3/23/01	10,900.00	DEB
28	102-01-03-02014	MARTINEZ,J.	1266304	3/23/01	16,580.00	DEB
29	102-01-07-05562	Borje, M.	1358964	7/17/01	9,100.00	DEB
30	102-01-08-08145	Borje, M.	1474242	9/10/01	18,190.00	DEB
31	102-01-09-08960	Borje, M.	1474974	9/26/01	22,400.00	DEB
32	102-01-09-08961	Borje, M.	1474991	9/26/01	19,600.00	DEB
33	102-01-09-09718	Borje, M.	1475050	9/28/01	1,500.00	DEB
34	102-01-09-09719	Borje, M.	1475058	9/28/01	6,540.00	DEB
35	102-01-10-10760	Borje, M.	1585982	10/23/01	5,680.00	DEB
36	102-01-11-11926	Valdez, C.	1586876	11/9/01	25,000.00	GK & J
37	102-01-11-12011	Valdez, C.	1587204	11/22/01	24,760.00	GK & J
38	102-01-11-12018	Valdez, C.	1587223	11/22/01	24,350.00	GK & J
39	102-01-12-13538	Valdez, C.	1587844	12/7/01	23,950.00	GK & J
40	102-01-12-13966	Valdez, C.	288164	12/20/01	24,400.00	GK & J
41	102-01-12-13969	Valdez, C.	288165	12/20/01	24,990.00	GK & J
42	102-01-12-14542	Valdez, C.	288307	12/21/01	24,500.00	GK & J
43	102-01-12----	Valdez, C.	288320	12/21/01	25,000.00	GK & J
44	102-01-12-13666	Borje, M.	288519	12/21/01	10,520.00	DEB
				TOTAL	768,561.00	

2) Nissan Pathfinder with Plate No. PND-918 purportedly underwent 27 emergency repairs and reimbursements for 21 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-11-21783	Umali, N	385035	11/22/01	24,340.00	J-Cap
2	101-01-11-21790	Umali, N.	385039	11/22/01	25,000.00	J-Cap
3	101-01-11-21786	Umali, N.	385064	11/22/01	24,850.00	J-Cap
4	101-01-12-25448	Umali, N.	390299	12/21/01	24,600.00	J-Cap
5	102-01-05-03626	Fernandez, D.	1267343	5/17/01	11,600.00	DEB
6	102-01-02-00742	MARTINEZ,J.	1267567	5/24/01	24,196.00	J-Cap
7	102-01-03-02308	MARTINEZ,J.	1267570	5/24/01	24,850.00	J-Cap
8	102-01-02-00741	MARTINEZ,J.	1267576	5/24/01	23,582.00	J-Cap
9	102-01-03-02301	MARTINEZ,J.	1267578	5/24/01	24,500.00	J-Cap
10	102-01-03-02293	MARTINEZ,J.	1267581	5/24/01	21,550.00	J-Cap
11	102-01-03-02306	MARTINEZ,J.	1267582	5/24/01	19,150.00	J-Cap
12	102-01-03-02294	MARTINEZ,J.	1267585	5/24/01	23,650.00	J-Cap
13	102-01-06-05416	MARTINEZ,J.	1358474	7/3/01	24,800.00	J-Cap
14	102-01-06-05411	MARTINEZ,J.	1358493	7/3/01	24,900,00	J-Cap
15	102-01-07-06395	MARTINEZ,J.	1359260	7/31/01	24,800.00	J-Cap
16	102-01-08-07648	MARTINEZ,J.	1360500	8/28/01	13,760.00	DEB
17	102-01-08-07651	MARTINEZ,J.	1473651	8/28/01	20,650.00	DEB
18	102-01-08-07650	MARTINEZ,J.	1473653	8/28/01	13,230.00	DEB
19	102-01-09-08291	MARTINEZ,J.	1473958	9/4/01	24,800.00	J-Cap
20	102-01-08-08089	MARTINEZ,J.	1473965	9/4/01	24,900.00	J-Cap
21	102-01-09-08671	MARTINEZ,J.	1474370	9/13/01	25,000.00	J-Cap
22	102-01-09-08680	MARTINEZ,J.	1474381	9/13/01	25,000.00	J-Cap
23	102-01-10-11322	MARTINEZ,J.	1586723	11/5/01	24,000.00	J-Cap
24	102-01-11-12122	MARTINEZ,J.	1587500	11/27/01	23,120.00	DEB
25	102-01-12-14437	MARTINEZ,J.	288358	12/21/01	24,800.00	J-Cap
26	101-01-12-25446	Umali, N.	340192	03/12/02	24,150.00	J-Cap
27	101-01-12-24449	Umali, N.	340218	03/12/02	24,700.00	J-Cap
				GRAND TOTAL	614,478.00	

3) Nissan Pick-Up with Plate No. PLH-256 purportedly underwent 30 emergency repairs and reimbursements for 20 of them were made in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-00-12-31221	P. Badere	1199738	01/12/01	1,640.00	DEB
2	102-01-01-00218	P. Badere	1200449	02/15/01	1,500.00	DEB
3	102-01-02-01198	P. Badere	1265963	03/07/01	22,240.00	DEB
4	102-01-03-01663	P. Badere	1266207	03/19/01	24,980.00	DEB
5	102-01-03-02011	P. Badere	1266302	03/23/01	24,215.00	DEB

6	102-00-11-354201	P. Badere	333203	04/19/01	1,350.00	DEB
7	102-01-05-03683	P. Badere	1267320	05/17/01	9,200.00	DEB
8	102-01-05-03901	M. Borje	1267548	05/24/01	3,960.00	DEB
9	102-01-03-02299	J. MARTINEZ	1267571	05/24/01	23,100.00	J-CAP
10	102-01-03-02290	J. MARTINEZ	1267583	05/24/01	21,450.00	J-CAP
11	102-01-07-06388	J. MARTINEZ	1359433	08/02/01	24,800.00	J-CAP
12	102-01-07-06547	J. MARTINEZ	1359440	08/02/01	22,450.00	J-CAP
13	102-01-09-08731	J. MARTINEZ	1474365	09/12/01	8,730.00	DEB
14	102-01-10-11169	M. Borje	1586453	10/29/01	14,650.00	DEB
15	102-01-10-11301	J. MARTINEZ	1586662	11/05/01	23,200.00	J-CAP
16	102-01-10-11305	J. MARTINEZ	1586728	11/05/01	24,800.00	J-CAP
17	102-01-11-12134	J. MARTINEZ	1587271	11/22/01	4,070.00	DEB
18	102-01-11-12101	P. Badere	1587272	11/22/01	16,190.00	DEB
19	102-01-11-12129	J. MARTINEZ	1587286	11/22/01	3,500.00	DEB
20	102-01-11-12124	J. MARTINEZ	1587332	11/22/01	2,400.00	DEB
21	102-01-11-13366	J. MARTINEZ	1588063	12/01/01	23,650.00	J-CAP
22	102-01-12-13690	J. MARTINEZ	288197	12/20/01	24,800.00	DEB
23	102-01-12-13687	J. MARTINEZ	288207	12/20/01	19,160.00	DEB
24	102-01-12-13686	J. MARTINEZ	288208	12/20/01	24,980.00	DEB
25	102-01-12-13689	J. MARTINEZ	288210	12/20/01	13,055.00	DEB
26	102-01-11-13376	J. MARTINEZ	288578	12/21/01	24,550.00	J-CAP
27	102-01-12-14781	J. MARTINEZ	288763	12/21/01	24,900.00	DEB
28	102-01-11-12829	J. MARTINEZ	1588348	12/21/01	24,990.00	DEB
29	102-01-11-12826	J. MARTINEZ	1588354	12/21/01	24,800.00	DEB
30	102-01-12-14887	J. MARTINEZ	333459	02/11/02	24,300.00	DEB
				TOTAL	507,610.00	

4) Nissan Pick-Up with Plate No. PMY-110 purportedly underwent 24 emergency repairs and reimbursements for 18 of them were made in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-09-16313	S. Florencio	384672	09/06/01	2,500.00	DEB
2	101-01-09-16314	S. Florencio	384680	09/06/01	13,760.00	DEB
3	101-01-11-22595	L. Velasquez	385366	11/27/01	24,580.00	RCF MOTOR
4	102-00-12-16212	S. Florencio	1199784	01/16/01	11,498.00	DEB
5	102-01-03-02292	J. MARTINEZ	1267574	05/24/01	22,540.00	J-CAP
6	102-01-03-02305	J. MARTINEZ	1267579	05/24/01	21,850.00	J-CAP
7	102-01-06-05419	J. MARTINEZ	1358473	07/03/01	23,140.00	J-CAP
8	102-01-06-05413	J. MARTINEZ	1358485	07/03/01	23,550.00	J-CAP
9	102-01-07-06389	J. MARTINEZ	1359556	08/07/01	24,800.00	J-CAP
10	102-01-08-07521	L. Velasquez	1359981	08/15/01	24,880.00	NEMAN

11	102-01-08-08157	L. Velasquez	1473752	08/30/01	24,500.00	NEMAN
12	102-01-09-08301	J.MARTINEZ	1473944	09/04/01	16,640.00	J-CAP
13	102-01-09-08293	J.MARTINEZ	1473950	09/04/01	23,550.00	J-CAP
14	102-01-09-08296	J.MARTINEZ	1473953	09/04/01	23,140.00	J-CAP
15	102-01-09-08672	J.MARTINEZ	1474388	09/13/01	15,200.00	J-CAP
16	102-01-09-08688	J.MARTINEZ	1474391	09/13/01	25,000.00	J-CAP
17	102-01-10-10112	L. Velasquez	1475424	10/04/01	24,860.00	RCF MOTOR
18	102-01-10-11304	J.MARTINEZ	1586713	11/05/01	23,670.00	J-CAP
19	102-01-10-11303	J.MARTINEZ	1586722	11/05/01	25,000.00	J-CAP
20	102-01-11-13375	J.MARTINEZ	1588074	12/11/01	22,150.00	J-CAP
21	102-01-11-13361	J.MARTINEZ	1588209	12/13/01	24,400.00	J-CAP
22	102-01-12-14436	J.MARTINEZ	288357	12/21/01	23,140.00	J-CAP
23	102-01-12-14438	J.MARTINEZ	288359	12/21/01	23,500.00	J-CAP
24	102-01-12-14426	J.MARTINEZ	288362	12/21/01	16,640.00	J-CAP
				TOTAL	504,538.00	

5) Toyota Land Cruiser (Jeep) with Plate No. CEJ-591 purportedly underwent 23 emergency repairs and reimbursements for all of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-03-01666	MARTINEZ J.	1266209	03/19/01	15,400.00	DEB
2	102-00-10-12400	MARTINEZ J.	333235	04/19/01	4,900.00	DEB
3	102-01-03-02295	MARTINEZ J.	1267573	05/24/01	23,600.00	J-CAP
4	102-01-03-02296	MARTINEZ J.	1267580	05/24/01	24,400.00	J-CAP
5	102-01-06-05421	MARTINEZ J.	1358484	07/03/01	24,550.00	J-CAP
6	102-01-06-05410	MARTINEZ J.	1358494	07/03/01	19,450.00	J-CAP
7	102-01-07-06383	MARTINEZ J.	1359435	08/02/01	22,500.00	J-CAP
8	102-01-09-08290	MARTINEZ J.	1473942	09/04/01	24,540.00	J-CAP
9	102-01-08-08090	MARTINEZ J.	1473959	09/04/01	19,450.00	J-CAP
10	102-01-09-08696	MARTINEZ J.	1474386	09/13/01	23,900.00	J-CAP
11	102-01-09-08689	MARTINEZ J.	1474390	09/13/01	24,700.00	J-CAP
12	102-01-09-09694	MARTINEZ J.	1475066	09/28/01	21,470.00	DEB
13	102-01-10-10234	MARTINEZ J.	1475490	10/08/01	24,000.00	DEB
14	102-01-10-11165	MARTINEZ J.	1586481	10/29/01	10,100,00	DEB
15	102-01-10-11319	MARTINEZ J.	1586719	11/05/01	24,900.00	J-CAP
16	102-01-10-11312	MARTINEZ J.	1586725	11/05/01	25,000.00	J-CAP
17	102-01-11-12131	MARTINEZ J.	1587276	11/22/01	5,180.00	DEB
18	102-01-11-12116	MARTINEZ J.	1587285	11/22/01	18,300.00	DEB
19	102-01-11-12121	MARTINEZ J.	1587457	11/27/01	20,520.00	DEB
20	102-01-11-12125	MARTINEZ J.	1587565	11/28/01	24,720.00	DEB

21	102-01-11-13367	MARTINEZ J.	1588061	12/11/01	22,550.00	J-CAP
22	102-01-11-13369	MARTINEZ J.	1588206	12/13/01	24,150.00	J-CAP
23	102-01-12-14431	MARTINEZ J.	288097	12/19/01	23,940.00	J-CAP
				TOTAL	472,220.00	

6) Toyota Land Cruiser with Plate No. TNY-416 purportedly underwent 22 emergency repairs and reimbursements for 18 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-07-12433	J.MARTINEZ	381850	07/13/01	11,290.00	DEB
2	102-00-12-15398	M. Borje	1199744	01/12/01	10,750.00	DEB
3	102-00-12-15401	M. Borje	1199747	01/12/01	13,990.00	DEB
4	102-01-01-00225	J.MARTINEZ	1200038	02/01/01	21,900.00	DEB
5	102-01-01-00230	J.MARTINEZ	1200039	02/01/01	24,350.00	DEB
6	102-01-01-00228	J.MARTINEZ	1200041	02/01/01	24,990.00	DEB
7	102-01-01-00226	J.MARTINEZ	1200043	02/01/01	24,660.00	DEB
8	102-01-01-00227	J.MARTINEZ	1200050	02/01/01	22,050.00	DEB
9	102-01-01-00231	J.MARTINEZ	1200055	02/01/01	24,556.00	DEB
10	102-01-01-00229	J.MARTINEZ	1200069	02/01/01	24,640.00	DEB
11	102-01-01-00642	J.MARTINEZ	1200447	02/15/01	24,900.00	DEB
12	102-01-01-00641	J.MARTINEZ	1200462	02/15/01	22,050.00	DEB
13	102-01-02-01208	M. Borje	1265851	02/28/01	14,700.00	DEB
14	102-01-02-01197	J.MARTINEZ	1265962	03/07/01	19,800.00	DEB
15	102-01-02-01207	M. Borje	1265971	03/07/01	19,000.00	DEB
16	102-01-03-01664	J.MARTINEZ	1266206	03/19/01	20,450.00	DEB
17	102-01-03-02017	J.MARTINEZ	1266300	03/23/01	8,750.00	DEB
18	102-01-03-02012	J.MARTINEZ	1266303	03/23/01	17,860.00	DEB
19	102-01-03-02016	J.MARTINEZ	1266306	03/23/01	15,220.00	DEB
20	102-01-10-10235	J.MARTINEZ	1475476	10/08/01	2,780.00	DEB
21	102-01-11-12119	J.MARTINEZ	1587267	11/22/01	21,550.00	DEB
22	102-01-10-09930	J.MARTINEZ	1587324	11/22/01	20,070.00	DEB
				TOTAL	410,306.00	

7) Toyota Land Cruiser with Plate No. CEJ-514 purportedly underwent 19 emergency repairs and reimbursements for 15 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.		CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-00-12-33114	M. Borje	338105	04/26/01	24,800.00	DEB

2	102-00-12-15418	J.MARTINEZ	1199745	01/12/01	9,400.00	DEB
3	102-00-12-15397	J.MARTINEZ	1199743	01/12/01	13,600.00	DEB
4	102-00-12-15396	J.MARTINEZ	1199732	11/12/01	13,600.00	DEB
5	102-01-02-01211	M. Borje	1265862	02/28/01	20,740.00	DEB
6	102-01-02-01203	M. Borje	1265900	03/02/01	19,070.00	DEB
7	102-01-04-01670	M. Borje	1266744	04/16/01	22,250.00	DEB
8	102-00-10-12399	J.MARTINEZ	333236	04/19/01	13,400.00	DEB
9	102-08-06-05409	J.MARTINEZ	1358475	07/03/01	24,250.00	J-CAP
10	102-01-06-05422	J.MARTINEZ	1358477	07/03/01	24,900.00	J-CAP
11	102-01-07-06382	J.MARTINEZ	1359557	08/07/01	24,800.[00]	J-CAP
12	102-01-09-08299	J.MARTINEZ	1473941	09/04/01	24,900.00	J-CAP
13	102-01-09-08298	J.MARTINEZ	1473955	09/04/01	24,250.00	J-CAP
14	102-01-09-08673	J.MARTINEZ	1474372	09/13/01	24,720.00	J-CAP
15	102-01-09-09255	J.MARTINEZ	1474773	09/24/01	25,000.00	J-CAP
16	102-01-10-09927	J.MARTINEZ	1587323	11/22/01	12,850.00	DEB
17	102-00-12-31216	J.MARTINEZ	1199746	12/10/01	22,980.00	DEB
18	102-01-12-14432	J.MARTINEZ	288098	12/19/01	24,900.00	DEB
19	102-01-12-14440	J.MARTINEZ	288360	12/21/01	24,250.00	DEB
				TOTAL	394,660.00	

8) Mitsubishi Pajero with Plate No. TKL-106 purportedly underwent 17 emergency repairs and reimbursements for 15 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-00-12-31218	Santos M.	1199739	01/12/01	3,960.00	DEB
2	102-00-12-15612	Santos M.	1199750	01/12/01	10,190.00	DEB
3	102-01-03-02015	MARTINEZ.J.	1266305	03/23/01	23,640.00	DEB
4	102-01-03-02302	MARTINEZ.J.	1267566	05/24/01	22,700.00	J-CAP
5	102-01-03-02304	MARTINEZ.J	1267575	05/24/01	22,840.00	J-CAP
6	102-01-06-05423	MARTINEZ.J.	1358478	07/03/01	25,000.00	J-CAP
7	102-01-06-05406	MARTINEZ.J.	1358492	07/03/01	22,440.00	J-CAP
8	102-01-07-06384	MARTINEZ.J.	1359261	07/31/01	24,600.00	J-CAP
9	102-01-09-08300	MARTINEZ.J.	1473943	09/04/01	25,000.00	J-CAP
10	102-01-08-08093	MARTINEZ.J.	1473964	09/24/01	22,640.00	J-CAP
11	102-01-09-08675	MARTINEZ.J.	1474387	09/13/01	25,000.00	J-CAP
12	102-01-09-08685	MARTINEZ.J.	1474389	09/13/01	25,000.00	J-CAP
13	102-01-10-11313	MARTINEZ.J.	1586721	11/05/01	24,990.00	J-CAP
14	102-01-10-11321	MARTINEZ.J.	1586724	11/05/01	24,140.00	J-CAP
15	102-01-11-13363	MARTINEZ.J.	1588059	12/11/01	24,700.00	J-CAP
16	102-01-11-13358	MARTINEZ.J.	1588073	12/11/01	24,350.00	J-CAP
17	102-01-12-14434	MARTINEZ.J.	288356	12/21/0[1]	24,900.00	J-CAP
				TOTAL	376,090.00	

9) Nissan Pick-Up with Plate No. PMB-631 / HI-4148 purportedly underwent 17 emergency repairs and reimbursements for 16 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-02-01199	Badere P.	1265856	02/28/01	8,350.00	DEB
2	102-01-03-02303	MARTINEZ.J.	1267565	05/24/01	24,750.00	J-CAP
3	102-01-03-02291	MARTINEZ.J.	1267568	05/24/01	21,900.00	J-CAP
4	102-01-02-00743	MARTINEZ.J	1267572	05/24/01	24,701.00	J-CAP
5	102-01-06-05408	MARTINEZ.J.	1358481	07/03/01	21,800.00	J-CAP
6	102-01-06-05417	MARTINEZ.J.	1358496	07/03/01	13,050.00	J-CAP
7	102-01-07-06364	MARTINEZ.J.	1359262	07/31/01	24,900.00	J-CAP
8	102-01-09-08297	MARTINEZ.J.	1473954	09/04/01	21,800.00	J-CAP
9	102-01-08-08094	MARTINEZ.J.	1473966	09/04/01	13,050.00	J-CAP
10	102-01-09-08773	MARTINEZ.J.	1474366	09/21/01	7,980.00	DEB
11	102-01-09-08674	MARTINEZ.J.	1475377	09/13/01	23,500.00	J-CAP
12	102-01-09-08669	MARTINEZ.J.	1474380	09/13/01	23,500.00	J-CAP
13	102-01-10-11315	MARTINEZ.J..	1586664	11/05/01	23,800.00	J-CAP
14	102-01-10-11311	MARTINEZ.J.	1586666	11/05/01	23,640.00	J-CAP
15	102-01-11-13371	MARTINEZ.J.	1588060	12/11/01	24,000.00	J-CAP
16	102-01-11-13359	MARTINEZ.J.	1588075	12/11/01	24,750.00	J-CAP
17	102-01-12-14427	MARTINEZ.J.	288111	12/19/01	21,800.00	J-CAP
					TOTAL 347,271 .00	

10) Mitsubishi L-200 with Plate No. SFG-496 purportedly underwent 19 emergency repairs and reimbursements for 10 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-07-12432	Jimenez R.	381999	07/16/01	4,800.00	DEB
2	102-00-12-15395	MARTINEZ.J.	1199734	1/12/01	3,600.00	DEB
3	102-00-05-03682	Jimenez R.	1267319	05/17/01	11.000.00	DEB
4	102-01-01-00221	Jimenez R.	1358245	06/27/01	3,900.00	DEB
5	102-01-01-00220	Jimenez R.	1358251	06/27/01	3,800.00	DEB
6	102-01-06-05401	MARTINEZ.J.	1358495	07/13/01	23,700.00	J-CAP
7	102-01-08-08092	MARTINEZ.J.	1473962	09/04/01	23,700.00	J-CAP
8	102-01-09-08732	Jimenez R.	1474358	09/12/01	2,658.00	DEB
9	102-01-09-08678	MARTINEZ.J.	1474373	09/13/01	24,900.00	J-CAP
10	102-01-09-08681	MARTINEZ.J.	1474382	09/13/01	24,200.00	J-CAP

11	102-01-10-11308	MARTINEZ.J.	1586720	11/05/01	24,290.00	J-CAP
12	102-01-10-11318	MARTINEZ.J.	1586726	11/05/01	17,970.00	J-CAP
13	102-01-11-12814	Jimenez R.	1587539	11/28/01	4,440.00	DEB
14	102-01-11-13379	MARTINEZ.J.	1588208	12/13/01	14,850.00	J-CAP
15	102-01-11-12827	MARTINEZ.J.	1588352	12/21/01	15,220.00	DEB
16	102-01-12-13683	Jimenez R.	288206	12/20/01	22,420.00	DEB
17	102-01-11-13364	MARTINEZ.J.	288572	12/21/01	20,670.00	J-CAP
18	102-01-12-14785	MARTINEZ.J.	288762	12/21/01	17,860.00	DEB
19	102-01-14888	Jimenez R.	333422	02/11/02	4,980.00	DEB
				TOTAL	268,958.00	

11) Mitsubishi L-200 with Plate No. SFC-309 purportedly underwent 15 emergency repairs and reimbursement for 1 of them is in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-06-10943	MARTINEZ.J.	380910	06/25/01	3,536.00	DEB
2	101-01-07-11697	Valdez C.	381495	07/06/01	15,220.00	DEB
3	101-01-08-14147	Borje M., Jr.	383032	08/07/01	18,750.00	DEB
4	101-01-09-17042	Borje M., Jr.	386245	09/18/01	5,000.00	DEB
5	101-01-10-19568	Valdez C.	387810	10/18/01	14,260.00	DEB
6	101-01-10-20056	Valdez C.	387872	10/19/01	17,860.00	DEB
7	102-01-03-01897	Valdez C.	1266161	03/16/01	20,130.00	GK & J
8	102-01-07-05571	Borje M., Jr.	1358970	07/17/01	15,460.00	DEB
9	102-01-08-08153	Borje M., Jr.	1474247	09/10/01	14,950.00	DEB
10	102-01-09-09703	Borje M., Jr.	1475061	09/28/01	9,980.00	DEB
11	102-01-10-10903	Planta D.	1476031	10/18/01	24,680.00	GK & J
12	102-01-10-10908	Planta D.	1476109	10/22/01	24,400.00	GK & J
13	102-01-10-11519	Valdez C.	1586497	10/29/01	24,600.00	GK & J
14	102-01-11-12013	Valdez C.	1587052	11/15/01	24,700.00	GK & J
15	102-01-11-11953	Valdez C.	1587795	12/06/01	25,000.00	GK & J
				TOTAL	258,526.00	

12) Nissan Pathfinder with Plate No. PND-908 / HI-4321 purportedly underwent 11 emergency repairs and all reimbursements were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-03-02300	MARTINEZ J.	1267569	05/24/01	21,650.00	J-CAP
2	102-01-03-02298	MARTINEZ J.	1267586	05/24/01	18,400.00	J-CAP
3	102-01-06-05414	MARTINEZ J.	1358476	07/03/01	23,400.00	J-CAP
4	102-01-07-06391	MARTINEZ J.	1359563	08/07/01	24,400.00	J-CAP
5	102-01-09-09261	MARTINEZ J.	1474765	09/24/01	24,900.00	J-CAP
6	102-01-09-09260	MARTINEZ J.	1474776	09/24/01	20,950.00	J-CAP
7	102-01-10-11316	MARTINEZ J.	1586665	11/05/01	21,150.00	J-CAP
8	102-01-10-11300	MARTINEZ J.	1586716	11/05/01	24,250.00	J-CAP
9	102-01-11-13365	MARTINEZ J.	1588064	12/11/01	24,900.00	J-CAP
10	102-01-11-13360	MARTINEZ J.	1588070	12/11/01	24,700.00	J-CAP
11	102-01-11-13357	MARTINEZ J.	1588207	12/13/01	24,200.00	J-CAP
					TOTAL 252,900.00	

13) Nissan Pick Up with Plate No. PME-676 purportedly underwent 17 emergency repairs and reimbursements for 7 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-09-16316	Fernandez D.	384501	09/04/01	22,530.00	DEB
2	101-01-09-16317	Fernandez D.	384504	09/04/01	19,410.00	DEB
3	101-01-09-16366	Fernandez D.	384514	09/04/01	20,340.00	DEB
4	102-00-09-11707	Quarto E.	333240	04/19/01	24,180.00	DEB
5	102-01-05-03622	Fernandez D.	1267342	05/17/01	4,800.00	DEB
6	102-01-03-01659	Fernandez D.	1358081	06/21/01	3,900.00	DEB
7	102-01-03-01661	Fernandez D.	1358248	06/27/01	4,910.00	DEB
8	102-01-03-01660	Fernandez D.	1358256	06/27/01	4,500.00	DEB
9	102-01-08-07645	MARTINEZ J.	1473655	08/28/01	23,900.00	DEB
10	102-01-09-08735	MARTINEZ J.	1474368	09/12/01	9,600.00	DEB
11	102-01-10-09936	MARTINEZ J.	1475801	10/12/01	20,200.00	DEB
12	102-01-10-09935	MARTINEZ J.	1475841	10/12/01	4,310.00	DEB
13	102-01-10-09937	MARTINEZ J.	1475797	10/12/01	22,680.00	DEB
14	102-01-11-12103	Fernandez D.	1587282	11/22/01	16,400.00	DEB
15	102-01-11-12114	MARTINEZ J.	1587289	11/22/01	5,110.00	DEB
16	102-01-11-12104	Fernandez D.	1587540	11/28/01	17,290.00	DEB
17	102-01-11-12123	MARTINEZ J.	1587564	11/28/01	17,480.00	DEB
					TOTAL 241,540.00	

14) Toyota Land Cruiser with Plate No. SFT-208 purportedly underwent 11 emergency repairs and reimbursements for all of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-06-05402	MARTINEZ J.	1358488	07/03/01	22,190.00	J-CAP
2	102-01-07-06385	MARTINEZ J.	1359564	08/07/01	22,600.00	J-CAP
3	102-01-08-08091	MARTINEZ J.	1473956	09/04/01	24,590.00	J-CAP
4	102-01-09-08684	MARTINEZ J.	1474375	09/13/01	15,780.00	J-CAP
5	102-01-09-08687	MARTINEZ J.	1474384	09/13/01	25,000.00	J-CAP
6	102-01-10-09933	MARTINEZ J.	1475799	10/12/01	20,850.00	DEB
7	102-01-10-09942	MARTINEZ J.	1475831	10/12/01	1,800.00	DEB
8	102-01-10-11314	MARTINEZ J.	1586718	11/23/01	14,790.00	J-CAP
9	102-01-10-11320	MARTINEZ J.	1586717	11/05/01	14,470.00	J-CAP
10	102-01-11-13368	MARTINEZ J.	1588062	12/11/01	24,500.00	J-CAP
11	102-01-11-13372	MARTINEZ J.	1588076	12/11/01	21,150.00	J-CAP
					TOTAL 207,720.00	

15) Toyota Land Cruiser with Plate No. SFT-308 / HI-4398 purportedly underwent 10 emergency repairs and reimbursements for all of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-06-05400	MARTINEZ J.	1358490	07/03/01	24,540.00	J-CAP
2	102-01-07-06363	MARTINEZ J.	1359264	07/31/01	16,700.00	J-CAP
3	102-01-09-09257	MARTINEZ J.	1474767	09/24/01	20,900.00	J-CAP
4	102-01-09-09259	MARTINEZ J.	1474777	09/24/01	24,700.00	J-CAP
5	102-01-10-11309	MARTINEZ J.	1586661	11/05/01	17,900.00	J-CAP
6	102-01-10-09929	MARTINEZ J.	1586615	11/05/01	2,770.00	DEB
7	102-01-10-11307	MARTINEZ J.	1586727	11/05/01	18,670.00	DEB
8	102-01-11-13381	MARTINEZ J.	1588201	12/13/01	20,770.00	J-CAP
9	102-01-11-13377	MARTINEZ J.	1588210	12/13/01	21,500.00	J-CAP
10	102-01-12-14439	MARTINEZ J.	288361	12/21/01	24,550.00	J-CAP
					TOTAL 193,000.00	

16) Mitsubishi L-200 with Plate No. SFG-417 purportedly underwent 12 emergency repairs and reimbursements for 8 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-08-15628	T. Bauzon	384132	08/28/01	3,200.00	DEB
2	101-01-08-16112	T. Bauzon	384357	08/31/01	2,550.00	DEB
3	102-01-05-03620	T. Bauzon	1267380	05/18/01	9,700.00	DEB
4	102-01-03-01667	T. Bauzon	1358250	06/27/01	24,970.00	DEB
5	102-01-06-05407	MARTINEZ J.	1358482	07/03/01	19,470.00	J-CAP
6	102-01-08-07485	MARTINEZ J.	1360025	08/16/01	22,150.00	J-CAP
7	102-01-08-07654	MARTINEZ J.	1360496	08/28/01	11,510.00	DEB
8	102-01-09-08306	MARTINEZ J.	1473948	09/04/01	19,470.00	J-CAP
9	102-01-09-08668	MARTINEZ J.	1471376	09/13/01	25,000.00	J-CAP
10	102-01-09-08683	MARTINEZ J.	1474383	09/13/01	24,720.00	J-CAP
11	102-01-10-09926	MARTINEZ J.	1586616	11/05/01	5,090.00	DEB
12	102-01-12-14428	MARTINEZ J.	288113	12/19/01	19,470.00	DEB
				TOTAL	187,300.00	

17) Mitsubishi L-200 with Plate No. SED-999 purportedly underwent 6 emergency repairs and reimbursements for all of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-11-12589	MARTINEZ J.	1587189	11/22/01	24,800.00	J-CAP
2	102-01-11-12590	MARTINEZ J.	1587191	11/22/01	24,750.00	J-CAP
3	102-01-11-13092	MARTINEZ J.	1588205	12/13/01	24,920.00	J-CAP
4	102-01-11-13374	MARTINEZ J.	288095	12/19/01	24,000.00	J-CAP
5	102-01-12-14044	MARTINEZ J.	288112	12/19/01	25,000.00	J-CAP
6	102-01-12-14043	MARTINEZ J.	288116	12/19/01	24,900.00	J-CAP
				TOTAL	148,370.00	

18) Mitsubishi L-200 with Plate No. SFG-361 / HI-4237 purportedly underwent 6 emergency repairs and reimbursements for all of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-11-12591	MARTINEZ J.	1587190	11/22/01	24,750.00	J-CAP
2	102-01-11-12491	MARTINEZ J.	1587192	11/22/01	24,800.00	J-CAP
3	102-01-12-14046	MARTINEZ J	288094	12/19/01	25,000.00	J-CAP

4	102-01-12-14045	MARTINEZ J.	288099	12/19/01	24,900.00	J-CAP
5	102-01-11-13373	MARTINEZ J.	288110	12/19/01	24,000.00	J-CAP
6	102-01-11-13093	MARTINEZ J.	288115	12/19/01	24,920.00	J-CAP
				TOTAL	148,370.00	

19) Mitsubishi L-200 with Plate No. SFG-346 purportedly underwent 20 emergency repairs and reimbursements for 15 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-09-16363	Fernandez D.	384500	09/04/01	6,400.00	DEB
2	102-01-01-00224	Fernandez D.	1200445	02/15/01	3,000.00	DEB
3	102-01-01-00223	Fernandez D.	1200469	02/15/01	1,900.00	DEB
4	102-01-03-01658	Fernandez D.	1358249	06/27/01	6,200.00	DEB
5	102-01-08-07646	MARTINEZ J.	1473654	08/28/01	14,300.00	DEB
6	102-01-08-07644	MARTINEZ J.	1360499	08/28/01	13,590.00	DEB
7	102-01-09-08734	MARTINEZ J.	1474364	09/12/01	7,030.00	DEB
8	102-01-10-10233	MARTINEZ J.	1475482	10/08/01	17,600.00	DEB
9	102-01-10-09928	MARTINEZ J.	1475795	10/12/01	2,180.00	DEB
10	102-01-10-09938	MARTINEZ J.	1475798	10/12/01	1,795.00	DEB
11	102-01-10-09939	MARTINEZ J.	1475840	04/19/01	2,200.00	DEB
12	102-01-10-09932	MARTINEZ J.	1475833	10/12/01	3,070.00	DEB
13	102-01-10-09934	MARTINEZ, J.	1475842	10/12/01	8,470.00	DEB
14	102-01-10-09943	MARTINEZ J.	1475854	12/12/01	2,470.00	DEB
15	102-01-10-09941	MARTINEZ J.	1475843	10/12/01	2,180.00	DEB
16	102-01-10-11167	Borje M. Jr.	1586473	10/29/01	19,200.00	DEB
17	102-01-10-12120	MARTINEZ J.	1587275	11/22/01	2,900.00	DEB
18	102-01-11-12133	MARTINEZ J.	1587284	11/22/01	3,100.00	DEB
19	102-01-11-12128	MARTINEZ J.	1587288	11/22/01	10,400.00	DEB
20	102-01-	MARTINEZ J.	288766	12/21/01	5,700.00	DEB
				TOTAL	133,685.00	

20) Toyota Land Cruiser with Plate No. SFT-304 purportedly underwent 5 emergency repairs and reimbursements for all of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	

1	102-01-06-05405	MARTINEZ J.	1358491	07/02/01	16,640.00	J-CAP
2	102-01-07-06387	MARTINEZ J.	1359422	08/02/01	23,200.00	J-CAP
3	102-01-09-08303	MARTINEZ J.	1473946	09/04/01	23,550.00	J-CAP
4	102-01-09-08304	MARTINEZ J.	1473947	09/04/01	24,550.00	J-CAP
5	102-01-12-14433	MARTINEZ J.	288092	12/19/01	23,550.00	J-CAP
					TOTAL 111,490.00	

21) Mitsubishi L-200 with Plate No. SFG-455/H1-4231 purportedly underwent 8 emergency repairs and reimbursements for 2 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-05-10279	Borje M., Jr.	360465	05/07/01	15,220.00	DEB
2	101-01-05-07902	Borje M., Jr.	360475	05/07/01	17,860.00	DEB
3	101-01-09-17910	Borje M., Jr.	387150	10/08/01	3,845.00	DEB
4	101-01-11-22977	Borje M., Jr.	385585	12/03/01	10,540.00	DEB
5	102-01-10-11183	Borje M., Jr.	1586475	10/29/01	18,300.00	DEB
6	102-01-11-12137	MARTINEZ J.	1587277	11/22/01	6,600.00	DEB
7	102-01-11-12117	MARTINEZ J.	1587292	11/22/01	11,200.00	DEB
8	102-01-12-25614	Borje M., Jr.	338738	03/12/02	5,365.00	DEB
					TOTAL 88,930.00	

22) Mitsubishi L-200 with Plate No. SFG-292 purportedly underwent 4 emergency repairs and reimbursements for all of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-06-05398	MARTINEZ J.	1358483	07/03/01	21,220.00	J-CAP
2	102-01-07-06392	MARTINEZ J.	13599272	07/31/01	20,400.00	J-CAP
3	102-01-09-08682	MARTINEZ J.	1474379	09/13/01	15,580.00	J-CAP
4	102-01-09-08677	MARTINEZ J.	1474385	09/13/01	24,800.00	J-CAP
					GRAND TOTAL 82,000.00	

23) Mitsubishi L-200 with Plate No. SFG-465 purportedly underwent 6 emergency repairs and reimbursements for one of them was in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-02-00313	de Vera T.	357469	02/13/01	9,800.00	DEB
2	102-00-12-15647	de Vera T.	333186	04/19/01	3,380.00	DEB
3	102-01-08-07510	Borje M.	1360110	08/16/01	15,900.00	J-CAP
4	102-01-10-10164	Planta D.	1475581	10/09/01	14,650.00	GK & J
5	102-01-10-09940	MARTINEZ J.	1475796	10/12/01	1,800.00	DEB
6	102-01-10-09940	de Vera T.	333407	02/11/02	25,000.00	DEB
				TOTAL	70,530.00	

24) Mitsubishi L-300 with Plate No. SFT-272 purportedly underwent 3 emergency repairs and reimbursements for all of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-12-13688	MARTINEZ J.	288209	12/20/01	24,900.00	DEB
2	102-01-11-12825	MARTINEZ J.	1588353	12/21/01	17,860.00	DEB
3	102-01-11-12824	MARTINEZ J.	1588350	12/21/01	15,220.00	DEB
				TOTAL	57,980.00	

25) Mitsubishi L-200 with Plate No. SFT-282 purportedly underwent 3 emergency repairs and reimbursements for all of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-12-13692	MARTINEZ J.	288211	12/20/01	24,900.00	DEB
2	102-01-11-12828	MARTINEZ J.	1588355	12/21/01	17,860.00	DEB
3	102-01-12-14862	MARTINEZ J.	333494	02/12/02	15,220.00	DEB
				TOTAL FUND	57,980.00	

26) Toyota Corolla with Plate No. TEG-822 purportedly underwent 2 emergency repairs and reimbursements for both were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-03-02297	MARTINEZ J.	1267577	05/24/01	21,810.00	JCAP
2	102-01-03-02307	MARTINEZ J.	1267584	05/24/01	21,250.00	JCAP
					TOTAL 43,060.00	

27) Mitsubishi L-200 with Plate No. SFG-527 purportedly underwent 5 emergency repairs and reimbursements for 4 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-09-16652	MARTINEZ J.	384632	09/06/01	7,170.00	DEB
2	102-01-05-03627	Borje M.	1267341	05/17/01	2,700.00	DEB
3	102-01-08-07643	MARTINEZ J.	1360495	08/28/01	13,440.00	DEB
4	102-01-11-12118	MARTINEZ J.	1587266	11/22/01	8,200.00	DEB
5	102-01-11-12132	MARTINEZ J.	1587294	11/22/01	9,300.00	DEB
					TOTAL 40,810.00	

28) Mitsubishi L-200 with Plate No. SFK-735 purportedly underwent 4 emergency repairs and reimbursements for 3 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-02-01204	Borje M.	1265858	02/28/01	5,880.00	DEB
2	102-00-11-3542	MARTINEZ J.	333201	04/19/01	1,900.00	DEB
3	102-00-11-35422	MARTINEZ J.	333204	04/19/01	23,000.00	DEB
4	100-01-05-03887	MARTINEZ J.	1267553	05/24/01	3,970.00	DEB
					TOTAL 34,750.00	

29) Mitsubishi L-200 with Plate No. SFT-715 purportedly underwent 2 emergency repairs and reimbursements for both of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-11-12821	MARTINEZ J.	1588358	12/21/01	17,800.00	DEB
2	102-01-11-12820	MARTINEZ J.	1588359	12/21/01	15,220.00	DEB
				TOTAL	33,020.00	

30) Mitsubishi L-200 with Plate No. SED-732 purportedly underwent 3 emergency repairs and reimbursements for one of them was in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-08-15023	Borje M.	383728	08/20/01	3,800.00	DEB
2	101-01-09-17571	Borje M.	386327	09/19/01	7,490.00	DEB
3	102-01-11-12822	MARTINEZ J.	1588357	12/21/01	15,220.00	DEB
				TOTAL	26,510.00	

31) Nissan Pick-Up with Plate No. PME-687 purportedly underwent 3 emergency repairs and reimbursements for 2 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-09-16655	MARTINEZ J.	384636	09/26/01	3,980.00	DEB
2	102-00-11-35411	Fernandez D.	333234	04/19/01	3,820.00	DEB
3	102-01-08-07653	MARTINEZ J.	1360497	08/28/01	15,220.00	DEB
				TOTAL	23,020.00	

32) Mitsubishi L-200 with Plate No. SFT-732 purportedly underwent 1 emergency repair and reimbursement was in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-12-14784	MARTINEZ J.	288761	12/21/01	17,860.00	DEB

33) Mitsubishi L-200 with Plate No. SFG-485 purportedly underwent 3 emergency repairs and reimbursements for 2 of them were in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-09-08765	Borje M.Jr.	1474430	09/13/01	6,300.00	DEB
2	102-01-11-12136	MARTINEZ J.	1587268	11/22/01	1,600.00	DEB
3	102-01-11-12135	MARTINEZ J.	1587270	11/22/01	9,870.00	DEB
				TOTAL	17,770.00	

34) Mitsubishi L-200 with Plate No. SFG-407 purportedly underwent 1 emergency repair and reimbursement was in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-11-12115	MARTINEZ J.	1587290	11/22/01	17,400.00	DEB

35) Toyota Prado with Plate No. SFG-402 purportedly underwent 1 emergency repair and reimbursement was in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-03-02018	MARTINEZ J.	1266307	03/23/01	4,900.00	DEB

36) Mitsubishi L-200 with Plate No. SFD-732 purportedly underwent 1 emergency repair and reimbursement was in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-05-03886	MARTINEZ J.	1267559	05/24/01	4,200.00	DEB

37) Mitsubishi L-200 with Plate No. SFG-369 purportedly underwent 1 emergency repair and reimbursement was in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-05-04005	MARTINEZ J.	1267739	06/01/01	4,188.00	DEB

38) Toyota Land Cruiser with Plate No. SFD-302 purportedly underwent 1 emergency repair and reimbursement was in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	102-01-11-12831	MARTINEZ J.	1588333	12/20/01	3,480.00	DEB

39) Toyota Prado with Plate No. SFT-207 purportedly underwent 1 emergency repair and reimbursement was in the name of accused Martinez, to wit:

	DISBURSEMENT VOUCHER NO.	PAYEE	CHECK			SUPPLIER
			NO.	DATE	AMOUNT	
1	101-01-09-16656	MARTINEZ J.	384637	09/06/01	3,400.00	DEB

Of the 39 vehicles aforementioned, only the Mitsubishi L-200 with Plate No. SFG-361/H1-4237 was assigned to accused Martinez. The others were assigned to other agencies or officials of the DPWH.

To support the issuance of the Disbursement Vouchers (DVs) and checks for the reimbursements of the amounts claimed and paid by the DPWH, the following documents were submitted: Job Orders; Pre-Repair Inspection Reports; Requisitions for Supplies and Equipment (RSEs); Accreditation Papers; Sales Invoices or Official Receipt; Certificates of Acceptance; Post-

> Repair Inspection Reports; Reports of Waste Materials; Requests for Obligation of Allotment (ROAs); Certificates of Emergency Purchase; Certificates of Fair Wear and Tear; Canvas from 3 suppliers and Price Monitoring Sheets.[4] (Citations omitted.)

On May 16, 2005,[5] petitioner, together with his co-accused, was arraigned in Criminal Case No. 28100 in an Information that reads, as follows:

> That during the period from March to December, 2001, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named high-ranking public officials and employees of the Department of Public Works and Highways (DPWH), Port Area, Manila, namely: JULIO T. MARTINEZ, then the Clerk/Supply Officer, BURT FAVORITO *y* BARBA, Director III, Administrative and Manpower Management Services (SG 27), FLORENDO ARIAS *y* BUÑAG, Assistant Director, Bureau of [Equipment (SG 27), VIOLETA AMAR y CASTILLO, NAPOLEON ANAS *y* SEBASTIAN, ROGELIO BERAY *y* LAGANGA, MAXIMO BORJE *y* AQUINO, ROLANDO CASTILLO *y* COMIA, JESSICA CATIBAYAN *y* JARDIEL, MA. LUISA CRUZ *y* TALAO, RICARDO JUAN, JR. *y* MACLANG, AGERICO PALAYPAY *y* CORTES, ERDITO QUARTO *y* QUIAOT, FELIPE A. SAN JOSE, RONALDO G. SIMBAHAN, VIOLETA TADEO *y* RAGASA, NORMA VILLARMINO *y* AGCAOILI and JOHN DOES, whose true names are not yet known, acting with unfaithfulness and abuse of confidence, committing the offense in relation to their office, and taking advantage of their official positions, and private individuals, namely: JESUS D. CAPUZ and CONCHITA M. DELA CRUZ and JOHN DOES, whose true names are not yet known, conspiring, confederating and mutually helping one another, with intent to defraud the government, did then and there, willfully[,] unlawfully and feloniously forge and falsify or cause to be forged and falsified documents, purportedly for emergency repairs of various DPWH vehicles and/or purchase of spare parts, with a total amount of SIX MILLION THREE HUNDRED SIXTY-EIGHT THOUSAND THREE HUNDRED SIXTY-FOUR PESOS (₱6,368,364.00), and thereafter, cause the payment of said fictitious repairs and/or purchase of spare parts in the said total amount from funds held in trust and

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[4] *Id.* at 96-109.

[5] *Id.* at 77.

for administration by the said public officers, and which payments were made by the government on the basis of and relying on said forged and falsified documents, when in truth and in fact, the accused knew fully well that there were no emergency repairs of DPWH vehicles and/or purchases of spare parts, which said amount, accused, thereafter, willfully, unlawfully and criminally take, convert and misappropriate, to the personal use and benefit of person(s) not entitled to receive said funds, to the damage and prejudice of the government and the public interest in the aforesaid sum.

CONTRARY TO LAW.[6]

While in Criminal Case No. 28253, petitioner was arraigned on July 20, 2005,[7] under an Information that states the following:

That during the period from March to December, 2001, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named high-ranking public officials and employees of the Department of Public Works and Highways (DPWH), Port Area, Manila, namely: JULIO T. MARTINEZ, then the Clerk/Supply Officer, BURT FAVORITO y BARBA, Director III, Administrative and Manpower Management Services (SG 27), FLORENDO ARIAS *y* BUÑAG, Assistant Director, Bureau of [E]quipment (SG 27), VIOLETA AMAR *y* CASTILLO, NAPOLEON ANAS *y* SEBASTIAN, ROGELIO BERAY *y* LAGANGA, MAXIMO BORJE *y* AQUINO, ROLANDO CASTILLO *y* COMIA, JESSICA CATIBAYAN *y* JARDIEL, MA. LUISA CRUZ *y* TALAO, RICARDO JUAN, JR. *y* MACLANG, AGERICO PALAYPAY *y* CORTES, ERDITO QUARTO *y* QUIAOT, FELIPE A. SAN JOSE, RONALDO G. SIMBAHAN, VIOLETA TADEO *y* RAGASA, NORMA VILLARMINO *y* AGCAOILI, and JOHN DOES, whose true names are not yet known, committing the offense in relation to their office, and taking advantage of their official positions, and private individuals, namely: JESUS D. CAPUZ and CONCHITA M. DELA CRUZ and JOHN DOES, whose true names are not yet known, conspiring, confederating and mutually helping one another, acting with evident bad faith, manifest partiality or at the very least gross inexcusable negligence, did then and there, willfully, unlawfully and feloniously forge and falsify or cause to

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[6] *Id.* at 75.

[7] *Id.* at 77.

be forged and falsified documents purportedly for emergency repairs of various DPWH vehicles and/or purchase of spare parts, with a total amount of SIX MILLION THREE HUNDRED SIXTY EIGHT THOUSAND THREE HUNDRED SIXTY FOUR PESOS (₱6,368,364.00), and which payments were made by the government on the basis of and relying on said forged and falsified documents, when in truth and in fact, as the accused fully well knew, that there were no emergency repairs of DPWH vehicles and/or purchases of spare parts, and these are ghost repairs in the total amount of SIX MILLION THREE HUNDRED SIXTY EIGHT THOUSAND THREE HUNDRED SIXTY FOUR PESOS (₱6,368,364.00), thereby causing undue injury to the government in the aforesaid sum.

CONTRARY TO LAW.[8]

The Sandiganbayan, on November 10, 2016, promulgated its Decision,[9] the dispositive portion of which reads, as follows:

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

1) In Criminal Case No. 28100, the Court finds accused Florendo Arias *y* Bunag, Maximo Borje *y* Aquino, Rolando Castillo *y* Comia, Burt Favorito *y* Barba, Erdito Quarto *y* Quiaot, Felipe A. San Jose and Conchita M. dela Cruz guilty beyond reasonable doubt of **Estafa Through Falsification Of Documents**, defined and penalized under **Article 315, in relation to Article 171 and Article 48, of the Revised Penal Code**, as charged in the **Information** dated March 1, 2005. Pursuant to the **Indeterminate Sentence Law**, all said accused are hereby sentenced to suffer imprisonment of ten (10) years and one (1) day of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, with perpetual absolute disqualification for public office. The aforementioned accused are also hereby declared solidarity liable to pay the Department of Public Works and Highways civil indemnity in the sum of ₱5,166,539.00.

For insufficiency of evidence, the following accused are hereby acquitted: Napoleon Anas *y* Sebastian, Rogelio Beray *y* Laganga, Jessica Catibayan *y* Jardial, Maria Luisa Cruz *y* Talao, Ricardo Juan,

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[8] *Id.* at 76.

[9] *Supra* note 2.

Jr. *y* Maclang, Ronaldo G. Simbahan, Violeta Tadeo *y* Tagasa and Norma Villarmino *y* Agcaoili.

By reason of their death, the case is dismissed as against accused Julio T. Martinez, Violeta Amar *y* Castillo, Agerico Palaypay *y* Cortez and Jesus N. Capuz by reason of their death.

-and-

2) In Criminal Case No. 28253, the Court finds accused Florendo Arias y Bunag, Maximo Borje *y* Aquino, Rolando Castillo *y* Comia, Burt Favorito *y* Barba, Erdito Quarto *y* Quiaot, Felipe A. San Jose and Conchita dela Cruz guilty beyond reasonable doubt of **Violation of Section 3(e) of Republic Act No. 3019, as amended**, as charged in the **Information** dated June 8, 2005. All said accused are hereby sentenced to suffer imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum. They shall also suffer perpetual disqualification from public office.

For insufficiency of evidence, the following accused are hereby acquitted: Napoleon Anas *y* Sebastian, Rogelio Boray *y* Laganga, Jessica Catibayan *y* Jardiel, Maria Luisa Cruz *y* Talao, Ricardo Juan, Jr. *y* Maclang, Ronaldo G. Simbahan, Violeta Tadeo *y* Ragasa and Norma Villarmino *y* Agcaoili.

By reason of their death, the case is dismissed as against Julio T. Martinez, Violeta Amar *y* Castillo, Agerico Palaypay *y* Cortez and Jesus N. Capuz.

SO ORDERED.[10] (Emphases in the original.)

On November 24, 2016, petitioner filed a Motion for Reconsideration,[11] contending, among others, that the testimonies of the prosecution witnesses were self-serving. He argued that the findings of fact made by the Sandiganbayan were not proven during the trial and that its ruling was based mainly on conjectures and surmises. Petitioner maintained that in signing documents, he performed only ministerial functions and that he relied on the tasks performed by his subordinates which were done in a regular manner.

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[10] *Id.* at 131-132.

[11] *Rollo*, pp. 51-65.

In its Resolution[12] dated January 15, 2018, the Sandiganbayan denied the motions for reconsideration filed by some of the accused, including that of the petitioner. The court stood by its earlier findings that the prosecution was able to prove beyond reasonable doubt the guilt of the petitioner and his other co-accused. The dispositive portion of the said Resolution reads as follows:

> WHEREFORE, premises considered, the Court resolves to deny the following:
>
> 1) Motion for Reconsideration dated November 22, 2016, filed by accused Maximo A. Borje, Jr., through counsel;
>
> 2) Motion for Reconsideration dated November 24, 2016, filed by accused Florendo B. Aries (sic), through counsel;
>
> 3) Motion for Reconsideration (Of The Decision Dated November 10, 2016) dated November 24, 2016, filed by accused Conchita M. dela Cruz, through counsel;
>
> and
>
> 4) Motion for Reconsideration dated November 18, 2016, filed by accused Burt B. Favorito, through counsel.[13]

Hence, the present petition.

Petitioner raised the following issues for our consideration:

I

WITH ALL DUE RESPECT, THE HONORABLE SANDIGANBAYAN, FOURTH DIVISION, HAS COMMITTED A REVERSIBLE ERROR WHEN IT FOUND PETITIONER-APPELLANT FLORENDO B. ARIAS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF ESTAFA AND VIOLATION OF SECTION 3(E) OF R.A. 3019, CONTRARY TO THE FACTUAL CIRCUMSTANCES OF THE CASE.

II

WITH ALL DUE RESPECT, THE HONORABLE SANDIGANBAYAN, FOURTH DIVISION, COMMITTED A

[12] *Supra* note 3.

[13] *Id.* at 49.

REVERSIBLE ERROR WHEN IT GAVE DUE COURSE TO THE PROSECUTION'S EXHIBITS DESPITE FAILURE TO PRESENT THE ORIGINAL DOCUMENTS ALLEGED TO HAVE BEEN FALSIFIED.[14]

The petition lacks merit.

All the elements of the crime of Estafa through Falsification of Official/Commercial Documents were established by the prosecution beyond reasonable doubt.

Article 315, paragraph 2 (a) of the Revised Penal Code (*RPC*) reads, as follows:

Article 315. Swindling (Estafa). – Any person who shall defraud another by any of the means mentioned hereinbelow x x x:

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

x x x x x x x x x

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

The elements of the above crime are the following:

1. That there must be a false pretense, fraudulent act or fraudulent means;

2. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud;

3. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and

4. That as a result thereof, the offended party suffered damage.

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[14] *Rollo*, p. 23.

Article 171, paragraph 4 of the RPC provides that:

> Article 171. x x x. — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:
>
> x x x x x x x x x
>
> 4. Making untruthful statements in a narration of facts[.]

In this case, certain funding requirements were set forth by the Department of Public Works and Highways (*DPWH*) for the payment of claims for emergency repairs of DPWH service vehicles, thus:

> D. FUNDING REQUIREMENTS
>
> 1. Documentation – No claim for payment for the emergency minor/major repair of service vehicles of this Department shall be processed by the Accounting Division, CFMS without strictly following provisions of COA Circular No. 92-389 dated November 03, 1992. The following documentary requirements shall be complied with prior to funding and/or processing of payment, to wit:
>
> 1.1 Request for Obligation of Allotment (ROA) for said claim which shall be signed by the concerned Undersecretary, Assistant Secretary, Bureau Directors, Project Director/Manager, Service Chief, or the duly designated representative of the office of the end-user;
>
> 1.2 Certification of Emergency Purchase/Repair which shall be signed by the end-user, duly approved by the Head of Office concerned (with the rank higher than Division Chief)[;]
>
> 1.3 Abstract of Open Canvass and corresponding written quotations for the purchase of spare parts and repair of vehicles duly signed by the Supply Officer, Canvasser, and supplier concerned[;]
>
> 1.4 The Requisition for Supplies or Equipment (RSE) which shall be prepared and signed by the end-user, recommended for approval and duly approved by the official concerned, in accordance with the existing delegation of authorities;
>
> 1.5 The Motor Vehicle Pre-repair/Post-repair Inspection Report which shall indicate the Control Series No. and the date of inspection, duly signed by all the members of the Special Inspectorate Team (SIT);

1.6 The Certificate of Acceptance which shall be signed by the end-user of said vehicle. All documents, under accounting and auditing rules and regulations, shall be signed by the official and/or supplier concerned over their respective printed names.[15]

Based on the evidence presented by the prosecution, it was proven that except for the Cash Invoices issued by the suppliers, the documents required under the DPWH Memorandum,[16] dated July 31, 1997, were prepared, accomplished and signed by all the public officials concerned, taking advantage of their official positions in making untruthful statements in the narration of facts. The said documents were made to appear that the 39 service vehicles underwent emergency repairs or required purchase of spare parts. In addition, in order to claim payment from DPWH, the Disbursement Vouchers were also falsified to justify the release of checks.

Thus, as aptly ruled by the Sandiganbayan, all the elements of the crime of Estafa through Falsification of Official/ Commercial Documents are present because the petitioner and his co-accused utilized false pretense, fraudulent act or fraudulent means to make it appear that the DPWH service vehicles underwent emergency repairs or required the purchase of spare parts, and that reimbursements are due to petitioner by using falsified documents. Through those falsified documents, petitioner and his co-accused employed fraudulent means in order to defraud the government in paying the claims for the fictitious emergency repairs/purchases of spare parts. Therefore, the government suffered undue injury or damages in the amount of ₱5,166,539.00 through such fraudulent act.

As held by the Sandiganbayan:

The Court finds, and so holds, that all the aforementioned documents submitted were falsified. Except for the Cash Invoices issued by the suppliers, the documents were prepared, accomplished and/or executed and signed by public officers/employees taking advantage of their

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[15] *Id.* at 71.

[16] *Id.* at 67-72.

official positions in making untruthful statements in the narration of facts. Through these documents, it was made to appear, albeit untrue, that the 39 vehicles subject of reimbursements claimed and paid to accused Martinez in the total sum of ₱5,166,539.00 underwent emergency repairs that required purchases of spare parts. The Disbursement Vouchers were also falsified to justify the release of checks for payment of the reimbursements claimed. The Cash Invoices issued by the suppliers were also falsified because they pertain to fictitious or non-existent purchases of spare parts. As earlier stated, these falsified documents were all utilized in sinister schemes to steal government funds.

The evidence on record shows that the falsified documents were accomplished and signed or initialed by the accused, as follows:

x x x x x x x x x

The aforementioned falsified documents, as well as the Cash Invoices issued by suppliers DEB and JCAP, were all utilized to defraud the government in a manner constituting Estafa under Article 315, paragraph 2(a) of the RPC. All the elements thereof were present, to wit:

> First. There were false pretenses, fraudulent acts or fraudulent means in that it was made to appear, through the use of the falsified documents, that the DPWH service vehicles in question underwent emergency repairs that required purchases of spare parts, and that reimbursements were due to accused Martinez;
>
> Second. The false pretenses, fraudulent acts or fraudulent means, in the form of falsification of documents, were employed prior to the commission of the fraud; that is to deceive the government in paying the claims for the fictitious emergency repairs/purchases of spare parts;
>
> Third. The government was induced to pay the claims relying on the false pretenses, fraudulent acts or fraudulent means employed;
>
> - and-
>
> Fourth. The government suffered damages in the total amount of ₱5,166,539.00, the sum total of the false claims paid.

The crime committed was the complex crime of Estafa Through Falsification of Documents, as charged in the Information dated March 1, 2005.

When the offender commits on a public, official or commercial document any of the acts of falsification enumerated in Article 171 of the RPC as a necessary means to commit another crime like Estafa under Article 315 of the RPC, the two crimes form a complex crime under Article 48 of the same law. A complex crime, as earlier defined, may refer to a single act which constitutes two or more grave or less grave felonies or to an offense as a necessary means for committing another.

In a complex crime of Estafa Through Falsification of Public, Official or Commercial Document, the falsified document is actually utilized to defraud another. The falsification is already consummated and it is the defraudation which causes damage or prejudice to another that constitutes estafa.

x x x x x x x x x

After a careful and meticulous scrutiny of the records, the Court finds, and so holds, that the prosecution evidence proved beyond reasonable doubt that the following accused are guilty of the offense charged, namely: Arias, Borja, Castillo, Favorito, Quarto, San Jose and Dela Cruz. These accused conspired with one another, and with accused Martinez whose criminal liability has been extinguished by death.

Accused Arias, an OIC Asst. Director of the Bureau of Equipment, affixed his signature approving and/or recommending approval of the falsified Disbursement Vouchers, Reports of Waste Materials, Requisitions for Supplies and/or Equipment (RSE) and Certificates of Emergency Purchase.[17]

In *Tanenggee v. People*,[18] this Court discussed the complex crime of estafa through falsification of public documents, thus:

When the offender commits on a public, official or commercial document any of the acts of falsification enumerated in Article 171 as a necessary means to commit another crime like estafa, theft or

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[17] *Id.* at 123-126.

[18] 712 Phil. 310 (2013).

malversation, the two crimes form a complex crime. Under Article 48 of the RPC, there are two classes of a complex crime. A complex crime may refer to a single act which constitutes two or more grave or less grave felonies or to an offense as a necessary means for committing another.[19]

In *Domingo v. People*,[20] we held:

> The falsification of a public, official, or commercial document may be a means of committing estafa, because before the falsified document is actually utilized to defraud another, the crime of falsification has already been consummated, damage or intent to cause damage not being an element of the crime of falsification of public, official, or commercial document. In other words, the crime of falsification has already existed. Actually utilizing that falsified public, official, or commercial document to defraud another is estafa. But the damage is caused by the commission of estafa, not by the falsification of the document. Therefore, the falsification of the public, official, or commercial document is only a necessary means to commit estafa.
>
> In general, the elements of estafa are: (1) that the accused defrauded another (a) by abuse of confidence or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed; and which deceives or is intended to deceive another so that he shall act upon it, to his legal injury.[21] (Citation omitted.)

It must be emphasized that the falsified documents (Disbursement Vouchers, Reports of Waste Materials, Requisition for Supplies and/or Equipment and Certificates of Emergency Purchase) involved in this case are official or public documents. Public documents are: (a) the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines or of a foreign country; (b) documents acknowledged

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[19] *Id.* at 334.

[20] 618 Phil. 499 (2009).

[21] *Id.* at 517-518.

before a notary public except last wills and testaments; and (c) public records, kept in the Philippines, of private documents required by law to be entered therein.[22] A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court.[23] In considering whether the accused is liable for the complex crime of estafa through falsification of public documents, it would be wrong to consider the component crimes separately from each other.[24] While there may be two component crimes (estafa and falsification of public documents), both felonies are animated by and result from one and the same criminal intent for which there is only one criminal liability.[25] That is the concept of a complex crime.[26] In other words, while there are two crimes, they are treated only as one, subject to a single criminal liability.[27] While a conviction for estafa through falsification of public documents requires that the elements of both estafa and falsification exist, it does not mean that the criminal liability for estafa may be determined and considered independently of that for falsification.[28] The two crimes of estafa and falsification of public documents are not separate crimes but component crimes of the single complex crime of estafa and falsification of public documents.[29] In this case, the prosecution was able to prove the elements of the crime.

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[22] Rules of Court, Rule 132, Section 19.

[23] *Patula v. People*, 685 Phil. 376, 397 (2012).

[24] *Intestate Estate of Manolita Gonzales Vda. De Carungcong v. People, et al.*, 626 Phil. 177, 206 (2010).

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* at 208.

[29] *Id.*

Petitioner further seeks a review of the testimonies of the prosecution witnesses for allegedly being "self-serving" and "perjured."

Findings of the trial court on the credibility of witnesses and their testimonies are generally accorded great respect by an appellate court. Well-settled is the rule that findings of facts and assessment of credibility of witnesses are matters best left to the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. For this reason, the trial court's findings are accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case.[30]

At any rate, the records of this case show no reversible error to warrant a reversal of the assailed decision. It appears that petitioner did not impugn his signatures appearing in the Disbursement Vouchers, Reports of Waste Materials, Requisitions for Supplies and/or Equipment and Certificates of Emergency Purchase. Furthermore, the repeated issuance and execution of these documents belies petitioner's claim that his participation was not necessary and that his function in signing documents is merely ministerial; on the contrary, these documents were necessary for the claims for payment of emergency repairs of DPWH service vehicles and/or purchases of spare parts which were found to be fictitious. Thus, petitioner's signatures on these documents were a clear manifestation of his assent and participation or complicity to the illegal transactions, and his assertion of lack of participation is without merit.

With regard to petitioner's contention as to the Best Evidence Rule, or, more specifically, to the Sandiganbayan's admission on the prosecution's exhibits despite the non-presentation of the original documents, such is misplaced. Instructive on this

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[30] *People v. Suarez*, 496 Phil. 231, 242-243 (2005).

point is the case of *Citibank, N.A. v. Sabeniano*,[31] wherein this Court stated that:

As the afore-quoted provision states, the best evidence rule applies only when the subject of the inquiry is the contents of the document. The scope of the rule is more extensively explained thus —

> But even with respect to documentary evidence, the best evidence rule applies only when the content of such document is the subject of the inquiry. Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible. Any other substitutionary evidence is likewise admissible without need for accounting for the original.
>
> Thus, when a document is presented to prove its existence or condition it is offered not as documentary, but as real, evidence. Parol evidence of the fact of execution of the documents is allowed.
>
> In *Estrada v. Desierto*, this Court had occasion to rule that –
>
> It is true that the Court relied not upon the original but only [a] copy of the Angara Diary as published in the Philippine Daily Inquirer on February 4-6, 2001. In doing so, the Court, did not, however, violate the best evidence rule. Wigmore, in his book on evidence, states that:
>
> "Production of the original may be dispensed with, in the trial court's discretion, whenever in the case in hand the opponent does not bona fide dispute the contents of the document and no other useful purpose will be served by requiring production
>
> "x x x x x x x x x
>
> "In several Canadian provinces, the principle of unavailability has been abandoned, for certain documents in which ordinarily no real dispute arised. This measure is a sensible and progressive one and deserves universal adoption. Its essential feature is that a copy may be used unconditionally, if the opponent has been given an opportunity to inspect it." x x x

[31] 535 Phil. 384 (2006).

This Court did not violate the best evidence rule when it considered and weighed in evidence the photocopies and microfilm copies of the PNs, MCs, and letters submitted by the petitioners to establish the existence of respondent's loans. The terms or contents of these documents were never the point of contention in the Petition at bar. It was respondent's position that the PNs in the first set (with the exception of PN No. 34534) never existed, while the PNs in the second set (again, excluding PN No. 34534) were merely executed to cover simulated loan transactions. As for the MCs representing the proceeds of the loans, the respondent either denied receipt of certain MCs or admitted receipt of the other MCs but for another purpose. Respondent further admitted the letters she wrote personally or through her representatives to Mr. Tan of petitioner Citibank acknowledging the loans, except that she claimed that these letters were just meant to keep up the ruse of the simulated loans. Thus, respondent questioned the documents as to their existence or execution, or when the former is admitted, as to the purpose for which the documents were executed, matters which are, undoubtedly, external to the documents, and which had nothing to do with the contents thereof.[32] (Citations omitted.)

Here, petitioner's objection to the prosecution's documentary evidence, as stated in his Comment/Objections to Formal Offer of Exhibits,[33] essentially relates to the materiality, relevance or purpose for which the documents were offered which had nothing to do with the contents thereof.

As to petitioner's guilt for violation of Section 3(e) of R.A. No. 3019, such has been established beyond reasonable doubt.

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

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,

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[32] *Id.* at 457-458.

[33] *Rollo*, pp. 219-254.

advantage or preference in the discharge of his official[,] administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

The elements of the above violation are:

(1) the offender is a public officer;

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

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

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[34]

All the above elements are present in this case. The petitioner is a public officer, being then the Assistant Director of the Bureau of Equipment of DPWH, discharging administrative and official functions. Petitioner and his co-accused acted with evident bad faith by falsifying official documents to defraud the DPWH into paying the claims for fictitious emergency repairs or purchase of spare parts under the name of Julio Martinez. The act of petitioner caused undue injury or damage to the government in the total amount of ₱5,166,539.00.

Petitioner acted with evident bad faith when he affixed his signature to the falsified documents in order to induce the government to pay the claim for fictitious emergency repairs and purchases of spare parts of certain vehicles. 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.[35]

In view, however, of R.A. No. 10951 (An Act Adjusting the Amount or the Value of Property and Damage on which a Penalty is Based, and the Fines Imposed under the Revised Penal Code,

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[34] *Sison v. People*, 628 Phil. 573, 583 (2010).

[35] *Fonacier v. Sandiganbayan*, 308 Phil. 661, 693 (1994).

amending for the Purpose Act No. 3815, otherwise known as "The Revised Penal Code"), a modification must be made as to the penalty imposed by the Sandiganbayan. Section 85 of the said law provides the following:

SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

"ART. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

"**1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000), and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (₱2,000,000); but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal* as the case may be.**

x x x x x x x x x

"4th. The penalty of *prision mayor* in its medium period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

"5th. By *prision mayor* in its minimum period, if such amount does not exceed Forty thousand pesos (₱40,000).

"3. Through any of the following fraudulent means:

"(a) By inducing another, by means of deceit, to sign any document.

"(b) By resorting to some fraudulent practice to insure success in a gambling game.

"(c) By removing, concealing or destroying, in whole or in part, any court record, office files, document or any other papers." (Emphasis ours.)

Applying the above provisions, the maximum term of the penalty that must be imposed should be within the maximum period of *prision correccional* maximum to *prision mayor* minimum, considering that the amount defrauded is ₱5,166,539.00 and the crime committed is a complex crime under Article 48 of the RPC, where the penalty of the most serious of the crimes should be imposed which, in this case, is the penalty for Estafa. Hence, applying the Indeterminate Sentence Law, the minimum term of the penalty should be within the range of the penalty next lower in degree or *prision correccional* minimum to *prision correccional* medium and the maximum term should be taken from the maximum period of *prision mayor* minimum. Thus, an indeterminate penalty of four (4) years and two (2) months of *prision correccional* medium, as the minimum term, to eight (8) years of *prision mayor* minimum, as the maximum term, is appropriate.

WHEREFORE, the petition for review on *certiorari* dated March 15, 2018 of petitioner Florendo B. Arias is **DENIED** for lack of merit. Consequently, the Decision of the Sandiganbayan dated November 10, 2016, in the consolidated Criminal Case No. 28100 and Criminal Case No. 28253, and its Resolution dated January 15, 2018 are **AFFIRMED** with the **MODIFICATION** that in Criminal Case No. 28100 for Estafa through Falsification of Official/Commercial Documents, petitioner is sentenced to suffer imprisonment of from four (4) years and two (2) months of *prision correccional* medium, as minimum, to eight (8) years of *prision mayor* minimum, as maximum.

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Inting, JJ.*, concur.

SECOND DIVISION

[G.R. No. 237738. June 10, 2019]

FILOMENA L. VILLANUEVA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (REPUBLIC ACT NO. 6713), SECTION 7 (D) THEREOF; PROHIBITED ACTS AND TRANSACTIONS; PUBLIC OFFICIAL OR EMPLOYEE IS PROHIBITED FROM DIRECTLY/INDIRECTLY SOLICITING OR ACCEPTING ANY LOAN OR ANYTHING OF MONETARY VALUE FROM ANY PERSON IN THE COURSE OF HIS/HER OFFICIAL DUTIES OR IN CONNECTION WITH ANY OPERATION BEING REGULATED BY, OR ANY TRANSACTION WHICH MAY BE AFFECTED BY THE FUNCTIONS OF HIS/HER OFFICE, TO THE PREJUDICE OF THE GOVERNMENT AND PUBLIC INTEREST.— In order to sustain a conviction for violation of Section 7 (d) of RA 6713, the following elements must be proved with moral certainty: (*a*) that the accused is a public official or employee; (*b*) that the accused solicited or accepted any loan or anything of monetary value from any person; and (*c*) that the said act was done in the course of the accused's official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his office. In this case, the prosecution was able to establish all the foregoing elements, considering that: (*a*) at the time the subject loans were obtained, petitioner was a public official; (*b*) she solicited and accepted the subject loans from CABMPCI, which was a cooperative that was being regulated by her office; and (*c*) based on her own admission, the subject loans were obtained from CABMPCI, the transactions and operations of which are regulated by the functions of petitioner's office.

2. ID.; ID.; ID.; ID.; PUBLIC OFFICIALS DO NOT ENJOY THE SAME AUTONOMY AS THAT OF PRIVATE INDIVIDUALS, AND HENCE, USUALLY NORMAL

TRANSACTIONS SUCH AS THAT OF OBTAINING LOANS COME WITH NECESSARY RESTRICTIONS WHEREBY PERSONAL INTERESTS TAKE A BACK SEAT FOR THE SAKE OF PRESERVING THE PRISTINE IMAGE AND UNQUALIFIED INTEGRITY OF ONE'S PUBLIC OFFICE; PETITIONER AS PUBLIC OFFICIAL OF THE COOPERATIVE DEVELOPMENT AUTHORITY (CDA) IS PROHIBITED FROM OBTAINING LOANS FROM COOPERATIVES WHICH ARE REGULATED BY HER OFFICE DESPITE HER MEMBERSHIP THEREIN.— That RA 6938, otherwise known as the "Cooperative Code of the Philippines," makes membership in cooperatives "[a]vailable to all individuals regardless of their social, political, racial or religious background or beliefs," does not accord petitioner, by virtue of the functions of her office, complete freedom in any of her personal transactions with any cooperative despite her membership therein. As observed by the Court in *Martinez v. Villanueva*, the limitation of CDA officials and employees to obtain loans from cooperatives is but a necessary consequence of the privilege of holding their public office, *viz*: **True, R.A. No. 6938 allows CDA officials and employees to become members of cooperatives and enjoy the privileges and benefits attendant to membership. However, R.A. No. 6938 should not be taken as creating in favor of CDA officials and employees an exemption from the coverage of Section 7 (d), R.A. No. 6713 considering that the benefits and privileges attendant to membership in a cooperative are not confined solely to availing of loans and not all cooperatives are established for the sole purpose of providing credit facilities to their members.** x x x. **We find that such limitation is but a necessary consequence of the privilege of holding a public office and is akin to the other limitations that, although interfering with a public servant's private rights, are nonetheless deemed valid in light of the public trust nature of public employment.** The overarching policy objective of RA 6713 is "to promote a high standard of ethics in public service." Accordingly, certain acts which violate these ethics, such as that provided under Section 7 (d), have been declared unlawful and accordingly, classified as *mala prohibita*. Notably, RA 6713 exhorts that "[p]ublic officials and employees shall always uphold the public interest over and above personal

interest." Thus, public officials do not enjoy the same autonomy as that of private individuals, and hence, usually normal transactions such as that of obtaining loans — as in this case — come with necessary restrictions whereby personal interests take a back seat for the sake of preserving the pristine image and unqualified integrity of one's public office. Therefore, in view of the foregoing, the Court upholds petitioner's conviction for violation of Section 7 (d) of RA 6713.

3. ID.; ID.; ID.; ID.; THE ACT OF OBTAINING LOANS FROM AN ENTITY WHOSE TRANSACTIONS AND OPERATIONS ORDINARILY FALL UNDER THE REGULATORY POWERS OF THE PUBLIC OFFICIAL'S OFFICE CONSTITUTES A VIOLATION OF SECTION 7 (D) OF RA NO. 6713; PROPER IMPOSABLE PENALTY.— x x x [T]he Court deems it appropriate to modify the penalty imposed against petitioner, considering that the penalty of five (5) years imprisonment — the maximum prison sentence under the law — is not commensurate to the gravity of her offense, which is essentially, the act of obtaining loans from an entity whose transactions and operations ordinarily fall under the regulatory powers of her office. To be sure, Section 11 of RA 6713 provides that a violation of Section 7, among others, **shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office**. In light of the above-stated circumstances and the fact that petitioner's acts were not shown to have been attended by any ill motive or bad faith, the Court deems it apt to instead, mete the maximum fine of ₱5,000.00.

APPEARANCES OF COUNSEL

J.O.B. Lorenzo and Associates Law Firm for petitioner.
Office of the Special Prosecutor for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before this Court is a petition for review on *certiorari*[1] seeking to annul the Decision[2] dated November 3, 2017 of the Sandiganbayan (SB) in SB-11-A/R/0002 which affirmed the Resolution[3] dated November 22, 2007 of the Regional Trial Court of Sanchez Mira, Cagayan, Branch 12 (RTC) in Criminal Case No. 3082-(S) upholding the conviction of petitioner Filomena L. Villanueva (petitioner) for violation of Section 7 (d) of Republic Act No. (RA) 6713,[4] otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."

The Facts

This case stemmed from an Information for violation of Section 7 (d) of RA 6713 before the First Municipal Circuit Trial Court of Claveria-Sta. Praxedes, Claveria, Cagayan (MCTC).[5] According to the prosecution, petitioner was the Assistant Regional Director of the Cooperative Development Authority (CDA) for Region II. While in the performance of her official functions, as well as by taking advantage of her office, she willfully obtained a ₱1,000,000.00 loan from the Claveria Agri-Based Multi-Purpose Cooperative, Incorporated (CABMPCI), thereby violating the aforesaid provision of law which prohibits/

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[1] *Rollo*, pp. 9-26.

[2] *Id*. at 27-33. Penned by Associate Justice Bayani H. Jacinto with Associate Justices Alex L. Quiroz and Reynaldo P. Cruz, concurring.

[3] *Id*. at 49-65. Penned by Executive Judge Leo S. Reyes.

[4] Entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES," approved on February 20, 1989.

[5] *Rollo*, pp. 36-37.

disallows public officials/employees from directly/indirectly accepting/soliciting any loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office, to the prejudice of the government and public interest.[6]

In her defense, petitioner maintained that the loans[7] were obtained by virtue of her membership in CABMPCI, and that the same had already been paid. Notably, she claimed that notwithstanding her position in the CDA, she was nevertheless allowed under RA 6938,[8] otherwise known as the "Cooperative Code of the Philippines," to become a member of a cooperative. Hence, she asserted that she may enjoy her rights incidental to her membership in CABMPCI, and consequently, allowed to obtain loans.[9]

The MCTC Ruling

In a Decision[10] dated March 24, 2006, the MCTC found petitioner guilty beyond reasonable doubt of violating Section 7 (d) of RA 6713, and accordingly, sentenced her to suffer the penalty of five (5) years of imprisonment and disqualification to hold office, with costs of suit. It ruled that petitioner applied for the subject loans while she was the Assistant Regional Director of the CDA in Region II, and that the said loans would not have been granted were it not for her position in the CDA. According to the MCTC, the loan was extended because of petitioner's moral ascendancy over CABMPCI.[11]

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[6] *Id*. at 28.

[7] Based on the records, while the Information only alleges a ₱1,000,000.00 loan, petitioner admittedly took out another loan with CABMPCI in the amount of ₱50,000.00. See *id*. at 38-39.

[8] Entitled "AN ACT TO ORDAIN A COOPERATIVE CODE OF THE PHILIPPINES," approved on March 10, 1990.

[9] *Rollo*, p. 28.

[10] *Id*. at 36-42. Penned by Judge Conrado A. Ruiz.

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

Aggrieved, petitioner appealed to the RTC.

The RTC Ruling

In a Resolution[12] dated November 22, 2007, the RTC affirmed petitioner's conviction.[13] It upheld the MCTC's finding that petitioner "exploited her position x x x in directly, if not indirectly soliciting, if not, accepting a loan from CABMPCI" in the whopping amount of ₱1,000,000.00 in the course of her official duties, and in an operation being regulated by her.[14] Further, the RTC noted that even if petitioner did indeed pay the subject loans, the same did not change the fact that her act of accepting/ soliciting the loan has been consummated.[15]

Undaunted, petitioner appealed to the SB.

The SB Ruling

In a Decision[16] dated November 3, 2017, the SB affirmed the rulings of the courts *a quo*. It ruled that all the elements for violation of Section 7 (d) of RA 6713 were proven, adding too that based on existing jurisprudence, the prohibition to, among others, obtain loans from cooperatives falling under the CDA's authority remains applicable to her notwithstanding her membership.[17]

Dissatisfied, petitioner moved for reconsideration, which was denied in a Resolution[18] dated February 2, 2018; hence, this appeal.

The Issue Before the Court

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[12] *Id*. at 49-65.

[13] *Id*. at 64-65.

[14] *Id*. at 64.

[15] *Id*. at 64-65.

[16] *Id*. at 27-33.

[17] *Id*. at 30-32.

[18] *Id*. at 34-35.

The issue before the Court is whether or not the SB erred in upholding the conviction of petitioner for violation of Section 7 (d) of RA 6713.

The Court's Ruling

Section 7 (d) of RA 6713 provides that:

Section 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x x x x x x

(d) *Solicitation or acceptance of gifts.* – **Public officials and employees shall not solicit or accept**, directly or indirectly, any gift, gratuity, favor, entertainment, **loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.** (Emphases and underscoring supplied).

In order to sustain a conviction for violation of Section 7 (d) of RA 6713, the following elements must be proved with moral certainty: (*a*) that the accused is a public official or employee; (*b*) that the accused solicited or accepted any loan or anything of monetary value from any person; and (*c*) that the said act was done in the course of the accused's official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his office.

In this case, the prosecution was able to establish all the foregoing elements, considering that: (*a*) at the time the subject loans were obtained, petitioner was a public official; (*b*) she solicited and accepted the subject loans from CABMPCI, which was a cooperative that was being regulated by her office; and (*c*) based on her own admission, the subject loans were obtained from CABMPCI, the transactions and operations of which are regulated by the functions of petitioner's office. This latter point was effectively admitted by petitioner during trial, to wit:

Q (Defense Counsel). Now, madam witness, where are you presently assigned?

A (Petitioner). I am presently assigned as Assistant Regional Director of CDA Regional Office, Sir.

x x x x x x x x x

Q. Will you please state your duties and responsibilities as Assistant Regional Director of the CDA?

A. Among my duties are, **I assist the Regional Director in the implementation of the programs of the CDA and I assist the Regional Director in the general supervision of the general services and the technical staff and including the field operations, sir**.

Q. Madam witness, from the duties and responsibilities which you mentioned, I would like to ask whether or not it is within the coverage of your authority as Assistant Regional Director of the CDA, whether you regulate or oversee the functions of the Cooperatives in your area?

A. **We are only regulating the cooperatives in some aspects like their audited financial statements and some other... They are private in nature**.[19] (Emphases and underscoring supplied)

That RA 6938, otherwise known as the "Cooperative Code of the Philippines," makes membership in cooperatives "[a]vailable to all individuals regardless of their social, political, racial or religious background or beliefs,"[20] does not accord petitioner, by virtue of the functions of her office, complete freedom in any of her personal transactions with any cooperative despite her membership therein. As observed by the Court in *Martinez v. Villanueva*,[21] the limitation of CDA officials and

[19] *Rollo*, pp. 31-32.

[20] Article 4 (1) of RA 6938 states:

Article 4. Cooperative Principles. – Every cooperative shall conduct its affairs in accordance with Filipino culture and experience and the universally accepted principles of cooperation which include the following:

(1) Open and Voluntary Membership. – Membership in a cooperative shall be voluntary and available to all individuals regardless of their social, political, racial or religious background or beliefs.

[21] 669 Phil. 14 (2011).

employees to obtain loans from cooperatives is but a necessary consequence of the privilege of holding their public office, *viz*.:

> **True, R.A. No. 6938 allows CDA officials and employees to become members of cooperatives and enjoy the privileges and benefits attendant to membership. <u>However, R.A. No. 6938 should not be taken as creating in favor of CDA officials and employees an exemption from the coverage of Section 7 (d), R.A. No. 6713 considering that the benefits and privileges attendant to membership in a cooperative are not confined solely to availing of loans and not all cooperatives are established for the sole purpose of providing credit facilities to their members</u>**. Thus, the limitation on the benefits which respondent may enjoy in connection with her alleged membership in CABMPCI does not lead to absurd results and does not render naught membership in the cooperative or render R.A. No. 6938 ineffectual, contrary to respondent's assertions. **We find that <u>such limitation is but a necessary consequence of the privilege of holding a public office</u> and is akin to the other limitations that, although interfering with a public servant's private rights, are nonetheless deemed valid <u>in light of the public trust nature of public employment</u>**.[22] (Emphasis and underscoring supplied)

The overarching policy objective of RA 6713 is "to promote a high standard of ethics in public service."[23] Accordingly, certain acts which violate these ethics, such as that provided under Section 7 (d), have been declared unlawful and accordingly, classified as *mala prohibita*.[24] Notably, RA 6713 exhorts that "[p]ublic officials and employees shall always uphold the public interest over and above personal interest."[25] Thus, public officials do not enjoy the same autonomy as that of private individuals, and hence, usually normal transactions such as that of obtaining loans – as in this case – come with necessary restrictions whereby personal interests take a back seat for the sake of preserving the pristine image and unqualified integrity of one's public office.

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

[23] See Section 2, RA 6713.

[24] *Supra* note 21.

[25] See Section 4 (a), RA 6713.

Therefore, in view of the foregoing, the Court upholds petitioner's conviction for violation of Section 7 (d) of RA 6713.

However, the Court deems it appropriate to modify the penalty imposed against petitioner, considering that the penalty of five (5) years imprisonment – the maximum prison sentence under the law – is not commensurate to the gravity of her offense, which is essentially, the act of obtaining loans from an entity whose transactions and operations ordinarily fall under the regulatory powers of her office.[26] To be sure, Section 11 of RA 6713 provides that a violation of Section 7, among others, **shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office**. In light of the above-stated circumstances and the fact that petitioner's acts were not shown to have been attended by any ill motive or bad faith, the Court deems it apt to instead, mete the maximum fine of ₱5,000.00.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated November 3, 2017 of the Sandiganbayan in SB-11-A/R/0002 is hereby **AFFIRMED** with **MODIFICATION**. Petitioner Filomena L. Villanueva is found **GUILTY** of violation of Section 7 (d) of RA 6713 and thereby, meted with the penalty of a fine of ₱5,000.00.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa*, and *Lazaro-Javier, JJ.*, concur.

Reyes, J. Jr., J. on leave.

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[26] See Section 3 of RA 6939, entitled "AN ACT CREATING THE COOPERATIVE DEVELOPMENT AUTHORITY TO PROMOTE THE VIABILITY AND GROWTH OF COOPERATIVES AS INSTRUMENTS OF EQUITY, SOCIAL JUSTICE AND ECONOMIC DEVELOPMENT, DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, RATIONALIZING GOVERNMENT POLICIES AND AGENCIES WITH COOPERATIVE FUNCTIONS, SUPPORTING COOPERATIVE DEVELOPMENT, TRANSFERRING THE REGISTRATION AND REGULATION FUNCTIONS OF EXISTING GOVERNMENT AGENCIES ON COOPERATIVES AS SUCH AND CONSOLIDATING THE SAME WITH THE AUTHORITY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES," (approved on March 10, 1990) which enumerates, among others, the regulatory powers of the CDA over cooperatives.

SECOND DIVISION

[G.R. No. 237837. June 10, 2019]

EMMANUEL CEDRO ANDAYA, ATTY. SYLVIA CRISOSTOMO BANDA, JOSEFINA SAN PEDRO SAMSON, ENGR. ANTONIO VILLAROMAN SILLONA, BERNADETTE TECSON LAGUMEN, and MARIA GRACIA DE LEON ENRIQUEZ, *petitioners, vs.* **FIELD INVESTIGATION OFFICE OF THE OFFICE OF THE OMBUDSMAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 9184 (THE GOVERNMENT PROCUREMENT REFORM ACT); COMPETITIVE PUBLIC BIDDING; REQUIRED IN THE PROCUREMENT OF GOODS AND SERVICES FOR THE GOVERNMENT.— Section 10, Article IV, in relation to Section 5, paragraphs (n) and (o), Article I of RA 9184, mandates that all acquisition of goods, consulting services, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or - controlled corporations, government financial institutions, and local government units shall be done through competitive bidding. This is in consonance with the law's policy and principle of promoting transparency in the procurement process, implementation of procurement contracts, and competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. Public bidding is the primary process to procure goods and services for the government. A competitive public bidding aims to protect public interest by giving it the best possible advantages through open competition. It is precisely the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts. Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest, and competitive public bidding.

2. ID.; ID.; ID.; NEGOTIATED PROCUREMENT; REFERS TO AN ALTERNATIVE METHOD OF PROCUREMENT WHICH DISPENSES WITH THE REQUIREMENT OF OPEN, PUBLIC, AND COMPETITIVE BIDDING BUT IT IS ALLOWED ONLY IN HIGHLY EXCEPTIONAL CASES AND UNDER THE CONDITIONS SET FORTH BY LAW.— Alternative methods of procurement, however, are allowed under RA 9184 which would enable dispensing with the requirement of open, public, and competitive bidding, but ***only in highly exceptional cases*** and under the conditions set forth in Article XVI thereof. One of these alternative modes of procurement is *negotiated procurement,* which, pursuant to Section 53 of RA 9184, may be availed by the procuring entity only in the following instances, to wit x x x b. **In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities x x x.** In this case, competitive public bidding was dispensed with by petitioners for the checkup, repair, and supply parts of Elevator II in the NPO building. However, as correctly found by the Ombudsman and affirmed by the CA, petitioners' resort to negotiated procurement as an alternative mode of procurement was not proper and justified. Their reasons do not satisfy any of the highly exceptional circumstances enumerated in Section 53 as above-quoted, particularly paragraph (b), as records are bereft of evidence to show that the immediate repair of the subject elevator was necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities, and other public utilities.

3. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT; THE ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW, OR FLAGRANT DISREGARD OF AN ESTABLISHED RULE MUST BE EVIDENT.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer. The misconduct is considered to be *grave* if it also involves other elements such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by

substantial evidence; otherwise, the misconduct is only simple. In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully' and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.

4. ID.; ID.; ID.; GROSS NEGLECT OF DUTY AND SIMPLE NEGLECT OF DUTY, DISTINGUISHED.— Gross Neglect of Duty is defined as "[n]egligence characterized by want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." In contrast, Simple Neglect of Duty is the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."

5. ID.; ID.; ID.; GRAVE MISCONDUCT AND GROSS NEGLECT OF DUTY; PUNISHABLE BY DISMISSAL FROM THE SERVICE UNDER THE PERTINENT CIVIL SERVICE LAWS AND RULES; CASE AT BAR.— [Petitioners] grossly disregarded the law and were remiss in their duties in strictly observing the directives of RA 9184, which resulted in undue benefits to EPI. Such gross disregard of the law is so blatant and palpable that the same amounts to a willful intent to subvert the clear policy of the law for transparency and accountability in government contracts, thereby warranting the penalty of dismissal from the service pursuant to Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, with accessory penalties. Considering that both Grave Misconduct and Gross Neglect of Duty are of similar gravity and that both are punished by dismissal under the pertinent civil service laws and rules applicable to petitioners, they are thus punished with the said ultimate penalty, together with the attending disabilities.

6. ID.; ID.; ID.; ID.; REFLECT ON THE FITNESS OF A CIVIL SERVANT TO CONTINUE IN OFFICE, AND WHEN AN

OFFICER OR EMPLOYEE IS DISCIPLINED, THE OBJECT SOUGHT IS NOT THE PUNISHMENT OF SUCH OFFICER OR EMPLOYEE BUT THE IMPROVEMENT OF PUBLIC SERVICE AND THE PRESERVATION OF THE PUBLIC'S FAITH AND CONFIDENCE IN THE GOVERNMENT.— Verily, it must be stressed that serious offenses, such as Grave Misconduct and Gross Neglect of Duty, have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee, but the improvement of public service and the preservation of the public's faith and confidence in the govemment. Indeed, public office is a public trust, and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. This high constitutional standard of conduct is not intended to be mere rhetoric and taken lightly as those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service, as in this case.

APPEARANCES OF COUNSEL

Alvin R.A. Bedar for petitioners.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorar*[1] are the Decision[2] dated August 31, 2017 and the Resolution[3] dated February 23, 2018 rendered by the Court of Appeals (CA) in

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[1] *Rollo*, pp. 21-50.

[2] *Id*. at 56-65. Penned by Associate Justice Ramon R. Garcia with Associate Justices Edwin D. Sorongon and Victoria Isabel A. Paredes, concurring.

[3] *Id*. at 122-124.

CA-G.R. SP No. 149420, which upheld the Decision[4] dated June 27, 2016 and the Order[5] dated October 10, 2016 of the Office of the Ombudsman (Ombudsman) in OMB-C-A-14-0122, finding petitioners Emmanuel Cedro Andaya (Andaya), Atty. Sylvia Crisostomo Banda (Atty. Banda), Josefina San Pedro Samson (Samson), Engr. Antonio Villaroman Sillona (Sillona), Bernadette Tecson Lagumen (Lagumen), and Maria Gracia De Leon Enriquez (Enriquez; collectively, petitioners) guilty of Gross Neglect of Duty and Grave Misconduct, and imposing upon them the penalty of dismissal from the service, with accessory penalties.

The Facts

At the time material to this case, Andaya was Acting Director of the National Printing Office (NPO) while Atty. Banda was Chairman, Samson was Vice Chairman, and Sillona, Lagumen, and Enriquez were Members of the Bids and Awards Committee (BAC).

On September 2, 2010, after obtaining a certification of availability of funds, the NPO Technical Working Group made a purchase request[6] to the BAC for the checkup, repair, and supply parts of Elevator II with an estimated cost of ₱680,000.00. Three (3) suppliers submitted their respective quotations, namely, Eastland Printink, Inc. (EPI), C.A. Enterprises, and Giraqui Trading.

On December 13, 2010, however, the BAC passed a Resolution[7] stating that it would resort to negotiated procurement for the following reasons: (*a*) the delay in the elevator's repair would hamper the NPO's operations which will result in considerable losses on the part of the government; and (*b*) the allocated budget for the elevator's repair must be disbursed

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[4] *Id.* at 162-175. Issued by Graft Investigation and Prosecution Officer III Cezar M. Tirol II, approved by Ombudsman Conchita Carpio Morales.

[5] *Id.* at 192-195.

[6] *Id*. at 257-259.

[7] *Id.* at 214-215.

before the end of the fiscal year for it not to revert to the general fund. The Resolution was approved by Andaya and the Notice of Award[8] was thereafter issued to EPI, having the lowest quotation in the amount of ₱665,000.00.

This prompted respondent Field Investigation Office (FIO) of the Ombudsman to file a complaint[9] against petitioners for Serious Dishonesty, Gross Neglect of Duty, Grave Misconduct, and Conduct Prejudicial to the Interest of the Service, alleging that the BAC failed to justify the recourse to negotiated procurement under emergency cases pursuant to Section 53 (b)[10] of Republic Act (RA) No. 9184[11] for the repair of an unserviceable elevator. The FIO alleged that an unserviceable elevator did not pose any imminent danger to life or property nor was immediate action necessary to prevent damage to or loss of life and property, or to restore vital services, infrastructure, facilities, and other public utilities. Further, the contract was awarded to EPI despite the latter being a printing company and not a contractor for elevator repair and maintenance. As for Andaya, the FIO added that he acted with gross inexcusable negligence in allowing the BAC to adopt negotiated procurement without complying with the formalities under RA 9184.

In defense, petitioners claimed that their resort to negotiated procurement was justified as the elevator in question was used to transfer heavy rolls and pallets of paper, as well as printed

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[8] *Id.* at 216.

[9] *Id*. at 199-206.

[10] SEC. 53. *Negotiated, Procurement*. — Negotiated Procurement shall be allowed only in the following instances:

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b. In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

x x x x x x x x x

[11] Otherwise known as the "Government Procurement Reform Act."

forms from one floor to another. Moreover, they believed in good faith that the repair was urgent and necessary to restore public services and infrastructure facilities and they had no intent to circumvent RA 9184 or to cause any damage to the government or the NPO. Finally, they maintained that EPI is a qualified contractor, as the company's secondary purpose is "to engage in general construction business."

The Ombudsman Ruling

In a Decision[12] dated June 27, 2016, the Ombudsman found petitioners guilty of Gross Neglect of Duty and Grave Misconduct, and accordingly, dismissed them from service. In ruling that petitioners were guilty of Grave Misconduct, the Ombudsman found that they violated the rules of procurement under RA 9184 when they resorted to negotiated procurement instead of conducting a public bidding, taking into account that the cost of the contract was ₱665,000.00, which is beyond the threshold for alternative modes of procurement. Likewise, the project was hastily awarded to EPI, a contractor engaged in printing, not in elevator repair and services.[13] Moreover, it observed that the public was not duly notified of the award to EPI for failure to comply with the required publication of the procurement in the Philippine Government Electronic Procurement System.[14]

Further, petitioners failed to substantiate that immediate and compelling justification exists in this case to dispense with public bidding.[15] Contrary to petitioners' explanation that immediate action was necessary to restore vital public services of the NPO, records show that they resorted to negotiated procurement "in order not to hamper [the NPO's] day to day transactions since the elevator has been in operational since July 2010 and in order not to lose the budget."[16] Likewise, the repair was

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[12] *Rollo*, pp. 162-175.

[13] *Id.* at 168.

[14] *Id.* at 168-169.

[15] *Id.* at 169-170.

[16] *Id.* at 170.

undertaken only for the convenience of the NPO employees in carrying documents in the NPO building; therefore, the emergency procurement was not necessary to address an unforeseen emergency or to restore vital services.[17] Finally, the Ombudsman added that petitioners' negligence denied the government of a fair system of determining the best possible price for its procurement.[18]

Petitioners moved for reconsideration, which was denied in an Order[19] dated October 10, 2016. Aggrieved, petitioners appealed to the CA via petition for review under Rule 43 of the Rules of Court.

The CA Ruling

In a Decision[20] dated August 31, 2017, the CA affirmed the Ombudsman's Decision, finding that petitioners failed to justify their resort to negotiated procurement considering that: (*a*) the elevator became non-functional in July 2010 but the purchase request was made only in September 2010, thereby disproving the alleged immediacy of its repair; (*b*) the elevator, which was merely used for carrying loads of paper and other printed materials, is not indispensable to the NPO's mandate to provide printing services for the government; and (*c*) the reversion of the budget allocation for the repair of the elevator to the general fund is too flimsy a reason to dispense with the required public bidding.[21] Stressing that alternative modes of procurement can be resorted to only in highly exceptional cases, the CA opined that petitioners' justifications failed to satisfy any of the extraordinary circumstances under RA 9184 permitting resort to negotiated procurement. As such, it affirmed the penalty of dismissal from the service meted by the Ombudsman.[22]

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[17] *Id.*

[18] *Id.* at 172.

[19] *Id.* at 192-195.

[20] *Id.* at 56-65.

[21] *Id.* at 63.

[22] See *id.* at 64-65.

Petitioners' motion for reconsideration[23] was denied in a Resolution[24] dated February 23, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether the CA erred in upholding the administrative liability of petitioners for Grave Misconduct and Gross Neglect of Duty and for meting upon them the penalty of dismissal from the service.

The Court's Ruling

The petition is bereft of merit.

Section 10,[25] Article IV, in relation to Section 5, paragraphs (n) and (o),[26] Article I of RA 9184, mandates that all acquisition of goods, consulting services, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations,

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[23] Dated September 27, 2017; *id*. at 66-96.

[24] *Id*. at 122-124.

[25] SEC. 10. *Competitive Bidding*. – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

[26] SEC. 5. *Definition of Terms*. –For purposes of this Act, the following terms or words and phrases shall mean or be understood as follows:

x x x x x x x x x

(n) *Procurement* – refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of Republic Act No. 8974, entitled "An Act to Facilitate the Acquisition of Right-of-Way Site or Location of National Government Infrastructure Projects and for Other Purposes" and other applicable laws, rules and regulations.

(o) *Procuring Entity* – refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects.

government financial institutions, and local government units shall be done through competitive bidding. This is in consonance with the law's policy and principle of promoting transparency in the procurement process, implementation of procurement contracts, and competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.[27]

Public bidding is the primary process to procure goods and services for the government.[28] A competitive public bidding aims to protect public interest by giving it the best possible advantages through open competition. It is precisely the mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.[29] Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest, and competitive public bidding.[30]

Alternative methods of procurement, however, are allowed under RA 9184 which would enable dispensing with the requirement of open, public, and competitive bidding,[31] but ***only in highly exceptional cases*** and under the conditions set forth in Article XVI thereof. One of these alternative modes of procurement is *negotiated procurement*, which, pursuant to Section 53 of RA 9184, may be availed by the procuring entity only in the following instances, to wit:

> Section 53. *Negotiated Procurement*. – Negotiated Procurement shall be allowed only in the following instances:
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> a. In case of two (2) failed biddings as provided in Section 35 hereof;

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[27] *De Guzman v. Office of the Ombudsman*, G.R. No. 229256, November 22, 2017.

[28] *Office of the Ombudsman-Mindanao v. Martel*, G.R. No. 221134, March 1, 2017, 819 SCRA 131, 141.

[29] *Id*., citing *Rivera v. People*, 749 Phil. 124, 145-146 (2014).

[30] *Id*. at 141-142, citing *Republic v. Capulong*, 276 Phil. 136, 152 (1991).

[31] *De Guzman v. Office of the Ombudsman*, *supra* note 27.

b. **In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities**;

c. Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

d. Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: *Provided, however*, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: *Provided, further*, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,

e. Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letter of Instruction No. 755 and Executive Order No. 359, series of 1989. (Emphasis supplied)

In this case, competitive public bidding was dispensed with by petitioners for the checkup, repair, and supply parts of Elevator II in the NPO building. However, as correctly found by the Ombudsman and affirmed by the CA, petitioners' resort to negotiated procurement as an alternative mode of procurement was not proper and justified. Their reasons do not satisfy any

of the highly exceptional circumstances enumerated in Section 53 as above-quoted, particularly paragraph (b), as records are bereft of evidence to show that the immediate repair of the subject elevator was necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities, and other public utilities.

First, the alleged urgency of the repair of the subject elevator is belied by the fact that the purchase request[32] therefor was made only in September 2010, whereas it supposedly became non-operational in July 2010. The delay in the submission of the purchase request is inconsistent with the immediate nature of the service required and negates the existence of an emergency. *Second*, the elevator, which was merely used for carrying loads of paper and other printed materials, is not indispensable to the NPO's mandate to provide printing services for the government. To be sure, the NPO can continue with its day-to-day operations even without the elevator, albeit, perhaps, with some inconvenience. Such inconvenience, however, does not warrant a complete disregard of the required public bidding. *Finally*, the adoption of negotiated procurement in order to utilize the funds allocated for the repair and service of the elevator before the end of the fiscal year lest the amount revert to the general fund is likewise devoid of legal justification. Clearly, therefore, petitioners utterly failed to justify the negotiated procurement in this case.

All told, substantial evidence exist to hold petitioners guilty for Grave Misconduct and Gross Neglect of Duty.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer. The misconduct is considered to be *grave* if it also involves other elements such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. In grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard

[32] *Rollo*, pp. 257-259.

of an established rule, must be evident.[33] Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[34]

On the other hand, Gross Neglect of Duty is defined as "[n]egligence characterized by want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property."[35] In contrast, Simple Neglect of Duty is the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."[36]

In the recent cases of *De Guzman v. Office of the Ombudsman*[37] and *Office of the Ombudsman-Mindanao v. Martel* (*Martel*),[38] where the members of the BAC dispensed with competitive public bidding and failed to justify the resort to alternative modes of procurement, the Court ruled that their actions constitute grave misconduct. The respondents in *Martel* were additionally found guilty of gross neglect of duty for their infractions. Similarly, in *Lagoc v. Malaga*[39] the members of the BAC were found guilty of grave misconduct for their failure to conduct

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[33] *Office of the Ombudsman-Mindanao v. Martel*, *supra* note 28 at 144-145.

[34] *Office of the Ombudsman v. Mallari*, 749 Phil. 224, 249 (2014).

[35] *Office of the Ombudsman v. Espina*, G.R. No. 213500, March 15, 2017, 820 SCRA 541, 554, citing *Office of the Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 381 (2014).

[36] *Id*. at 554-555, citing *Ombudsman v. De Leon*, 705 Phil. 26, 38 (2013).

[37] *Supra* note 27.

[38] *Supra* note 28.

[39] 738 Phil. 623 (2014).

a public bidding. The Court emphasized thereat that it was the duty of the BAC to ensure that the rules and regulations for the conduct of bidding for government projects were faithfully observed.[40]

Indubitably, the same transgressions were committed by petitioners in this case. They grossly disregarded the law and were remiss in their duties in strictly observing the directives of RA 9184, which resulted in undue benefits to EPI. Such gross disregard of the law is so blatant and palpable that the same amounts to a willful intent to subvert the clear policy of the law for transparency and accountability in government contracts,[41] thereby warranting the penalty of dismissal from the service pursuant to Section 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, with accessory penalties. Considering that both Grave Misconduct and Gross Neglect of Duty are of similar gravity and that both are punished by dismissal under the pertinent civil service laws and rules applicable to petitioners,[42] they are thus punished with the said ultimate penalty, together with the attending disabilities.[43]

Verily, it must be stressed that serious offenses, such as Grave Misconduct and Gross Neglect of Duty, have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee, but the improvement of public service and the preservation of the public's faith and confidence in the government.[44] Indeed, public office

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[40] *Id.* at 636.

[41] See *De Guzman v. Office of the Ombudsman*, *supra* note 27.

[42] See Section 46 (A) (2) and (3) of THE REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS), CSC Resolution No. 1101502, promulgated on November 8, 2011.

[43] See Section 52 (a), RRACCS.

[44] See *Office of the Ombudsman-Mindanao v. Martel*, *supra* note 28 at 148.

is a public trust, and public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.[45] This high constitutional standard of conduct is not intended to be mere rhetoric and taken lightly as those in the public service are enjoined to fully comply with this standard or run the risk of facing administrative sanctions ranging from reprimand to the extreme penalty of dismissal from the service,[46] as in this case.

WHEREFORE, the petition is **DENIED**. The Decision dated August 31, 2017 and the Resolution dated February 23, 2018 rendered by the Court of Appeals in CA-G.R. SP No. 149420 are **AFFIRMED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa*, and *Lazaro-Javier, JJ.*, concur.

Reyes, J. Jr., J., on leave.

SECOND DIVISION

[G.R. No. 240209. June 10, 2019]

DOMINADOR C. FERRER, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019); CORRUPT PRACTICES

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[45] See Section 1, Article XI of the 1987 Constitution.

[46] See *Amit v. Commission on Audit*, 699 Phil. 9, 26 (2012).

OF PUBLIC OFFICERS; SECTION 3(E) OF RA 3019; CAUSING ANY UNDUE INJURY TO ANY PARTY, INCLUDING THE GOVERNMENT, OR GIVING ANY PRIVATE PARTY ANY UNWARRANTED BENEFITS; ELEMENTS; ESTABLISHED.— [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 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. After a judicious review of the case, the Court is convinced that the SB correctly convicted Ferrer of the crime charged. The elements constituting a violation of Section 3 (e) of RA 3019 have been sufficiently established considering that: (*a*) Ferrer was indisputably a public officer at the time of the commission of the offense, discharging his administrative and official functions as the IA Administrator; (*b)* he acted with gross inexcusable negligence when he knowingly allowed OCDC to commence construction on the Intramuros Walls without the required permits or clearances; and (*c)* by his actions, he gave unwarranted benefits to a private party, *i.e.,* OCDC, to the detriment of the public insofar as the preservation and development plans for Intramuros are concerned.

2. ID.; ID.; ID.; ID.; ID.; GROSS NEGLIGENCE, DEFINED; KNOWINGLY ALLOWING A PRIVATE PARTY TO PROCEED WITH CONSTRUCTION ON THE INTRAMUROS WALLS WITHOUT THE REQUIRED PERMITS OR CLEARANCES CONSTITUTES GROSS INEXCUSABLE NEGLIGENCE.— [A]s the SB correctly pointed out, even if a development clearance was belatedly granted to OCDC, the construction had already reached 75% completion by then. As the IA Administrator, Ferrer is presumed aware of the requirements **before** any construction work may be done on the Intramuros Walls. This is also palpably clear in the tenor of the lease agreement which provides that the Lessor will "[a]ssist the Lessee in **securing all required government permits and clearances for the successful implementation of this agreement** and to **give its conformity to such permits and clearances** or permits whenever necessary." Despite

knowing the requirements and conditions precedent mandated by law, he knowingly allowed OCDC to proceed with construction without such permits or clearances. This amounted to gross inexcusable negligence on his part. Gross negligence has been defined as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but **wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected.** It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."

3. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; IN APPEALS FROM THE SANDIGANBAYAN, ONLY QUESTIONS OF LAW AND NOT QUESTIONS OF FACT MAY BE RAISED, AND THE FACTUAL FINDINGS OF THE SANDIGANBAYAN SHALL BE DEEMED AS CONCLUSIVE UPON THE COURT ABSENT SHOWING THAT IT OVERLOOKED, MISUNDERSTOOD OR MISAPPLIED THE SURROUNDING FACTS AND CIRCUMSTANCES OF THE CASE; PETITIONER'S CONVICTION FOR VIOLATION OF SECTION 3 (e) OF RA 3019, AFFIRMED.— [T]he Court finds no reason to overturn these findings, as there was no showing that the SB overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. "[I]t bears pointing out that in appeals from the [SB], as in this case, only questions of law and not questions of fact may be raised. Issues brought to the Court on whether the prosecution was able to prove the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was sufficiently debunked, whether or not conspiracy was satisfactorily established, or whether or not good faith was properly appreciated, are all, invariably, questions of fact. Hence, absent any of the recognized exceptions to the above-mentioned rule, the [SB's] findings on the foregoing matters should be deemed as conclusive." As such, Ferrer's conviction for violation of Section 3 (e) of RA 3019 must stand.

APPEARANCES OF COUNSEL

Arnulfo V. Pelagio for petitioner.
Office of the Special Prosecutor 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 May 11, 2018 and the Resolution[3] dated June 18, 2018 of the *Sandiganbayan* (SB) in Crim. Case No. 26546, which found petitioner Dominador C. Ferrer, Jr. (Ferrer) 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 case stemmed from an Information[5] charging Ferrer with violation of Section 3 (e) of RA 3019, the accusatory portion of which states:

That, on or about August 20, 1998 or for sometime (*sic*) prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, DOMINADOR C. FERRER, JR., being the Administrator of the Intramuros Administration (IA), Manila, while in the performance of his official and administrative functions as such, and acting with manifest partiality, evident bad faith and gross inexcusable negligence, did then and there, willfully, unlawfully and criminally give unwarranted benefits to Offshore Construction and Development Company, by causing the award of the Lease Contracts to said company, involving Baluarte de San Andres, R[e]vellin de Recolletos, and Baluarte de San Francisco de Dilao, Intramuros, Manila, without conducting any public bidding as required under Joint Circular No. 1 dated September 30, 1989 of the Department of Budget and Management, Department of Environment and Natural

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[1] *Rollo*, pp. 3-16.

[2] *Id*. at 17-43. Penned by Associate Justice Oscar C. Herrera, Jr. with Associate Justices Michael Frederick L. Musngi and Lorifel L. Pahimna, concurring.

[3] See minute resolution; *id*. at 45.

[4] (August 17, 1960).

[5] Not attached to the *rollo*.

Resources and Department of Public Works and Highways, and by allowing the construction of new structures in said leased areas without any building permit or clearance required under the Intramuros Charter (P.D. 1616) and the National Building Code, to the damage and prejudice of public interest.

CONTRARY TO LAW.[6]

The prosecution alleged that Ferrer, then Administrator of the Intramuros Administration (IA), gave unwarranted benefits to Offshore Construction and Development Company (OCDC) when he: (*a*) awarded to it three (3) contracts of lease covering three (3) areas[7] in Intramuros without any public bidding; and (*b*) allowed OCDC to construct new structures without a building permit or clearance as required under the Intramuros Charter and the National Building Code.[8] The prosecution's witnesses testified that in August 1998, OCDC presented plans to the Technical Committee (Committee) – whose favorable recommendation is required before a building permit can be processed – for the development of structures on top of the Intramuros Walls. However, the plans were disapproved because they would impair the Walls' integrity and violate the laws relating to the conservation of heritage sites. Notwithstanding the Committee's disapproval, and without their knowledge, OCDC commenced construction in the leased areas.[9] Later on, the Committee inspected the areas and found that air conditioning units had been installed through the Walls, that nails bored through them, and that the concrete added to put up a mezzanine was damaging the same. Seeing the unauthorized construction activities, they asked for building permits but OCDC could not produce any.[10] Thereafter, the matter was reported to then

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[6] Referenced in the SB's Decision dated May 11, 2018; see *rollo*, pp. 17-18.

[7] See Contracts of Lease dated August 20, 1998 covering Baluarte de San Andres (*id.* at 66-67), Revellin de Recoletos (*id*. at 46-55), and Baluarte de San Francsico de Dilao (*id*. at 56-65).

[8] See *id*. at 17-18.

[9] See *id*. at 23-24.

[10] See *id*. at 23.

Department of Tourism (DoT) Secretary Gemma Cruz-Araneta (Secretary Cruz-Araneta), to Ferrer as Administrator, and to the Urban Planning and Community Development Division. In his testimony, Victor B. Reyes (Reyes), then head of the Urban Planning and Community Development Division, confirmed that OCDC was not among those listed as recipients of building permits, and testified that his office prepared a Notice of Violation addressed to OCDC which Ferrer was supposed to sign but did not. This prompted their division to prepare a letter requiring OCDC to cease construction activities and to secure the necessary building permits. Reyes also confirmed that OCDC applied for development clearances, which were then issued to them upon Ferrer's instruction.[11]

Pleading "not guilty" to the charge,[12] Ferrer argued that it was at the instance of Secretary Cruz-Araneta that the lease contracts with OCDC were entered into. The former assured him that she will also sign the said contracts in her capacity as DoT Secretary. Both of them even signed the Letter dated August 19, 1998 allowing OCDC to enter the leased properties for purposes of site development and inspection. He claimed that after he received reports of OCDC's violations, he immediately visited the site and issued a Notice of Demolition. He further testified that the required clearances under the Intramuros Charter were issued to OCDC.[13]

The SB Ruling

In a Decision[14] dated May 11, 2018, the SB found Ferrer guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month,

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[11] See *id*. at 25-26.

[12] *Id*. at 19.

[13] See *id*. at 28-29. Notably, OCDC applied for clearances for the three (3) areas only on October 13, 1998 when construction was already ongoing, and the developmental clearances were approved merely two (2) days after or on October 15, 1998 (see *id*. at 37).

[14] *Id*. at 17-43.

as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.[15]

The SB found that while no public bidding was required for IA to enter into lease contracts,[16] the prosecution had nevertheless established that Ferrer committed a violation of Section 3(e) of RA 3019 considering that: (*a*) Ferrer was a public officer, particularly the IA's Administrator, at the time material to this case; (*b*) he exhibited gross inexcusable negligence when he allowed the construction of the structures on top of the Intramuros Walls without the recommendatory approval of the Technical Committee, which is a requirement for getting a building permit;[17] and (*c*) his acts gave OCDC a distinct advantage to enter the leased properties, occupy them, and commence construction activities.

Aggrieved, Ferrer filed a motion for reconsideration,[18] which was denied in a Resolution[19] dated June 18, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the SB correctly convicted Ferrer for violation of Section 3 (e) of RA 3019.

The Court's Ruling

The petition is without merit.

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[15] *Id*. at 42.

[16] The SB rejected the prosecutor's view that public bidding was necessary before the IA can award lease contracts. It stressed that the mere fact that OCDC is a construction company does not change the nature of the contracts entered into (*i.e*., lease) and that whatever improvements or modifications made on the leased properties were only incidents arising from such lease. (See *id*. at 33-36.)

[17] The SB listed his specific infractions: (*i*) in a Letter dated August 19, 1998, granted OCDC access to the leased premises even before the lease contract was executed; (*ii*) failed to act despite being apprised as early as September 1998 of violations committed by OCDC; and (*iii*) hurriedly issued the development clearances to OCDC in October 1998 when construction was already ongoing. (See *id.* at 41.)

[18] Dated May 25, 2018; not attached to the *rollo*.

[19] *Rollo*, p. 45.

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:
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> 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.

As may be gleaned above, 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.[20]

After a judicious review of the case, the Court is convinced that the SB correctly convicted Ferrer of the crime charged. The elements constituting a violation of Section 3 (e) of RA 3019 have been sufficiently established considering that: (*a*) Ferrer was indisputably a public officer at the time of the commission of the offense, discharging his administrative and official functions as the IA Administrator; (*b*) he acted with gross inexcusable negligence when he knowingly allowed OCDC to commence construction on the Intramuros Walls without the required permits or clearances; and (*c*) by his actions, he gave unwarranted benefits to a private party, *i.e.*, OCDC, to the

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[20] See *Cambe v. Ombudsman*, 802 Phil. 190, 216-217 (2016), citing *Presidential Commission on Good Government v. Navarro-Gutierrez*, 772 Phil. 91, 102 (2015).

detriment of the public insofar as the preservation and development plans for Intramuros are concerned.[21]

Insisting on his innocence, Ferrer argues that the allegations in the Information, *i.e.*, "the construction of **new** structures in said leased areas **without** any building permit or clearance x x x[,]"[22] were not actually proved during trial. He posits that what was involved was mere renovation, and the SB even conceded that clearances were eventually issued.[23]

Ferrer's arguments are untenable. As the SB correctly pointed out, even if a development clearance was belatedly granted to OCDC, the construction had already reached 75% completion by then.[24] As the IA Administrator, Ferrer is presumed aware of the requirements **before** any construction work may be done on the Intramuros Walls. This is also palpably clear in the tenor of the lease agreement which provides that the Lessor will "[a]ssist the Lessee in **securing all required government permits and clearances for the successful implementation of this agreement** and to **give its conformity to such permits and clearances** or permits whenever necessary."[25] Despite knowing the requirements and conditions precedent mandated by law, he knowingly allowed OCDC to proceed with construction without such permits or clearances.[26] This amounted to gross inexcusable negligence on his part. Gross negligence has been defined as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but **wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected**. It is the omission

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[21] See *rollo*, pp. 37-41.

[22] *Id*. at 9; emphases supplied.

[23] See *id*.

[24] *Id*. at 37.

[25] *Id*. at 52, 62, and 72; emphases supplied.

[26] See *id*. at 37.

of that care which even inattentive and thoughtless men never fail to take on their own property."[27]

In view of the foregoing, the Court finds no reason to overturn these findings, as there was no showing that the SB overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case.[28] "[I]t bears pointing out that in appeals from the [SB], as in this case, only questions of law and not questions of fact may be raised. Issues brought to the Court on whether the prosecution was able to prove the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was sufficiently debunked, whether or not conspiracy was satisfactorily established, or whether or not good faith was properly appreciated, are all, invariably, questions of fact. Hence, absent any of the recognized exceptions to the above-mentioned rule, the [SB's] findings on the foregoing matters should be deemed as conclusive."[29] As such, Ferrer's conviction for violation of Section 3 (e) of RA 3019 must stand.

WHEREFORE, the petition is **DENIED**. The Decision dated May 11, 2018 and the Resolution dated June 18, 2018 of the *Sandiganbayan* in Crim. Case No. 26546 are hereby **AFFIRMED**. Petitioner Dominador Carandang Ferrer, Jr. is found **GUILTY** beyond reasonable doubt of the crime of violation of Section 3 (e) of RA 3019, and accordingly, sentenced to suffer the indeterminate penalty of imprisonment for a period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.

SO ORDERED.

Carpio (*Chairperson*), *Caguioa,* and *Lazaro-Javier, JJ.,* concur.

Reyes, J. Jr. J., on leave.

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[27] *Coloma, Jr. v. Sandiganbayan*, 744 Phil. 214, 229 (2014); emphasis supplied.

[28] See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, citing *Peralta v. People*, G.R. No. 221991, August 30, 2017.

[29] *Lihaylihay v. People*, 715 Phil. 722, 728 (2013); citations omitted.

SECOND DIVISION

[G.R. No. 240614. June 10, 2019]

DANILLE G. AMPO-ON, *petitioner, vs.* **REINIER[*] PACIFIC INTERNATIONAL SHIPPING, INC. and/or NEPTUNE SHIPMANAGEMENT SERVICES PTE./ NOL LINER (PTE.), LTD.,**[**] *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT; DISABILITY BENEFITS; TOTAL AND PERMANENT DISABILITY; WHEN THE COMPANY-DESIGNATED PHYSICIAN FAILS TO ARRIVE AT A DEFINITE ASSESSMENT ON THE SEAFARER'S FITNESS TO WORK OR PERMANENT DISABILITY WITHIN THE PRESCRIBED PERIOD, THE LAW STEPS IN TO CONSIDER THE LATTER'S DISABILITY AS TOTAL AND PERMANENT.— Pursuant to the 2010 POEA-SEC, which applies to this case, the employer is' liable for disability benefits only when the seafarer suffers from a work-related injury or illness during the term of his contract. In this regard, work-related injury is defined as an injury arising out of and in the course of employment. Upon finding that the seafarer suffers a work-related injury or illness, the employer is obligated to refer the former to a company-designated physician, who has the responsibility to arrive at a definite assessment of the former's fitness or degree of disability within a period of 120 days from repatriation. This period may be extended up to a maximum of 240 days, if the seafarer requires further medical treatment, subject to the right of the employer to declare within this extended period that a permanent partial or total disability already exists. The responsibility of the company-designated physician to arrive at a definite assessment within the prescribed

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[*] "Renier" in some parts of the *rollo*.

[**] "Neptune Shipmanagement Services Pte., Ltd./NOL Liner Pte., Ltd." in some parts of the *rollo*.

periods necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report. To be conclusive and to give proper disability benefits to the seafarer, this assessment must be **complete and definite;** otherwise, the medical report shall be set aside and the disability grading contained therein shall be ignored. As case law holds, a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.

2. ID.; ID.; ID.; DISABILITY COMPENSATION; WHAT IS COMPENSATED IS THE INCAPACITY TO WORK RESULTING IN THE IMPAIRMENT OF ONE'S EARNING CAPACITY AND NOT THE INJURY.— [P]etitioner's injury persisted despite the company designated-physician's declaration of partial disability Grade 8. Thus, applying Article 198 (c) (1) of the Labor Code, petitioner's disability should be deemed total and permanent. In this regard, it must be emphasized that in the determination of whether a disability is total or partial, what is crucial is whether the employee who suffered from disability could still perform his work notwithstanding the injuries he sustained. **A permanent partial disability presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period** despite the injuries sustained, and works on the premise that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained. Total disability does not require that the employee be completely disabled or totally paralyzed. In disability compensation, it is not the injury which is compensated, but it is the incapacity to work resulting in the impairment of one's earning capacity.

3. ID.; ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY COMPENSATION; GRANTED FOR ANY INJURY OR DEATH ARISING FROM AN ACCIDENT WHILE IN THE EMPLOYMENT OF THE COMPANY; CASE AT BAR.— As to the amount of petitioner's entitlement, Article 25 (1) of the CBA provides that the company shall pay compensation to a seaman for any injury or death arising from an accident while

in the employment of the company and for this purpose, shall effect a 24-hour insurance coverage in accordance with Appendix III to the agreement. An accident has been defined as an unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct; that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual, and unforeseen. Here, petitioner was performing his duty, *i.e.,* sanding works, as an Able Seaman when he heard a snap and crunching sound in his back immediately followed by tremendous pain. He could not have anticipated such unusual and unexpected snap in his back, since he merely exerted normal force with his upper extremities and such exertion does not at all times cause back injury. Thus, for being an unintended and unforeseen injurious occurrence, the sudden snap on petitioner's back could qualify as an accident. x x x Accordingly, petitioner is entitled to the total and permanent disability compensation under the CBA in the amount of US$120,000.00, as well as attorney's fees equivalent to ten percent (10%) of the award for being forced to litigate.

APPEARANCES OF COUNSEL

Nicomedes Tolentino for petitioner.
Soo Gutierrez Leogardo & Lee for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 28, 2018 and the Resolution[3] dated July 10, 2018 of the Court of Appeals (CA) in CA-G.R. SP No.

[1] *Rollo*, pp. 3-34.

[2] *Id*. at 464-475. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Priscilla J. Baltazar-Padilla and Zenaida T. Galapate-Laguilles, concurring.

[3] *Id*. at 494-495.

144437 which set aside the Decision[4] dated October 1, 2015 and the Resolution[5] dated January 7, 2016 of the National Conciliation and Mediation Board (NCMB) in MVA-093-RCMB-NCR-MVA-042-05-05-2015, granting petitioner Danille G. Ampo-on's (petitioner) claim for total and permanent disability benefits in accordance with the Singapore Organisation of Seamen - Neptune Shipmanagement Services, Pte., Ltd. Collective Bargaining Agreement[6] (CBA) in the amount of US$120,000.00, as well as ten percent (10%) attorney's fees.

The Facts

On February 11, 2014, petitioner was employed as an Able Seaman by respondent Reinier Pacific International Shipping, Inc. for and on behalf of its principal Neptune Shipmanagement Services Pte./NOL Liner (Pte.), Ltd.[7] (respondents), on board M/V APL Barcelona, under an eight (8)-month contract,[8] with a basic monthly salary of US$671.00, exclusive of overtime pay and other benefits. After undergoing the required pre-employment medical examination (PEME),[9] petitioner was declared fit for sea duty, and thus, boarded the vessel.[10]

On October 18, 2014, while doing sanding works, petitioner heard a snap and crunching sound in his back followed by tremendous pain. Upon reaching the port of Taiwan on October 20, 2014, petitioner was sent to the hospital, where he was initially diagnosed to be suffering from L3-L4 Spondylolisthesis and L3 Pars Fracture.[11] Consequently, he was repatriated on

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[4] 180-204. Signed by Accredited Voluntary Arbitrators (AVA) Romeo A. Young and Walfredo D. Villazor, with AVA Leonardo B. Saulog, dissenting.

[5] *Id.* at 234-235.

[6] *Id*. at 42-53.

[7] *Id*. at 117.

[8] *Id.* at 135.

[9] Dated February 3, 2014. *Id.* at 54-55.

[10] See *id*. at 180-181 and 465.

[11] See Medical Report Form dated October 21, 2014; *id*. at 56-58.

October 23, 2014 and referred to the company-designated physician, who performed several tests on him, advised him to undergo physical therapy, and even suggested back surgery.[12]

Eventually, on February 6, 2015, the company-designated physician issued a medical report,[13] stating, *inter alia*, that "[f]itness to work is unlikely to be given within his 120 days of treatment" and that "[i]f patient is entitled to disability, his suggested disability grading is Grade 8 – loss of 2/3 lifting power of the trunk," *viz*.:

> Based on the patient's present status, his prognosis is guarded.
>
> The specialist recommends surgery with Transforaminal Lumbar Interbody Fusion. However, the patient has refused the surgery. Without the surgery, he has already reached maximum medical improvement.
>
> **Fitness to work is unlikely to be given within his 120 days of treatment.**
>
> **If patient is entitled to disability, his suggested disability grading is Grade 8 – loss of 2/3 lifting power of the trunk.**[14]

On March 25, 2015, petitioner consulted his independent physician, Dr. Manuel Fidel M. Magtira (Dr. Magtira) who observed[15] that the former was permanently disabled and unfit to work.[16]

Thus, claiming that his condition rendered him incapacitated to work as a seafarer for more than 120 days, petitioner filed a complaint[17] against respondents before the NCMB for the

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[12] See *id*. at 181 and 465-466.

[13] *Id*. at 149.

[14] *Id*.

[15] See Medical Report dated March 25, 2015; *id*. at 62-64.

[16] See *id*. at 64, 182, and 466.

[17] See Complainant's Position Paper dated July 6, 2015; *id*. at 65-89.

payment of total and permanent disability benefits in the amount of US$120,000.00 as per the CBA, moral, exemplary, and compensatory damages, and attorney's fees.[18]

For their part, respondents denied petitioner's monetary claims, contending that petitioner's condition was not work-related and was not an accidental injury, but merely a manifestation of an illness, which was not compensable under the Philippine Overseas Employment Administration – Standard Employment Contract (POEA-SEC) or the CBA. Moreover, respondents pointed out that petitioner committed notorious negligence, since the latter refused surgery as suggested by the company-designated physician, despite the fact that the expenses thereof would be shouldered by the former.[19]

The NCMB's Ruling

In a Decision[20] dated October 1, 2015, the NCMB ruled in favor of petitioner, and accordingly, ordered respondents to jointly and severally pay him: (*a*) US$120,000.00, or its peso equivalent, as maximum disability compensation pursuant to the CBA; and (*b*) 10% attorney's fees.[21]

It held that petitioner's back injury was sustained in the course of performing his duties as an Able Seaman while exerting force with his upper extremities and hence, work-related. Besides, the company-designated physician failed to issue a report or opinion to the effect that the medical condition was not work-related.[22]

Moreover, the NCMB observed that the event so described, wherein petitioner suffered tremendous pain immediately when he heard a snap and crunching sound on his back during exertion,

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[18] See *id*. at 72-88 and 186-189.

[19] See *id*. at 189-192 and 509-517.

[20] *Id*. at 180-204.

[21] *Id*. at 200.

[22] *Id*. at 195.

falls within the definition of accidental injury.[23] On this score, it further noted that page three (3) of the October 21, 2014 Medical Report Form – which appears to have been suppressed by respondents as the same was not included in its evidence – discloses that the certifying doctor encircled the text "Yes"[24] in response to the question "Is the illness due to an accident."[25] Hence, the NCMB concluded that petitioner is entitled to maximum disability compensation pursuant to the CBA.[26]

Dissatisfied, respondents moved for reconsideration[27] but were denied in a Resolution[28] dated January 7, 2016; hence, the matter was elevated[29] to the CA.

The CA's Ruling

In a Decision[30] dated March 28, 2018, the CA set aside the NCMB's ruling and held that petitioner was only entitled to Grade 8 disability benefits under the POEA-SEC.[31]

Essentially, the CA gave more credence to the findings of the company-designated physician that petitioners' disability was "Grade 8 – loss of 2/3 lifting power of the trunk"[32] considering that its assessment contained in the February 6, 2015 medical report was arrived at after examining petitioner thoroughly, and after requiring him to undergo a series of medical

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[23] *Id*. at 196.

[24] *Id*. at 58.

[25] *Id*. at 195.

[26] See *id.* at 194-200.

[27] See motion for reconsideration dated December 4, 2015; *id*. at 205-215.

[28] *Id*. at 234-235.

[29] See Petition for Review dated February 12, 2016; *id*. at 236-253.

[30] *Id*. at 464-475.

[31] *Id*. at 474.

[32] *Id*. at 149.

tests, physical therapy, and medication, as evidenced by six (6) medical reports. On the other hand, the conclusion of petitioner's independent physician, Dr. Magtira, that petitioner was unfit for sea duty, was made without proof of the medical procedures, examinations, or tests, which would form the basis thereof.[33]

Undaunted, petitioner moved for reconsideration[34] but was denied in a Resolution[35] dated July 10, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in ruling that petitioner is entitled to only Grade 8 disability benefits under the POEA-SEC.

The Court's Ruling

The petition is meritorious.

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, the parties' contracts, and the medical findings. The relevant statutory provisions are Articles 197 to 199[36] (formerly Articles 191 to

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[33] See *id*. at 473.

[34] See motion for reconsideration dated April 19, 2018; *id*. at 476-490.

[35] *Id*. at 494-495.

[36] Article 197. *Temporary Total Disability*. – (a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: **the daily income benefit shall not be** less than Ten Pesos nor more than Ninety Pesos, nor **paid for a continuous period longer than one hundred twenty days**, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness.

x x x x x x x x x

Article 198. *Permanent Total Disability*. – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability

193) of the Labor Code, in relation to Section 2 (a),[37] Rule X of the Amended Rules on Employees' Compensation, whereas the material contracts are the POEA-SEC and the parties' CBA, if any.

I.

Pursuant to the 2010 POEA-SEC, which applies to this case, the employer is liable for disability benefits only when the seafarer suffers from a work-related injury or illness during

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shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: Provided, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

x x x x x x x x x

(c) The following disabilities shall **be deemed total and permanent**:

(1) **Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;**

x x x x x x x x x

Article 199. *Permanent Partial Disability*. – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains **an injury resulting in permanent partial disability shall**, for each month not exceeding the period designated herein, **be paid by the System during such disability an income benefit for permanent total disability**.

x x x x x x x x x (Emphases and underscoring supplied)

[37] RULE X – TEMPORARY TOTAL DISABILITY

x x x x x x x x x

Section 2. *Period of entitlement* – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness **it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid**. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

x x x x x x x x x (Emphasis supplied)

the term of his contract.[38] In this regard, work-related injury is defined as an injury arising out of and in the course of employment.[39]

Upon finding that the seafarer suffers a work-related injury or illness, the employer is obligated to refer the former to a company-designated physician, who has the responsibility to arrive at a definite assessment of the former's fitness or degree of disability within a period of 120 days from repatriation.[40] This period may be extended up to a maximum of 240 days, if the seafarer requires further medical treatment, subject to the right of the employer to declare within this extended period that a permanent partial or total disability already exists.[41]

The responsibility of the company-designated physician to arrive at a definite assessment within the prescribed periods necessitates that the perceived disability rating has been properly established and inscribed in a valid and timely medical report.[42] To be conclusive and to give proper disability benefits to the seafarer, this assessment must be **complete and definite**;[43] otherwise, the medical report shall be set aside and the disability grading contained therein shall be ignored.[44] As case law holds, a final and definite disability assessment is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such.[45]

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[38] See Section 20 (A) of the 2010 POEA-SEC.

[39] See Number 17 of the Definition of Terms of the 2010 POEA-SEC.

[40] See Section 20 (A) of the 2010 POEA-SEC.

[41] *TSM Shipping Phils., Inc. v. Patiño*, G.R. No. 210239, March 20, 2017, 821 SCRA 70, 83.

[42] See *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018.

[43] See *Orient Hope Agencies, Inc. v. Jara*, G.R. No. 204307, June 6, 2018.

[44] See *Olidana v. Jebsens Maritime, Inc.*, 772 Phil. 234, 245 (2015).

[45] *Sunit v. OSM Maritime Services, Inc.*, 806 Phil. 505, 519 (2017).

Failure of the company-designated physician to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the prescribed periods and if the seafarer's medical condition remains unresolved, the law steps in to consider the latter's disability as total and permanent.[46]

In this case, records reveal that petitioner sustained a back injury while doing sanding works as an Able Seaman during his employment on board respondents' vessel.[47] For respondents' part, there appears to be no categorical assessment from the company-designated physician that petitioner's injury was not work-related, as the former even suggested a partial disability grading.[48] Clearly, these facts negate respondents' claim that the injury did not arise out of and in the course of employment, and hence, must be deemed work-related.

Moreover, while the company-designated physician's assessment[49] was issued within the 120-day period, which was on February 6, 2015 or 106 days after petitioner's repatriation, it could not have been a final and definite assessment as mandated by law, considering the language of the assessment showing that the disability grading was merely **interim**, as it was declared that "**prognosis is guarded**" and "**[i]f** patient is entitled to a disability, his **suggested** disability grading is Grade 8 – loss of 2/3 lifting power of the trunk." Notably, the company-designated physician even informed petitioner that "**[f]itness to work is unlikely** to be given **within his 120 days** of treatment." The medical report reads:

> Based on the patient's present status, his **prognosis is guarded**.
>
> The specialist recommends surgery with Transforaminal Lumbar Interbody Fusion. However, the patient has refused the surgery. Without the surgery, he has already reached maximum medical improvement.

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[46] See *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717, 731 (2013).

[47] See *rollo*, pp. 181 and 465.

[48] See *id*. at 149, 181-182, and 465.

[49] See Medical Report dated February 6, 2015; *id*. at 149.

Fitness to work is unlikely to be given within his 120 days of treatment.

If patient is entitled to disability, his **suggested disability grading** is Grade 8 – loss of 2/3 lifting power of the trunk.[50]

Consequently, the company-designated physician's assessment should not prevail and must be completely disregarded, since it was merely an "interim" assessment. Being an interim disability grading, the declaration was merely an initial prognosis of petitioner's condition for the time being, which does not fully assess his condition and cannot provide sufficient basis for an award of disability benefits in his favor.[51] Moreover, notwithstanding such interim assessment and declaration of unfitness to work, the company-designated physician failed to indicate the need for further treatment/rehabilitation or medication, and provide an estimated period of treatment to justify the extension of the 120-day period. Evidently, without the required final and definite assessment declaring petitioner fit to resume work or the degree of his disability, the characterization of the latter's condition after the lapse of the 120-day period as total and permanent ensued by operation of law.[52]

Besides, petitioner's injury persisted despite the company designated-physician's declaration of partial disability Grade 8. Thus, applying Article 198 (c) (1) of the Labor Code, petitioner's disability should be deemed total and permanent. In this regard, it must be emphasized that in the determination of whether a disability is total or partial, what is crucial is whether the employee who suffered from disability could still perform his work notwithstanding the injuries he sustained. **A permanent**

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[50] *Id*. at 149; emphases and underscoring supplied.

[51] See *Sharpe Sea Personnel, Inc. v. Mabunay, Jr.*, G.R. No. 206113, November 6, 2017, 844 SCRA 18, 38, citing *Magsaysay Maritime Corp. v. Cruz*, 786 Phil. 451, 463 (2016).

[52] See *Gamboa v. Maunlad Trans, Inc.*, G.R. No. 232905, August 20, 2018.

partial disability presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period despite the injuries sustained, and works on the premise that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained.[53] Total disability does not require that the employee be completely disabled or totally paralyzed. In disability compensation, it is not the injury which is compensated, but it is the incapacity to work resulting in the impairment of one's earning capacity.[54]

Corollarily, the compliance with the third-doctor referral provision of the 2010 POEA-SEC is rendered inapplicable, considering that absent a final assessment from the company-designated physician, the seafarer has nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.[55]

Neither can the Court subscribe to respondents' claim that petitioner's refusal to undergo surgery can be considered as notorious negligence that would bar the latter from claiming compensation. Notorious negligence has been defined as something more than mere or simple negligence or contributory negligence; it signifies a deliberate act of the employee to disregard his own personal safety.[56] Here, there is no showing that the latter was informed that surgery was the sole remedy to address his back injury nor warned of the effect of his choice of physical therapy.

Given the foregoing circumstances, the Court finds that the NCMB did not gravely abuse its discretion in holding that

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[53] See *Sunit v. OSM Maritime Services, Inc.*, *supra* note 45, at 521.

[54] *Id.* at 522.

[55] See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, G.R. No. 228504, June 6, 2018.

[56] *Marlow Navigation Philippines, Inc. v. Heirs of Ricardo S. Ganal*, G.R. No. 220168, June 7, 2017, 827 SCRA 72, 87.

petitioner is deemed permanently and totally disabled and should be entitled to the corresponding disability benefits.

II.

As to the amount of petitioner's entitlement, Article 25 (1) of the CBA provides that the company shall pay compensation to a seaman for any injury or death arising from an accident while in the employment of the company and for this purpose, shall effect a 24-hour insurance coverage in accordance with Appendix III[57] to the agreement.[58] An accident has been defined as an unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct; that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual, and unforeseen.[59]

Here, petitioner was performing his duty, *i.e.*, sanding works, as an Able Seaman when he heard a snap and crunching sound in his back immediately followed by tremendous pain.[60] He

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[57]

Appendix III
Insurance

	Capital Sum Insured
1 All Ratings	US $120,000
2 Compensation shall be paid to any seaman who sustains injuries through an accident as follows:	
	% of Capital Sum Insured
2.1 Death	100%
2.2 Total and Permanent Disablement	100%

x x x (*Rollo*, p. 52)

[58] *Id.* at 48, including dorsal portion.

[59] See *Philsynergy Maritime, Inc. v. Gallano*, *supra* note 55, citing *C.F. Sharp Crew Management, Inc. v. Perez*, 752 Phil. 46, 57 (2015).

[60] *Rollo*, pp. 181 and 465.

could not have anticipated such unusual and unexpected snap in his back, since he merely exerted normal force with his upper extremities and such exertion does not at all times cause back injury. Thus, for being an unintended and unforeseen injurious occurrence, the sudden snap on petitioner's back could qualify as an accident.

Moreover, as aptly observed by the NCMB, respondents did not include in its evidence page three (3) of the Medical Report Form, which reveals that the certifying doctor encircled the text "Yes" in response to the question "Is the illness due to an accident."[61] Thus, it appears that they have suppressed such evidence, which would have been an admission contained in a pleading that is conclusive against the pleader,[62] confirming that petitioner indeed suffered an accident.

Accordingly, petitioner is entitled to the total and permanent disability compensation under the CBA in the amount of US$120,000.00, as well as attorney's fees equivalent to ten percent (10%) of the award for being forced to litigate. However, the claims for moral and exemplary damages are not warranted for lack of substantial evidence showing that respondents acted with malice or bad faith in refusing petitioner's claims.[63]

WHEREFORE, the petition is **GRANTED**. The Decision dated March 28, 2018 and the Resolution dated July 10, 2018 of the Court of Appeals in CA-G.R. SP No. 144437 are hereby **REVERSED AND SET ASIDE**. The Decision dated October 1, 2015 and the Resolution dated January 7, 2016 of the National Conciliation and Mediation Board in MVA-093-RCMB-NCR-MVA-042-05-05-2015 are **REINSTATED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa*, and *Lazaro-Javier, JJ.*, concur.

Reyes, J. Jr., J., on leave.

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[61] *Id*. at 58.

[62] See *Anuat v. Pacific Ocean Manning, Inc.*, G.R. No. 220898, July 23, 2018.

[63] See *Gamboa v. Maunlad Trans, Inc.*, *supra* note 52.

SECOND DIVISION

[A.M. No. P-19-3916. June 17, 2019]
(Formerly OCA IPI No. 17-4710-P)

ANONYMOUS, *complainant, vs.* **JESSICA MAXILINDA A. IBARRETA, SHERIFF IV, REGIONAL TRIAL COURT OF IRIGA CITY, CAMARINES SUR, BRANCH 36,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT OF COURT PERSONNEL; ADMINISTRATIVE CIRCULAR NO. 5 DATED OCTOBER 4, 1988; ALL OFFICIALS AND EMPLOYEES OF THE JUDICIARY ARE PROHIBITED FROM ENGAGING DIRECTLY IN ANY PRIVATE BUSINESS, VOCATION OR PROFESSION EVEN OUTSIDE THEIR OFFICE HOURS TO ENSURE THAT THEY RENDER FULL-TIME SERVICE, FOR ONLY THEN COULD ANY UNDUE DELAYS IN THE ADMINISTRATION OF JUSTICE AND IN THE DISPOSITION OF COURT CASES BE AVOIDED.— [A]dministrative Circular No. 5 dated October 4, 1988 has prohibited all officials and employees of the Judiciary from engaging directly in any private business, vocation or profession, even outside their office hours. The prohibition is aimed at ensuring that full-time officers and employees of the courts render full-time service, for only then could any undue delays in the administration of justice and in the disposition of court cases be avoided. The nature of the work of court employees and officials demanded their highest degree of efficiency and responsibility, and they would not ably meet the demand except by devoting their undivided time to the government service. This explains why court employees have been enjoined to strictly observe official time and to devote every second or moment of such time to serving the public. This is in line with Section 1, Canon IV of A.M. No. 03-06-13-SC, entitled the "Code of Conduct of Court Personnel," which reads: CANON IV PERFORMANCE OF DUTIES Section 1. Court personnel shall at all times perform official duties properly and with diligence.

They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

2. **ID.; ID.; ID.; ID.; THE ACT OF ENGAGING IN A MONEY LENDING BUSINESS WHILE CONCURRENTLY BEING A SHERIFF CONSTITUTES SIMPLE MISCONDUCT, AS THE SAME GREATLY DIMINISHED THE REPUTATION OF HER OFFICE AND OF THE COURTS IN THE ESTEEM OF THE PUBLIC.—** Although many "moonlighting" activities were themselves legal acts that would be permitted or tolerated had the actors not been employed in the public sector, moonlighting, albeit not usually treated as a serious misconduct, can amount to a malfeasance in office by the very nature of the position held. In this case, respondent's act of engaging in a money lending business — an accusation which she failed to sufficiently rebut – while concurrently being a Sheriff of the RTC surely put the integrity of her office under so much undeserved suspicion. She should have been more circumspect in her acts, knowing that sooner or later, it would be unavoidable that the impression that she had taken advantage of her position and abused the confidence reposed in her office and functions would arise. Undoubtedly, her activities greatly diminished the reputation of her office and of the courts in the esteem of the public. As such, the OCA correctly found her administratively liable for Simple Misconduct.

3. **ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); SIMPLE MISCONDUCT IS CLASSIFIED AS A LESS GRAVE OFFENSE PUNISHABLE BY SUSPENSION FOR THE FIRST OFFENSE, AND DISMISSAL FROM THE SERVICE FOR THE SECOND OFFENSE; PENALTY OF FINE IMPOSED AGAINST THE RESPONDENT FOR SIMPLE MISCONDUCT AS IT WAS HER FIRST OFFENSE IN HER THIRTY YEARS OF SERVICE.—** Anent the proper penalty to be imposed on respondent, Section 46 (D) (2), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) classifies Simple Misconduct as a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. Nonetheless, in *Cabigao v. Nery* (*Cabigao*), the Court explained

that it has the discretion to temper the harshness of the penalties imposed on erring officials and employees of the judiciary when warranted by the circumstances x x x. Here, considering the fact that this is respondent's first offense in her thirty (30) years of service, and that she is performing a frontline function as a Sheriff, the Court finds it proper to impose on her a fine equivalent to her salary for one (1) month and one (1) day, pursuant to Section 47 (1) (b) and (2) of the RRACCS.

4. ID.; ID.; SHERIFFS; AS A FRONT-LINE REPRESENTATIVE OF THE JUDICIAL SYSTEM, SHERIFFS MUST ALWAYS DEMONSTRATE INTEGRITY IN THEIR CONDUCT FOR ONCE THEY LOSE THE PEOPLE'S TRUST, THEY ALSO DIMINISH THE PEOPLE'S FAITH IN THE ENTIRE JUDICIARY.— [T]he Court emphasizes that the conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. Court employees should act with more circumspection and to steer clear of any situation, which may cast the slightest suspicion on their conduct. Relatedly, "'[s]heriffs, as officers of the court and agents of the law, play an important role in the administration of justice. They are in the forefront of things, tasked as they are to serve judicial writs, execute all processes, and carry into effect the orders of the court.' As a front-line representative of the judicial system, sheriffs must always demonstrate integrity in their conduct for once they lose the people's trust, they also diminish the people's faith in the entire judiciary."

D E C I S I O N

PERLAS-BERNABE, *J.*:

The instant administrative case arose from the letter indorsement[1] dated January 8, 2016 of Assistant Ombudsman Joselito P. Fangon (Assistant Ombudsman Fangon) and the

[1] *Rollo*, p. 7.

undated anonymous complaint[2] charging respondent Jessica Maxilinda A. Ibarreta (respondent), Sheriff IV of the Regional Trial Court of Iriga City, Camarines Sur, Branch 36 (RTC) of: (*a*) acquiring ill-gotten wealth; and (*b*) engaging in lending business with high interest and devoting her official time in promoting her financial and propriety pursuit, respectively.

The Facts

At around two (2) o'clock in the afternoon of January 7, 2016, the Office of the Ombudsman received an anonymous call reporting that respondent displays wealth which is disproportionate to her monthly wage, has a money lending business, and is a powerful and influential person because judges in the RTC always give special preference to her.[3] The Office of the Ombudsman, through Assistant Ombudsman Fangon, forwarded the complaint to the Office of the Court Administrator (OCA), which referred the matter to Executive Judge Timoteo A. Panga, Jr. (Judge Panga) of the RTC for investigation. After Judge Panga submitted his partial report,[4] Hon. Manuel M. Rosales (Judge Rosales) was designated as the new executive judge of the RTC, and as such, he took over the investigation of the case,[5] and thereafter, submitted his own report.[6]

In their reports, Judge Panga and Judge Rosales observed that: (*a*) respondent's marriage had been annulled; (*b*) she has two (2) college-level children who are both studying at a private university in Naga City; (*c*) she owns a house and two (2) vehicles, all of which are declared in her Statements of Assets, Liabilities, and Net Worth; (*d*) no adverse findings

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[2] *Id*. at 9.

[3] *Id*. at 1.

[4] See Report (on the alleged ill-gotten wealth of Sheriff Jessica Maxilinda A. lbarreta) dated July 20, 2016; *id*. at 12-14.

[5] See *id*. at 1-3.

[6] See Report on the Alleged III-Gotten Wealth of Sheriff Jessica Maxilinda A. lbarreta dated January 23, 2017; *id*. at 32-33.

regarding her work performance as Sheriff was reported nor was there any complaints or accusation filed relative to her misuse of her office or any reports of harassment or oppression from any litigant or counsel; (*d*) she, however, runs a money lending business, locally known as "5-6," wherein she charges excessive interest rates of as much as ten percent (10 %) per month, which apparently is the source of her wealth; and (*e*) she personally conducts such money lending business even during office hours.[7]

In a Memorandum[8] dated May 24, 2017, the OCA found the charges of acquisition of ill-gotten wealth against respondent to be without merit. Nevertheless, it found *prima facie* evidence against respondent for simple misconduct, taking into account her acts of engaging in a money lending business during office hours and devoting her official time to foster her proprietary pursuits. Hence, the OCA recommended that the matter be docketed for purposes of preliminary inquiry and that respondent be made to comment.[9]

In her Comment,[10] respondent made a point-by-point refutation of the accusation on acquisition of ill-gotten wealth against her. Notably, however, as to the issue about her money lending business, she merely asserted that it was the business of her late mother which was discontinued when she passed away.[11]

The OCA's Report and Recommendation

In a report and recommendation[12] dated November 6, 2018, the OCA recommended, among others, that: (*a*) respondent be

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[7] See *id*. at 12-14 and 32-33. See also *id.* at 2-4.

[8] *Id*. at 1-6. Penned by OCA Legal Office Chief Wilhelmina D. Geronga and approved by Court Administrator Jose Midas P. Marquez.

[9] See *id*. at 4-6.

[10] Dated August 4, 2017. *Id*. at 37-39.

[11] See *id*.

[12] *Id*. at 42-49. Signed by Deputy Court Administrator and Office-in-Charge Raul Bautista Villanueva.

found guilty of Simple Misconduct for violating Reasonable Rules and Regulation and Section 1, Canon IV of the Code of Conduct for Court Personnel,[13] and accordingly, fined in the amount of ₱5,000.00 payable within thirty (30) days from receipt of notice; and (b) she be directed to cease and desist from her money lending activities and be sternly warned that her failure to do so shall be dealt with more severely.[14]

Prefatorily, the OCA pointed out that as per their Memorandum[15] dated May 24, 2017, it already cleared respondent from the allegation of acquisition of ill-gotten wealth, and that she was only being made to answer for her money lending activities.[16] Despite this, respondent took more time in explaining the origins of her wealth and property, and only made an unconvincing and dismissive retort to address the latter charge. The OCA took this as an implicit admission that respondent is indeed engaging in a money lending business during office hours. The OCA held that respondent's acts violated: (*a*) Section 1, Canon IV of the Code of Conduct for Court Personnel which mandates that court personnel shall commit themselves exclusively to the business and responsibilities of their office during working hours; and (*b*) Administrative Circular No. 5 dated October 4, 1988, which prohibits all officials and employees of the Judiciary from engaging in, *inter alia*, money lending activities during office hours, and thus, constitutes Simple Misconduct for which she must be held administratively liable. Finally, the OCA recommended the imposition of a fine in lieu of suspension, considering respondent's first offense in her thirty (30) years of service, and that such imposition would prevent any adverse effect on the public service that would ensue if respondent, a Sheriff performing frontline functions, is suspended.[17]

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[13] See A.M. No. 03-06-13-SC effective on June 1, 2004.

[14] *Rollo*, p. 49.

[15] *Id.* at 1-6.

[16] See *id.* at 42-45.

[17] See *id.* at 47-49.

The Issue before the Court

At the outset, the Court notes that as early as in the OCA's Memorandum dated May 24, 2017, respondent was already cleared of the charge of acquisition of ill-gotten wealth. As such, the sole issue for the Court' resolution is whether or not respondent should be held administratively liable for her alleged money lending business activities during office hours.

The Court's Ruling

After a judicious perusal of the records, the Court adopts the findings and recommendations of the OCA, except as to the amount of fine to be imposed on respondent.

Administrative Circular No. 5 dated October 4, 1988 reads in full:

TO: ALL OFFICIALS AND EMPLOYEES OF THE JUDICIARY

SUBJECT: PROHIBITION TO WORK AS INSURANCE AGENT

In line with Section 12, Rule XVIII of the Revised Civil Service Rules, the Executive Department issued Memorandum Circular No. 17 dated September 4, 1986 authorizing heads of government offices to grant their employees permission to "engage directly in any private business, vocation and profession ... outside office hours."

However, in its *En Banc* resolution dated October 1, 1987, denying the request of Atty. Froilan L. Valdez of the Office of Associate Justice Ameurfina Melencio-Herrera, to be commissioned as a Notary Public, **the Court expressed the view that the provisions of Memorandum Circular No. 17 of the Executive Department are not applicable to officials or employees of the courts considering the express prohibition in the Rules of Court and the nature of their work which requires them to serve with the highest degree of efficiency and responsibility, in order to maintain public confidence in the Judiciary**. The same policy was adopted in Administrative Matter No. 88-6-002-SC, June 21, 1988, where the court denied the request of Ms. Esther C. Rabanal, Technical Assistant II, Leave Section, Office of the Administrative Services of this Court, to work as an insurance agent after office hours including Saturdays, Sundays and holidays. **Indeed, the entire time of**

Judiciary officials and employees must be devoted to government service to insure efficient and speedy administration of justice.

ACCORDINGLY, **all officials and employees of the Judiciary are hereby enjoined from being commissioned as insurance agents or from engaging in any such related activities, and, to immediately desist therefrom if presently engaged thereat.** (Emphases and underscoring supplied)

Verily, Administrative Circular No. 5 dated October 4, 1988 has prohibited all officials and employees of the Judiciary from engaging directly in any private business, vocation or profession, even outside their office hours. The prohibition is aimed at ensuring that full-time officers and employees of the courts render full-time service, for only then could any undue delays in the administration of justice and in the disposition of court cases be avoided. The nature of the work of court employees and officials demanded their highest degree of efficiency and responsibility, and they would not ably meet the demand except by devoting their undivided time to the government service. This explains why court employees have been enjoined to strictly observe official time and to devote every second or moment of such time to serving the public[18] This is in line with Section 1, Canon IV of A.M. No. 03-06-13-SC, entitled the "Code of Conduct of Court Personnel," which reads:

CANON IV
PERFORMANCE OF DUTIES

Section 1. Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.

Although many "moonlighting" activities were themselves legal acts that would be permitted or tolerated had the actors not been employed in the public sector, moonlighting, albeit not usually treated as a serious misconduct, can amount to a

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[18] *Re: Anonymous Letter-Complaint Against Lopez and Montalvo*, 744 Phil. 541, 553-554 (2014).

malfeasance in office by the very nature of the position held. In this case, respondent's act of engaging in a money lending business – an accusation which she failed to sufficiently rebut – while concurrently being a Sheriff of the RTC surely put the integrity of her office under so much undeserved suspicion. She should have been more circumspect in her acts, knowing that sooner or later, it would be unavoidable that the impression that she had taken advantage of her position and abused the confidence reposed in her office and functions would arise. Undoubtedly, her activities greatly diminished the reputation of her office and of the courts in the esteem of the public.[19] As such, the OCA correctly found her administratively liable for Simple Misconduct.[20]

Anent the proper penalty to be imposed on respondent, Section 46 (D) (2), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service[21] (RRACCS) classifies Simple Misconduct as a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense. Nonetheless, in *Cabigao v. Nery*[22] (*Cabigao*), the Court explained that it has the discretion to temper the harshness of the penalties imposed on erring officials and employees of the judiciary when warranted by the circumstances, to wit:

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[19] See *id*. at 554.

[20] "[M]isconduct is *intentional* wrongdoing or *deliberate* violation of a rule of law or standard of behavior. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest. Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only. Most importantly, without a nexus between the act complained of and the discharge of duty, the charge of grave misconduct shall necessarily fail." (*Daplas v. Department of Finance*, 808 Phil. 763, 772 [2017].)

[21] Promulgated on November 8, 2011.

[22] 719 Phil. 475 (2013).

"However, while this Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, this Court also has the discretion to temper the harshness of its judgment with mercy." "In several jurisprudential precedents, **the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Factors such as the respondent's length of service**, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the determination by the Court of the imposable penalty."[23] (Emphasis and underscoring supplied)

Here, considering the fact that this is respondent's first offense in her thirty (30) years of service, and that she is performing a frontline function as a Sheriff, the Court finds it proper to impose on her a fine equivalent to her salary for one (1) month and one (1) day, pursuant to Section 47 (1) (b) and (2)[24] of the

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[23] *Id*. at 484; citations omitted.

[24] Section 47 (1) (b) and (2) of the RRACCS reads:

Section 47. *Penalty of Fine*. –The following are the guidelines for the penalty of fine:

I. Upon the request of the head of office or the concerned party and when supported by justifiable reason/s the disciplining authority may allow payment of fine in place of suspension if any of the following circumstances are present:

x x x x x x x x x

b. When the respondent is actually discharging frontline functions or those directly dealing with the public and the personnel complement of the office is insufficient to perform such function;

x x x x x x x x x

2. The payment of penalty of fine in lieu of suspension shall be available in Grave, Less Grave, and Light Offenses where the penalty imposed is for six (6) months or less at the ratio of one (1) day of suspension from the service to one (I) day fine; Provided, that in Grave Offenses where the penalty imposed is six (6) months and one (1) day suspension in view of the presence of mitigating circumstance[/s], the conversion shall only apply to the suspension of six (6) months. Nonetheless, the remaining one (I) day suspension is deemed included therein.

RRACCS. This imposition also finds support in *Cabigao* where the Court held:

> While the recommended penalty of one-month suspension is reasonable, the same is not practical at this point, considering that his work would be left unattended by reason of his absence. Furthermore, he may use his suspension as another excuse to justify his inaction and inefficiency in other matters pending before his office. Instead of suspension, we impose a fine equivalent to his one-month salary, so that he can finally implement the subject writs and perform the other duties of his office.[25]

As a final note, the Court emphasizes that the conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage. Court employees should act with more circumspection and to steer clear of any situation, which may cast the slightest suspicion on their conduct.[26] Relatedly, '"[s]heriffs, as officers of the court and agents of the law, play an important role in the administration of justice. They are in the forefront of things, tasked as they are to serve judicial writs, execute all processes, and carry into effect the orders of the court.' As a front-line representative of the judicial system, sheriffs must always demonstrate integrity in their conduct for once they lose the people's trust, they also diminish the people's faith in the entire judiciary."[27]

WHEREFORE, The Court finds respondent Jessica Maxilinda A. lbarreta, Sheriff IV of the Regional Trial Court of Iriga City, Camarines Sur, Branch 36 **GUILTY** of Simple Misconduct. Accordingly, she is ordered to pay a **FINE** equivalent

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[25] *Cabigao v. Nery*, *supra* note 22, at 486, citing *Mariñas v. Florendo*, 598 Phil. 322, 331 (2009).

[26] See *id*. at 483, citing *Macinas v. Arimado*, 508 Phil. 161, 165 (2005).

[27] See *id*.; citations omitted.

to her salary for one (1) month and one (1) day, and is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely. Let a copy of this Decision be attached to her personal record.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa, Reyes, J. Jr.,* and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 212862. June 17, 2019]

SPOUSES FERNANDO C. CRUZ and AMELIA M. CRUZ and MILLIANS SHOE, INC., *petitioners, v.* **ONSHORE STRATEGIC ASSETS (SPV-AMC), INC., UNITED OVERSEAS BANK PHILIPPINES (formerly WESTMONT BANK),[*] REGIONAL TRIAL COURT, BRANCH 263-MARIKINA CITY, REGISTER OF DEEDS, MARIKINA CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; NONCOMPLIANCE WITH BAR MATTER NO. 1922 REQUIRING LAWYERS TO INDICATE IN ALL THE PLEADINGS AND MOTIONS THEY FILE BEFORE THE COURTS, THE NUMBER AND DATE OF THEIR MANDATORY CONTINUING LEGAL EDUCATION (MCLE) CERTIFICATE OF COMPLETION OR EXEMPTION, WOULD CAUSE THE DISMISSAL OF THE CASE AND THE EXPUNCTION OF THE PLEADINGS FROM THE

[*] Also referred to as "West Bank" in the Petition.

RECORDS.— Bar Matter No. 1922 requires lawyers to indicate in all the pleadings and motions they file before the courts, the number and date of their MCLE Certificate of Completion or Exemption **would cause the dismissal of the case and the expunction of the pleadings from the records**. It provides: x x x Bar Matter No. 1922. — Re: Recommendation of the Mandatory Continuing Legal Education (MCLE) Board to Indicate in All Pleadings Filed with the Courts the Counsel's MCLE Certificate of Compliance or Certificate of Exemption. – x x x. **Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records.** There is no dispute that when the subject complaint was filed before the RTC, petitioners' counsel failed to indicate the date and number of her MCLE Compliance Certificate for the immediately preceding period, which is the third compliance period in this case, as required by Bar Matter No. 1922. The obligation to disclose the information required under Bar Matter No. 1922 is not a useless formality. The inclusion of information regarding compliance with (or exemption from) MCLE seeks to ensure that legal practice is reserved only for those who have complied with the recognized mechanism for "keep[ing] abreast with law and jurisprudence, maintain[ing] the ethics of the profession[,] and enhance[ing] the standards of the practice of law." Thus, the dismissal of petitioners' complaint for non-compliance therewith was proper.

2. ID.; RULES OF PROCEDURE; RULES OF PROCEDURE SHOULD BE VIEWED AS MERE TOOLS DESIGNED TO FACILITATE THE ATTAINMENT OF JUSTICE, AND THEIR STRICT AND RIGID APPLICATION, WHICH WOULD RESULT IN TECHNICALITIES THAT TEND TO FRUSTRATE RATHER THAN PROMOTE SUBSTANTIAL JUSTICE MUST ALWAYS BE ESCHEWED, BUT THE LIBERAL APPLICATION OF THE RULES OF PROCEDURE CAN BE INVOKED ONLY IN PROPER CASES AND UNDER JUSTIFIABLE CAUSES AND CIRCUMSTANCES.— In a plethora of cases, this Court has consistently held that rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice; their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice,

must always be eschewed. However, it must be stressed that the liberal application of the rules of procedure can be invoked only in proper cases and under justifiable causes and circumstances. The Court finds no compelling reason to relax the application of the subject rule to the case at bench. The counsel's busy schedule in attending to her clients' needs, as well as to her personal concerns, is not a sufficient justification to excuse the non-compliance with the subject rule. No evidence was also offered to show that petitioners' counsel made a conscious effort to at least substantially comply with what was required by Bar Matter No. 1922.

3. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; SUPREME COURT *EN BANC* RESOLUTION DATED JANUARY 14, 2014 AMENDED BAR MATTER NO. 1922, WHICH PROVIDES THAT THE FAILURE OF COUNSEL TO INDICATE IN THE PLEADINGS THE NUMBER AND DATE OF ISSUE OF HIS OR HER MCLE COMPLIANCE CERTIFICATE WILL NO LONGER RESULT IN THE DISMISSAL OF THE CASE AND THE EXPUNCTION OF THE PLEADINGS FROM THE RECORDS, BUT WILL ONLY SUBJECT THE COUNSEL TO THE PRESCRIBED FINE AND/OR DISCIPLINARY ACTION; CANNOT BE LIBERALLY APPLIED TO CASE AT BAR.— The Court is aware that Bar Matter No. 1922 has been amended by the Supreme Court *En Banc* in a Resolution dated January 14, 2014 by repealing the phrase *"Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records"* and replacing it with *"Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action,"* such that under the amendatory resolution, the failure of counsel to indicate in the pleadings the number and date of issue of his or her MCLE Compliance Certificate will no longer result in the dismissal of the case and the expunction of the pleadings from the records, but will only subject the counsel to the prescribed fine and/or disciplinary action; and that in *Doble, Jr. v. ABB, Inc./Nitin Desai,* the Court applied the aforementioned *En Banc* Resolution even if the pleading prepared by the non-compliant counsel was filed before Bar Matter No. 1922 was amended, and thus refused to dismiss the case. In this case, however, the counsel complied, albeit belatedly, with the MCLE requirement and exerted honest effort

to correct the procedural defect. Such is not obtaining in this case. Hence, there is no reason to apply the same liberality in this case.

4. ID.; ID.; ID.; DISMISSAL OF THE CASE DUE TO COUNSEL'S NON-COMPLIANCE WITH BAR MATTER NO. 1922 WILL NOT PREJUDICE PETITIONERS' CAUSE OR RIGHT TO DUE PROCESS BECAUSE THE SAME COMPLAINT MAY BE RE-FILED WITH COMPLETE COMPLIANCE OF THE RULES AS IT HAD NOT BEEN ADJUDICATED ON THE MERITS.— It must be stressed that the dismissal was brought about by their counsel's non-observance of Bar Matter No. 1922. Be that as it may, such dismissal did not prejudice petitioners' cause or rights because the same complaint may be re-filed with complete compliance of the rules as it had not been adjudicated on the merits. Moreover, such dismissal could not be considered a violation of due process as rights were never deprived or taken away from the petitioners.

5. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; THE NEGLIGENCE OF COUNSEL BINDS THE CLIENT; EXCEPTIONS; NOT PRESENT; THE FAILURE OF THE PETITIONERS TO ADVANCE MERITORIOUS REASONS TO SUPPORT THEIR PLEA OF THE RELAXATION OF THE SUBJECT RULE WILL NOT SUFFICE TO OVERRIDE THE STRINGENT IMPLEMENTATION OF THE RULE ON THE BARE INVOCATION OF THE INTEREST OF SUBSTANTIAL JUSTICE.— The doctrinal rule is that the negligence of counsel binds the client. Otherwise, there would be no end to a suit so long as a new counsel could be employed who would allege and show that the prior counsel had not been sufficiently diligent, experienced, or learned. "However, this rule admits certain exceptions, such as: (1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so requires." None of these exceptions obtain here. x x x [P]etitioners' right to due process was not violated because the dismissal was without prejudice and can be corrected by the refilling of the complaint that complies with the prescribed rules. Since the court has not even taken cognizance of the case and has not yet ruled on the merits, petitioners could not

be said to have been outrightly deprived of their property. The failure of the petitioners to advance meritorious reasons to support their plea of the relaxation of the subject rule will not suffice to override the stringent implementation of the rule on the bare invocation of the interest of substantial justice.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL THE DECISION OF THE REGIONAL TRIAL COURT DISMISSING THE ACTION WITHOUT PREJUDICE.— As aptly observed by the CA, petitioners availed of the wrong remedy when they appealed the Orders of the RTC which dismissed their complaint without prejudice. x x x. Since the dismissal of the action was without prejudice as petitioners are not precluded from refiling the same complaint, Section 1, Rule 41 of the Rules of Court is clear that the proper recourse is not an appeal, but to file the appropriate special civil action under Rule 65. Hence, the CA correctly dismissed the appeal for being the wrong remedy.

APPEARANCES OF COUNSEL

Jose V. Nitura, Jr. for petitioners.
Villaraza and Angangco for respondent OSAI.
Lainez and Partners Law Offices for respondent UOBP.

D E C I S I O N

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

The Facts and the Case

Before this Court is a Petition for Review on *Certiorari* seeking to annul and set aside the July 25, 2013 Decision[1] and June 9, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 99062 which dismissed the appeal of petitioners spouses Fernando C. Cruz and Amelia M. Cruz, and Millians Shoe, Inc., relative to the September 21, 2011 and March 19, 2012

[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ramon R. Garcia and Danton Q. Bueser, concurring; *rollo*, pp. 39-45.

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

Orders[3] of the Regional Trial Court (RTC) of Marikina City, Branch 263, which dismissed petitioners' complaint.

On March 17, 2011, petitioners filed a Complaint for Annulment of Extrajudicial Foreclosure Sale, Loan Documents, Accounting and Damages against respondents Onshore Strategic Assets (SPV-AMC), Inc. (OSAI), United Overseas Bank Philippines, as well as the Office of the Clerk of Court and Ex-Officio Sheriff, RTC of Marikina City and the Register of Deed of Marikina City.[4]

Instead of filing its Answer, OSAI moved for the dismissal of the complaint on the following grounds: (a) failure of the lawyer for the petitioners to comply with Bar Matter No. 1922, particularly the requirement for the counsel to indicate in every pleading that will be filed in court, the counsel's Mandatory Continuing Legal Education (MCLE) Compliance Number for the immediately preceding compliance period; (b) violation of the prohibition against forum shopping as there is another action pending between the same parties for the same cause; (c) lack of legal capacity to sue on the part of petitioner Millians Shoe, Inc. by reason of the revocation of its Articles of Incorporation by the Securities and Exchange Commission.[5]

In their Opposition/Comment to the Motion to Dismiss,[6] petitioners alleged that Atty. Michelle D. Martinez (Atty. Martinez), their counsel, had no intention to derogate the rules. They admitted that their counsel had only complied with the MCLE requirement for the second compliance period, and that she has a two-hour deficiency for the third compliance period brought about by her occupied time in attending to client calls in various domestic destinations and trips to Australia to attend to important filial obligations. Hence, they prayed that the complaint should not be dismissed due to their counsel's

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[3] *Id*. at 401-402, 415a.

[4] *Id*. at 127-145.

[5] *Id*. at 380-385.

[6] *Id*. at 392-399.

excusable negligence and honest oversight. Petitioners further claimed that they are not guilty of forum shopping because the case pending before the appellate court is a corporate rehabilitation proceedings initiated by petitioner Millians Shoe, Inc., which is separate and distinct from the present action.[7]

On September 21, 2011, the RTC issued an order granting the motion to dismiss. It held:

A careful perusal of the records of the case shows that counsel for the plaintiff Atty. Michelle D. Martinez failed to comply with her third MCLE the deadline for the MCLE III compliance period was on April 14, 2010. The complaint was filed on March 17, 2011. Counsel for the plaintiffs knowingly ignored Bar Matter No. 1922 and still filed the instant complaint despite knowing that she has not yet comply [sic] with MCLE III Counsel has more than a year to comply with the said rule but opted not to for the simple reason that she has to attend various client calls and her in and out trips to Australia. For Plaintiff's [sic] counsel's failure to comply with Bar Matter No. 1922 the instant case should be dismissed and expunge [sic] from the records. This Court will not delve on the issue of forum-shopping as the complaint should be dismissed outright.[8]

Petitioners moved for reconsideration but the same was still denied by the RTC in an Order dated March 19, 2012.[9]

Not accepting defeat, petitioners appealed the matter before the CA.

In a Decision[10] dated July 25, 2013, the CA found the appeal to be without merit and dismissed the same. It held that:

Bar Matter No. 1922, requires lawyers to indicate their MCLE Certificate of Compliance or Certificate of Exemption in all pleadings filed before the courts, thus:

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[7] *Id*.

[8] *Id*. at 41.

[9] *Supra* note 3, at 415a.

[10] *Supra* note 1.

x x x x x x x x x

In the present case, when the plaintiffs-appellants' counsel filed the complaint, she did not indicate her MCLE compliance for the immediately preceding compliance period, the third compliance period. She indicated her MCLE Certificate Number for the second compliance period. The complaint was filed on March 17, 2011 and the deadline for the completion of MCLE III was on April 14, 2010. More than a year has passed after the deadline and still the counsel did not comply. This is not a mere or simple inadvertence as claimed by the appellants.

Clearly, under Bar Matter No. 1922, the failure of a practicing lawyer to disclose the number and date of issue of his MCLE Certificate of Compliance or Certificate of Exemption in his pleadings in court "would cause the dismissal of the case and the expunction of the pleadings from the records." Thus, the trial court did not commit a reversible error in dismissing the complaint.

x x x x x x x x x

In the case at hand, there is absolutely no compliance with Bar Matter No. 1922. While the appellants claim that there was a deficiency of two hours or two units, no proof was proffered.[11]

The appellate court refused to apply liberality in the interpretation and application of the subject Bar Matter for failure of the counsel to give an adequate explanation for her failure to abide by the rule. Moreover, it ruled that appeal to the appellate court of the Orders of the RTC was not the proper remedy. Pursuant to Section 1(h) of Rule 41 of the Revised Rules of Court, no appeal may be taken from an order dismissing an action without prejudice. Instead of filing an appeal, petitioners should have refiled the case, signed by a counsel who has complied with Bar Matter No. 1922.[12]

Petitioners moved for reconsideration, but the CA denied it in a Resolution[13] dated June 9, 2014.

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

[12] *Id.* at 43-44.

[13] *Supra* note 2.

Undaunted, petitioners are now before this Court in the present Petition for Review on *Certiorari*, raising the following issues for this Court's consideration:

The Issues

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DENYING THE MOTION FOR RECONSIDERATION AND DISMISSING THE PETITION NOTWITHSTANDING THE FACT THAT IT WAS CLEARLY SHOWN THAT THE PETITIONERS HAVE BEEN ABSOLUTELY DENIED THE CONSTITUTIONALLY GUARANTEED RIGHT TO DUE PROCESS.

II.

WHETHER OR NOT THE REGIONAL TRIAL COURT, BRANCH 263, OF MARIKINA CITY ERRED IN CONCLUDING THAT THE NEGLIGENCE AND MISTAKE OF COUNSEL BIND THE CLIENT.[14]

Arguments of the Parties

Petitioners contended that their counsel did not fail to disclose the information required under Bar Matter No. 1922 since she indicated in the pleadings she filed before the court her MCLE Certificate of Compliance number for the second compliance period. She has actually attended the MCLE lectures for the third compliance period and lacked only 2 units to be fully compliant thereto. Thus, the complaint should not have been dismissed and expunged from the records for the excusable negligence and/or honest oversight of Atty. Martinez.

They likewise averred that the negligence and mistake of their counsel should not prejudice them given the merits of their complaint. The court should have relaxed the rules in order not to cause injustice to the petitioners commensurate to the degree of their counsel's thoughtlessness in complying with

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[14] *Id*. at 17.

the rules, and so as not to deprive them of their property right without due process of law. The strict application of the rules should be relaxed in the interest of substantial justice.[15] Petitioners also claimed that they are not guilty of forum shopping since the actions for the nullification of foreclosure proceedings pending in Marikina City and Antipolo City do not involve the same properties.[16]

For these reasons, petitioners prayed that the ruling of the CA be reversed and the case be remanded to the RTC for a full blown trial.

For their part, respondents argued that the dismissal of petitioners' complaint was in accordance with Bar Matter No. 1922. Respondents contended that petitioners and their counsel are not at liberty to seek an exception to the clear mandate of Bar Matter No. 1922 by simply invoking jurisprudence on liberal construction given that petitioners' counsel did not only fail to indicate her MCLE Compliance Certificate Number for the immediately preceding compliance period, which is the third compliance period, she also unabashedly admitted to have failed to complete her MCLE requirements for the third compliance period which had already ended almost a year prior to the filing of the subject complaint. Worse, petitioners and their counsel did not even lift a finger to rectify their counsel's blatant non-compliance with the rules, but instead persisted in demanding that their counsel's non-compliance should just be excused as a mere inadvertence. Even after petitioners' attention had been called to the fact that the complaint did not comply with Bar Matter No. 1922, petitioners' counsel still proceeded to file a similarly defective Opposition/Comment, again without indicating her MCLE Compliance Certificate Number for the immediately preceding compliance period. The obstinate refusal of their counsel to comply with the MCLE requirements and Bar Matter No. 1922 make it all the more preposterous for

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[15] *Id.* at 11-31.

[16] *Id.* at 470.

petitioners to demand that said non-compliance be excused as a matter of course simply by making empty invocations of substantial justice.

Respondents also averred that the dismissal of the complaint did not violate petitioners' right to due process, considering that the dismissal was without prejudice; hence, the case could have just been refiled by a counsel who was duly compliant with Bar Matter No. 1922.

Lastly, respondents claimed that even assuming that the violation of Bar Matter No. 1922 is brushed aside, the petition should still be dismissed outright for violation of the proscription against forum shopping; for being accompanied by a false certification against forum shopping; and for failure to attach documents material for the proper resolution thereof.[17]

Ruling of the Court

Non-compliance with Bar Matter No. 1922 of petitioners' counsel correctly resulted to the dismissal of the complaint filed in court.

Bar Matter No. 1922[18] requires lawyers to indicate in all the pleadings and motions they file before the courts, the number and date of their MCLE Certificate of Completion or Exemption. It provides:

> Bar Matter No. 1922. – Re: Recommendation of the Mandatory Continuing Legal Education (MCLE) Board to Indicate in All Pleadings Filed with the Courts the Counsel's MCLE Certificate of Compliance or Certificate of Exemption. – The Court Resolved to **NOTE** the Letter, dated May 2, 2008, of Associate Justice Antonio Eduardo B. Nachura, Chairperson, Committee on Legal Education and Bar Matters, informing the Court of the diminishing interest of the members of the Bar in the MCLE requirement program.

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[17] *Id*. at 81-123.

[18] Re: Number and Date of MCLE Certificate of Completion/Exemption Required in All Pleadings/Motions, dated June 3, 2008.

The Court further Resolved, upon the recommendation of the Committee on Legal Education and Bar Matters, to **REQUIRE** practicing members of the bar to **INDICATE** in all pleadings filed before the courts or quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption, as may be applicable, for the immediately preceding compliance period. **Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records**. (Emphasis in the original)

There is no dispute that when the subject complaint was filed before the RTC, petitioners' counsel failed to indicate the date and number of her MCLE Compliance Certificate for the immediately preceding period, which is the third compliance period in this case, as required by Bar Matter No. 1922.

The obligation to disclose the information required under Bar Matter No. 1922 is not a useless formality. The inclusion of information regarding compliance with (or exemption from) MCLE seeks to ensure that legal practice is reserved only for those who have complied with the recognized mechanism for "keep[ing] abreast with law and jurisprudence, maintain[ing] the ethics of the profession[,] and enhance[ing] the standards of the practice of law."[19]

Thus, the dismissal of petitioners' complaint for non-compliance therewith was proper.

Liberal application of the rule is not justified in this case

In a plethora of cases, this Court has consistently held that rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice; their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[20]

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[19] *Intestate Estate of Jose Uy v. Maghari, III*, 768 Phil. 10, 25 (2015); *Malixi v. Baltazar*, G.R. No. 208224, November 22, 2017.

[20] *Spouses Salise v. Salcedo, Jr.,* 787 Phil. 586, 596 (2016); *Peñoso v. Dona*, 549 Phil. 39, 46 (2007); *Curammeng v. People*, 799 Phil. 575, 582 (2016); *Heirs of Amada Zaulda v. Zaulda*, 729 Phil. 639, 652 (2014).

However, it must be stressed that the liberal application of the rules of procedure can be invoked only in proper cases and under justifiable causes and circumstances.[21]

The Court finds no compelling reason to relax the application of the subject rule to the case at bench. The counsel's busy schedule in attending to her clients' needs, as well as to her personal concerns, is not a sufficient justification to excuse the non-compliance with the subject rule. No evidence was also offered to show that petitioners' counsel made a conscious effort to at least substantially comply with what was required by Bar Matter No. 1922. While they claim that their counsel only lacked two units to be fully compliant with the MCLE requirement for the third compliance period, no evidence whatsoever was presented to prove the same. It must also be taken into account that in the undated Opposition/Comment (to the Motion to Dismiss) that petitioners filed before the RTC, Atty. Martinez stated that she only had to attend the May 2011 MCLE lecture in order to make up for her two-unit deficiency for the third compliance period. From the time the said Opposition/Comment was filed until the September 21, 2011 Order of the RTC which dismissed the complaint for non-compliance with the subject Bar Matter was issued, petitioners' counsel certainly had a longer period than the promised May 2011 date to comply with the MCLE requirement, but she still stubbornly refused to do so. Her obstinate refusal to comply with the rule should not be countenanced and should not be rewarded with the relaxation of the rule.

The Court is aware that Bar Matter No. 1922 has been amended by the Supreme Court *En Banc* in a Resolution dated January 14, 2014 by repealing the phrase "*Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records*" and replacing it with "*Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action*," such that under the amendatory resolution, the failure of counsel

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[21] *Land Bank of the Philippines v. CA*, 789 Phil. 577, 583 (2016).

to indicate in the pleadings the number and date of issue of his or her MCLE Compliance Certificate will no longer result in the dismissal of the case and the expunction of the pleadings from the records, but will only subject the counsel to the prescribed fine and/or disciplinary action; and that in *Doble, Jr. v. ABB, Inc./Nitin Desai*,[22] the Court applied the aforementioned *En Banc* Resolution even if the pleading prepared by the non-compliant counsel was filed before Bar Matter No. 1922 was amended, and thus refused to dismiss the case. In this case, however, the counsel complied, albeit belatedly, with the MCLE requirement and exerted honest effort to correct the procedural defect. Such is not obtaining in this case. Hence, there is no reason to apply the same liberality in this case.

Petitioners' right to due process had not been violated by the dismissal of the complaint

It must be stressed that the dismissal was brought about by their counsel's non-observance of Bar Matter No. 1922. Be that as it may, such dismissal did not prejudice petitioners' cause or rights because the same complaint may be re-filed with complete compliance of the rules as it had not been adjudicated on the merits. Moreover, such dismissal could not be considered a violation of due process as rights were never deprived or taken away from the petitioners.

Negligence of counsel binds petitioners

The doctrinal rule is that the negligence of counsel binds the client. Otherwise, there would be no end to a suit so long as a new counsel could be employed who would allege and show that the prior counsel had not been sufficiently diligent, experienced, or learned. "However, this rule admits certain exceptions, such as: (1) where reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so

[22] 810 Phil. 210 (2017).

requires."[23] None of these exceptions obtain here. As discussed above, petitioners' right to due process was not violated because the dismissal was without prejudice and can be corrected by the re-filing of the complaint that complies with the prescribed rules. Since the court has not even taken cognizance of the case and has not yet ruled on the merits, petitioners could not be said to have been outrightly deprived of their property. The failure of the petitioners to advance meritorious reasons to support their plea of the relaxation of the subject rule will not suffice to override the stringent implementation of the rule on the bare invocation of the interest of substantial justice.[24]

Appeal to the appellate court from the RTC's Orders of dismissal was not proper.

As aptly observed by the CA, petitioners availed of the wrong remedy when they appealed the Orders of the RTC which dismissed their complaint without prejudice. This is explicitly provided in Section 1, Rule 41 of the 1997 Revised Rules of Civil Procedure which states:

Sec. 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

(a) An order denying a motion for new trial or reconsideration;

(b) An order denying a petition for relief or any similar motion seeking relief from judgment;

(c) An interlocutory order;

(d) An order disallowing or dismissing an appeal;

(e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

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[23] *Spouses Friend v. Union Bank of the Philippines*, 512 Phil. 810, 815 (2005).

[24] *Asia United Bank v. Goodland Company, Inc.*, 650 Phil. 174, 185 (2010).

(f) An order of execution;

(g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Since the dismissal of the action was without prejudice as petitioners are not precluded from refiling the same complaint, Section 1, Rule 41 of the Rules of Court is clear that the proper recourse is not an appeal, but to file the appropriate special civil action under Rule 65. Hence, the CA correctly dismissed the appeal for being the wrong remedy.

WHEREFORE, premises considered, the petition is **DENIED**. The assailed July 25, 2013 Decision and June 9, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 99062 are **AFFIRMED.**

SO ORDERED.

Perlas-Bernabe (*Acting Chairperson*), *Jardeleza*,[**] *Gesmundo*,[***] and *Lazaro-Javier, JJ.,* concur.

[**] Designated additional member per Raffle dated February 18, 2019 in lieu of Senior Associate Justice Antonio T. Carpio who recused himself from the case due to close association to the counsel of a party.

[***] Designated additional member per Raffle dated April 15, 2019 in lieu of Associate Justice Alfredo Benjamin S. Caguioa who recused himself from the case as his son works in the law firm representing a party.

SECOND DIVISION

[G.R. No. 213650. June 17, 2019]

BOOKLIGHT, INC., *petitioner, vs.* **RUDY O. TIU,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE DETERMINATION OF ISSUES WHICH ARE PURELY FACTUAL IN NATURE IS GENERALLY BEYOND THE COURT'S JUDICIAL REVIEW UNDER RULE 45 OF THE RULES OF COURT; IT IS ONLY IN EXCEPTIONAL CIRCUMSTANCES THAT THE COURT ADMITS AND REVIEWS QUESTIONS OF FACT CONSIDERING THAT THE COURT IS NOT A TRIER OF FACTS.—** [I]t must be stressed that the issues raised herein are purely factual in nature, the determination of which is generally beyond this Court's judicial review under Rule 45 of the Rules of Court. A petition for review under Rule 45 should only cover questions of law. It is only in exceptional circumstances that the Court admits and reviews questions of fact considering that this Court is not a trier of facts; and the determination of factual issues is best left to the courts below, especially the trial courts. We do not find such exceptional circumstances herein.

2. **ID.; ID.; PRE-TRIAL; PETITIONER LOST ITS RIGHT TO PRESENT EVIDENCE TO SUPPORT ITS ALLEGATIONS DUE TO ITS FAILURE TO FILE A PRE-TRIAL BRIEF AND TO APPEAR IN THE PRE-TRIAL CONFERENCE.—** x x x [T]his Court takes the occasion to clarify that while it was correct to allow respondent to present his evidence *ex parte* for petitioner's failure to file a pre-trial brief and to appear in the pre-trial conference, it was not proper for petitioner , being the defendant in the case *a quo* , to be declared "non-suited" under the Rules of Court. The failure of a party to appear at the pre-trial has adverse consequences. Section 5, Rule 18 of the Rules of Court provides that if the absent party is the plaintiff, then he may be declared non-suited and his case dismissed; if it is the defendant who fails to appear, then the plaintiff may be allowed to present his evidence *ex parte* and the court to render judgment

on the basis thereof. x x x [S]uch declaration of non-suit against petitioner was already upheld by this Court with finality. Hence, due to its failure to file a pre-trial brief and to appear in the pre-trial conference, petitioner lost its right to present evidence to support its allegations. It is, thus, bad enough for petitioner's case that the questions posed before us are purely factual matters that this Court, generally, cannot review x x x. The fact that petitioner, for being declared non-suited, was not able to present evidence to support its claims is surely fatal to its case. The records are bereft of any evidence to support petitioner's claim that it paid advanced rental and deposit and that the same have not yet been refunded or utilized; nor was there any record to definitely show that the subject electric bills pertain only to a month when petitioner was not occupying the premises anymore. Therefore, for lack of basis, this Court finds no cogent reason to deviate from the findings of the RTC, as affirmed by the CA, on the matters of rentals and electric bills.

3. ID.; ID.; JUDGMENTS; EXECUTION OF JUDGMENT; WHILE THE PROCEEDS OF THE SALE OF THE ATTACHED PROPERTIES MAY BE CONSIDERED BY THE SHERIFF IN THE SATISFACTION OF JUDGMENT, IT IS UNWARRANTEDLY PREMATURE FOR THE COURT TO RULE ON THE MATTER WHEN NO WRIT OF EXECUTION HAD BEEN ISSUED AND REFERRED TO THE SHERIFF YET; ABSENT BREACH OF THE PROCEDURE IN THE EXECUTION, THE COURT MAY NOT INTERVENE.— With regard to the alleged proceeds of the auction sale of the attached properties, we find that the same is not the proper subject of this review. For one, matters with regard to the fact of the sale of the attached properties and the amount of its proceeds are likewise factual in nature, which this Court cannot judiciously determine for lack of evidence. Notably, petitioner without support alleges ₱3,375,161.12 as the value of said proceeds, while respondent alleges, also, without support except an allegation that it is on record, that the sheriff turned over to the RTC Clerk of Court the proceeds of such sale amounting only to Three Hundred Fifty Two Thousand Twenty Eight Pesos and Five Centavos (₱352,028.05). Clearly, these are matters which should be presented before, and determined by the trial court in the execution of the final judgment. That being said, while the proceeds of the sale of the attached properties may indeed

be considered by the sheriff in the satisfaction of judgment pursuant to Section 15, Rule 57 of the Rules of Court, it is unwarrantedly premature for this Court to rule on the matter when no writ of execution had been issued and referred to the sheriff yet. There is no breach of the procedure in the execution which this Court may evaluate at this point. The court's intervention may, if at all, eventuate only if the sheriff should refuse to follow the outlined procedure in the execution of judgment under the Rules.

4. ID.; ID.; ID.; SATISFACTION OF JUDGMENT OUT OF PROPERTY ATTACHED; THE SATISFACTION OF JUDGMENT OUT OF PROPERTY ATTACHED IS NOT MANDATORY, AS THE SHERIFF MAY DISREGARD THE PROPERTIES ATTACHED AND PROCEED AGAINST OTHER PROPERTIES OF THE JUDGMENT DEBTOR, IF NECESSARY.— [C]ontrary to petitioner's position, the satisfaction of judgment out of property attached is not mandatory to warrant this Court to unconditionally order the satisfaction of the judgment against petitioner out of the attached properties. Section 15, Rule 57 of the Rules of Court provides: SEC. 15. *Satisfaction of judgment out of property attached; return of officer.* — If judgment be recovered by the attaching party and execution issue thereon, **the sheriff *may* cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose** x x x. The use of the word *may* clearly makes the procedure directory, in which case, the sheriff may disregard the properties attached and proceed against other properties of the judgment debtor, if necessary. The proper procedure, therefore, is for the prevailing party, respondent in this case, to move for the execution of the judgment upon finality before the RTC, wherein the proper satisfaction thereof should be addressed.

APPEARANCES OF COUNSEL

Saludo Agpalo Fernandez Aquino & Taleon Law Offices for petitioner.

Wilfred D. Asis for respondent.

D E C I S I O N

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

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated July 31, 2013, and the Resolution[3] dated July 21, 2014 of the Court of Appeals (CA)-Cagayan De Oro City in CA-G.R. CV No. 02154-MIN.

On February 13, 2003, Rudy O. Tiu (respondent) filed a case for Collection of Sum of Money, Damages, Attorney's Fees, Litigation Expenses and Attachment against Booklight, Inc. (petitioner) before the Regional Trial Court (RTC) of Butuan City.[4]

The complaint alleged that petitioner entered into a contract of lease with respondent for a space in respondent's building to be used for petitioner's bookstore business. The lease was for five years, which expired on September 1, 2001. It was never renewed upon expiration although petitioner continued to occupy the premises until its business operations ceased on February 28, 2003. Alleging unpaid rentals from December 2001, respondent filed the said complaint.[5]

Respondent's application for the issuance of a writ of attachment was granted by the RTC. Thus, petitioner's personal properties in the bookstore were attached and its funds in Rizal Commercial Banking Corporation were garnished.[6]

In its Answer with Compulsory Counterclaim, petitioner alleged that there was no prior demand made by respondent and that it fully paid its rentals up to July 2002, among others.[7]

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[1] *Rollo*, pp. 9-22.

[2] Penned by Associate Justice Oscar V. Badelles, with Associate Justices Romulo V. Borja and Renato C. Francisco, concurring; *id.* at 25-33.

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

[4] *Id*. at 12.

[5] *Id*. at 26.

[6] *Id*.

[7] *Id*. at 27.

On September 2, 2003, the RTC declared petitioner non-suited for its failure to file a pre-trial brief and for its failure to appear during the scheduled pre-trial. Petitioner filed a motion to lift order of non-suit, which was denied by the RTC in its Resolution dated July 26, 2004. Petitioner's motion for reconsideration was likewise denied by the RTC. Hence, the RTC set the hearing for the *ex parte* presentation of respondent's evidence on March 21, 2005.[8]

Respondent then proceeded to the presentation of his evidence *ex parte*.[9]

Meanwhile, the RTC's denial of petitioner's motion to lift order of non-suit was upheld by the CA, as well as by this Court in a Resolution dated April 2, 2008 in G.R. No. 181950.[10]

On April 24, 2009, the RTC rendered a Decision[11] in favor of respondent as follows:

> **WHEREFORE**, in the light of the foregoing, judgment is hereby rendered in favor of [the respondent) and against [the petitioner), directing and ordering said [petitioner] to pay [respondent] the following sums of money, to wit:
>
> a.) the sum of FOUR HUNDRED SIXTY FIVE THOUSAND FIVE HUNDRED EIGHTY SEVEN PESOS and FIFTY CENTAVOS ([₱]465,587.50), Philippine Currency, as unpaid rentals from August 2002 up to February 2003, plus legal interest of 6% per annum beginning August 2002 until fully paid;
>
> b.) the sum of ONE HUNDRED SIXTEEN THOUSAND THREE HUNDRED NINETY SIX PESOS and EIGHTY SEVEN CENTAVOS ([₱]116,396.87), Philippine Currency, as attorney's fees;
>
> c.) the sum of FIFTY FOUR THOUSAND SIX HUNDRED NINE PESOS and SIXTY FIVE CENTAVOS ([₱]54,609.65), Philippine Currency, as litigation expenses;

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[8] *Id.* at 14, 27-28.

[9] *Id.* at 28.

[10] *Id.* at 15.

[11] *Id.* at 221-227.

d.) the sum of EIGHTEEN THOUSAND SEVEN HUNDRED TWELVE PESOS and NINETY EIGHT CENTAVOS ([₱]18,712.98), Philippine Currency, as unpaid electric bill;

e.) the sum of FORTY FIVE THOUSAND NINE HUNDRED PESOS ([₱]45,900.00), Philippine Currency, for expenses incurred for security services; and

f.) to pay the costs.

SO ORDERED.[12]

On appeal, the CA affirmed the RTC's Decision with modification, as follows:

WHEREFORE, premises considered, the Decision dated April 24, 2009 of the Regional Trial Court, Branch 33, Butuan City, in Civil Case No. 5310, is **AFFIRMED with MODIFICATION**. The award of legal interest on the amount of unpaid rentals, the expenses incurred for security services rendered by Visa Security Services, the litigation expense as well as attorney's fees are hereby **DELETED**.

SO ORDERED.[13]

Petitioner's motion for partial reconsideration was denied by the CA in its July 21, 2014 Resolution, *viz.*:

ACCORDINGLY, the Motion for Reconsideration is **DENIED**.

SO ORDERED.[14]

Petitioner now questions the CA's Decision only with regard to matters raised on appeal but were not addressed therein.[15] Petitioner avers that the CA neglected to rule on its claim for refund of the advanced rental and deposit it allegedly paid to respondent amounting to a total of One Hundred Nine Thousand Four Hundred Forty Pesos (₱109,440.00).[16]

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[12] *Id.* at 226-227.

[13] *Id.* at 32.

[14] *Id.* at 43.

[15] *Id.* at 16.

[16] *Id.* at 16-18.

Petitioner also argues that the electric bills should likewise be deleted for the same reason used by the CA in ruling for the deletion of the unpaid security fees. According to petitioner, since the electric bills were allegedly for the month of March 2003 and the CA found that it already ceased operations on February 28, 2003, it cannot be made liable therefor for the same reason that it was adjudged not responsible for the security bills from February 2003 to July 2003.[17]

Petitioner likewise claims for the proceeds of the alleged auction sale of its attached goods, as well as its garnished funds, which "per [petitioner's] recollection from its previous inquiry with the lower court" amounts to Three Million, Three Hundred Seventy Five Thousand, One Hundred Sixty One Pesos, and Twelve Centavos (₱3,375,161.12).[18]

In fine, petitioner prays for the deduction of the advanced rental and deposit amounting to ₱109,440.00 and the electric bills amounting to ₱18,712.98 from the adjudged unpaid rentals; and after such deductions, the satisfaction of the resulting unpaid rentals from the proceeds of the garnished properties allegedly valued at ₱3,375,161.12 and the release of the balance thereof to the petitioner.[19]

We deny the petition.

At the outset, it must be stressed that the issues raised herein are purely factual in nature, the determination of which is generally beyond this Court's judicial review under Rule 45 of the Rules of Court. A petition for review under Rule 45 should only cover questions of law. It is only in exceptional circumstances[20] that the Court admits and reviews questions

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[17] *Id.* at 19.

[18] *Id.* at 18.

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

[20] (1) where the conclusion is a finding grounded entirely on speculation, surmise, and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) the findings of fact are premised

of fact considering that this Court is not a trier of facts; and the determination of factual issues is best left to the courts below, especially the trial courts.[21] We do not find such exceptional circumstances herein.

The instant petition requires this Court to determine the following underlying questions, to wit: (1) whether or not there was an advanced rental and deposit amounting to ₱109,440.00; (2) if there was, whether or not this amount was already refunded or considered in the computation of the unpaid rentals; and (3) whether or not the electric bills amounting to ₱18,712.98 pertain only to March 2003. Clearly, a judicious determination of these issues necessitates an examination of available evidence on record, making them factual in nature, beyond the coverage of Rule 45.

Further, at this juncture, it must be remembered that the complaint herein was decided on the basis of the evidence presented by respondent *ex parte* considering that petitioner was declared non-suited for failure to file a pre-trial brief and to appear in the pre-trial conference.

However, before proceeding to its point, this Court takes the occasion to clarify that while it was correct to allow respondent to present his evidence *ex parte* for petitioner's failure to file a pre-trial brief and to appear in the pre-trial conference, it was not proper for petitioner, being the defendant in the case *a quo*, to be declared "non-suited" under the Rules of Court. The failure of a party to appear at the pre-trial has adverse consequences. Section 5,[22] Rule 18 of the Rules of Court provides

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on the absence of evidence and are contradicted by evidence on record. (Citation omitted) *Heirs of Teresita Villanueva v. Heirs of Petronila Syquia Mendoza*, 810 Phil. 172, 178-179 (2017).

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

[22] Section 5. *Effect of failure to appear.* — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof. RULES OF COURT, Rule 18.

that if the absent party is the plaintiff, then he may be declared non-suited and his case dismissed; if it is the defendant who fails to appear, then the plaintiff may be allowed to present his evidence *ex parte* and the court to render judgment on the basis thereof.[23]

At any rate, proceeding to our point, such declaration of non-suit against petitioner was already upheld by this Court with finality. Hence, due to its failure to file a pre-trial brief and to appear in the pre-trial conference, petitioner lost its right to present evidence to support its allegations.[24]

It is, thus, bad enough for petitioner's case that the questions posed before us are purely factual matters that this Court, generally, cannot review as explained above. The fact that petitioner, for being declared non-suited, was not able to present evidence to support its claims is surely fatal to its case. The records are bereft of any evidence to support petitioner's claim that it paid advanced rental and deposit and that the same have not yet been refunded or utilized; nor was there any record to definitely show that the subject electric bills pertain only to a month when petitioner was not occupying the premises anymore.

Therefore, for lack of basis, this Court finds no cogent reason to deviate from the findings of the RTC, as affirmed by the CA, on the matters of rentals and electric bills.

With regard to the alleged proceeds of the auction sale of the attached properties, we find that the same is not the proper subject of this review. For one, matters with regard to the fact of the sale of the attached properties and the amount of its proceeds are likewise factual in nature, which this Court cannot judiciously determine for lack of evidence. Notably, petitioner without support alleges ₱3,375,161.12 as the value of said proceeds, while respondent alleges, also, without support except an allegation that it is on record, that the sheriff turned over to the RTC Clerk of Court the proceeds of such sale amounting

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[23] *Daaco v. Yu*, 761 Phil. 161, 168 (2015).

[24] *Social Security System v. Hon. Chavez*, 483 Phil. 292, 301 (2004).

only to Three Hundred Fifty Two Thousand Twenty Eight Pesos and Five Centavos (₱352,028.05). Clearly, these are matters which should be presented before, and determined by the trial court in the execution of the final judgment.

That being said, while the proceeds of the sale of the attached properties may indeed be considered by the sheriff in the satisfaction of judgment pursuant to Section 15, Rule 57 of the Rules of Court, it is unwarrantedly premature for this Court to rule on the matter when no writ of execution had been issued and referred to the sheriff yet. There is no breach of the procedure in the execution which this Court may evaluate at this point. The court's intervention may, if at all, eventuate only if the sheriff should refuse to follow the outlined procedure in the execution of judgment under the Rules.[25]

Besides, contrary to petitioner's position, the satisfaction of judgment out of property attached is not mandatory to warrant this Court to unconditionally order the satisfaction of the judgment against petitioner out of the attached properties. Section 15, Rule 57 of the Rules of Court provides:

SEC. 15. *Satisfaction of judgment out of property attached; return of officer*.— If judgment be recovered by the attaching party and execution issue thereon, **the sheriff *may* cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose** in the following manner: (Emphasis supplied)

(a) By paying to the judgment obligee the proceeds of all sales of perishable or other property sold in pursuance of the order of the court, or so much as shall be necessary to satisfy the judgment;

(b) If any balance remain due, by selling so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in the sheriffs hands, or in those of the clerk of the court;

(c) By collecting from all persons having in their possession credits belonging to the judgment obligor, or owing debts to the latter at the time of the attachment of such credits or debts, the amount of

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[25] *Maceda, Jr. v. Moreman Builders Company, Inc.*, 280 Phil. 319, 329 (1991).

such credits and debts as determined by the court in the action, and stated in the judgment, and paying the proceeds of such collection over to the judgment obligee.

The sheriff shall forthwith make return in writing to the court of his proceedings under this section and furnish the parties with copies thereof.

The use of the word *may* clearly makes the procedure directory, in which case, the sheriff may disregard the properties attached and proceed against other properties of the judgment debtor, if necessary.[26]

The proper procedure, therefore, is for the prevailing party, respondent in this case, to move for the execution of the judgment upon finality before the RTC, wherein the proper satisfaction thereof should be addressed.[27]

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated July 31, 2013, and the Resolution dated July 21, 2014 of the Court of Appeals-Cagayan De Oro City in CA-G.R. CV No. 02154-MIN, are **AFFIRMED.**

SO ORDERED.

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

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[26] *Id*.

[27] Section 1. *Execution upon judgments or final orders*.— Execution shall issue as a matter of right, or motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution. RULES OF COURT, Rule 39.

SECOND DIVISION

[G.R. No. 227013. June 17, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARIES REYES *y* HILARIO, ARGIE REYES *y* HILARIO, ARTHUR HILARIO, and DEMETRIO SAHAGUN *y* MANALILI,** *accused*, **ARIES REYES *y* HILARIO and DEMETRIO SAHAGUN *y* MANALILI,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS. — 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 24832 of the Revised Penal Code; and (4) the killing is not parricide or infanticide.

2. ID.; CONSPIRACY; THE PARTIES NEED NOT ACTUALLY COME TOGETHER AND AGREE IN EXPRESS TERMS TO ENTER INTO AND PURSUE A COMMON DESIGN, FOR IT IS ENOUGH THAT AT THE TIME OF THE COMMISSION OF THE OFFENSE, THE ACCUSED OR ASSAILANTS HAD THE SAME PURPOSE AND WERE UNITED IN ITS EXECUTION.— Catherine Balmores, Jonalyn Balmores, and Mary Ann Nuñez substantially corroborated Fernando's eyewitness account on all material points. Based on the interlocking testimonies of the eyewitnesses, both the trial court and the Court of Appeals correctly ruled that appellants and their co-accused each took an active part in assaulting Jun Balmores. They in fact acted in concert toward one common purpose: to kill Jun Balmores. This is conspiracy. In conspiracy, the parties need not actually come together and agree in express terms to enter into and pursue a common design. It is enough that at the time of the commission of the offense, the accused or assailants had the same purpose and were united in its execution, as in this case.

3. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; NOT PRESENT WHEN THE KILLING IS NOT PREMEDITATED OR

WHERE THE SUDDEN ATTACK IS NOT PRECONCEIVED AND DELIBERATELY ADOPTED, BUT IS JUST TRIGGERED BY A SUDDEN INFURIATION ON THE PART OF THE ACCUSED AS A RESULT OF A PROVOCATIVE ACT OF THE VICTIM, OR WHEN THE KILLING IS DONE AT THE SPUR OF THE MOMENT.— The essence of treachery is the swift, deliberate, and unexpected manner by which the offense was committed, affording the victim no opportunity to resist, escape, much less, defend himself or herself. The offender must have planned the mode of attack to ensure its execution without exposing himself to any danger which may come from the victim's act of retaliation or self-defense. x x x. There is no showing, as none was shown, that appellants and their co-accused knew Jun was going back to the area at that late time of the day and that they had planned to attack Jun there and then. On the contrary, appellants and their co-accused appeared to have spontaneously acted as soon as they saw Jun back in the area. They instantaneously pursued him, one hit him with a plastic chair in the head, two alternately whipped him with broomstick handles, one waylaid and stabbed him in the side of his body, and later, in his arm. *People of the Philippines vs. Canaveras* ruled that treachery is not present when the killing is not premeditated or where the sudden attack is not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim, or when the killing is done at the spur of the moment. x x x. In conclusion, the qualifying circumstance of treachery was not shown to have attended the killing of Jun Balmores.

4. **ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH; PRESENT WHENEVER THERE IS A NOTORIOUS INEQUALITY OF FORCES BETWEEN THE VICTIM AND THE AGGRESSOR/S THAT IS PLAINLY AND OBVIOUSLY ADVANTAGEOUS TO THE AGGRESSOR/S AND PURPOSELY SELECTED OR TAKEN ADVANTAGE OF TO FACILITATE THE COMMISSION OF THE CRIME; MERE SUPERIORITY IN NUMBERS IS NOT INDICATIVE OF THE PRESENCE OF ABUSE OF SUPERIOR STRENGTH.—** Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely

selected or taken advantage of to facilitate the commission of the crime. Evidence must show that the aggressor/s consciously sought the advantage, or their deliberate intent to use it. No such evidence obtains in this case. Abuse of superior strength cannot be inferred, as the trial court erroneously did, simply from the fact that Jun was outnumbered four to one. Mere superiority in numbers is not indicative of the presence of abuse of superior strength. Neither can the Court consider as evidence thereof the fact alone that appellants and their co-accused were each armed either with broomstick handles, plastic chair, or knife. As shown, there is no evidence that appellants and their companions planned the attack or purposely sought the advantage of superior strength by arming themselves to put the victim in such notorious disadvantage to ensure the commission of the crime.

5. ID.; ID.; HOMICIDE; ABSENT QUALIFYING CIRCUMSTANCE ATTENDANT TO THE KILLING OF THE VICTIM, APPELLANTS MAY ONLY BE CONVICTED OF HOMICIDE; PROPER IMPOSABLE PENALTY.— There being no qualifying circumstance attendant to the killing of Jun Balmores, appellants may only be convicted of homicide under Article 249 of the Revised Penal Code x x x. Applying the indeterminate sentence law, appellants should be sentenced to eight years and one day of *prision mayor* as minimum to fourteen years, eight months and one day of *reclusion temporal* as maximum.

6. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANTS.— In accordance with prevailing jurisprudence, the heirs of Jun Balmores are entitled to civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00. Exemplary damages may not be awarded here since no aggravating circumstance was proved. We affirm the award of ₱28,266.15 as actual damages for medical, funeral and burial expenses as the same were duly supported by receipts under Exhibits "F" and "G". On the alleged loss of earning capacity, there is no evidence on record to prove the actual extent thereof. x x x. Catherine's unsubstantiated testimony thereon is not sufficient, nay competent for the purpose of awarding actual damages for loss of earning capacity. Be that as it may, temperate damages may be awarded where the earning capacity is clearly established but no evidence was presented to prove the actual income of the offended party or the victim. x x x. Here, the Court of Appeals awarded ₱500,000.00 as

temperate damages to the Heirs of Jun Balmores. But this amount appears to be in excess of the usual earnings of a typical vendor or tricycle driver in Quiapo, Manila. In *Tan vs. OMC Carriers, Inc.,* the Court held that the award of ₱300,000.00 as temperate damages to the heirs of a deceased tailor conformed with the usually known earnings of a tailor x x x. We adopt the same amount of ₱300,000.00 as temperate damages here. For this amount appears to approximate the earnings of Jun Balmores for his triple job as vendor, school service driver, and personal driver.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This appeal[1] seeks to reverse and set aside the Decision[2] dated March 10, 2016 of the Court of Appeals in CA G.R. CR-HC No. 07105 entitled "The People of the Philippines, Plaintiff-Appellee, *versus* Aries Reyes *y* Hilario, Argie Reyes *y* Hilario, Arthur Hilario, and Demetrio Sahagun *y* Manalili, Accused, Aries Reyes *y* Hilario and Demetrio Sahagun *y* Manalili, Accused-Appellants," for murder. Its dispositive portion reads:

WHEREFORE, the instant appeal is **DENIED**. The Decision dated August 27, 2014 of the Manila Regional Trial Court, Branch 3, in Criminal Case No. 08-259395 is hereby **AFFIRMED WITH MODIFICATIONS**, in that, the accused-appellants Aries H. Reyes

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[1] CA *rollo*, pp. 133-135; filed under Section 13(c), Rule 124 of the Rules of Court.

[2] *Rollo*, pp. 2-14; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan.

and Demetrio M. Sahagun are found guilty beyond reasonable doubt of the crime of Murder, qualified by treachery. The payment for actual damages representing medical, funeral and burial expenses is reduced to **Php28,266.15**; moral damages is increased to **₱75,000.00**; and exemplary damages is reduced to **₱30,000.00**. All damages awarded shall likewise earn interest at the rate of **six percent (6%)** ***per annum*** from date of finality of this Decision until full payment thereof.

All other aspects of the assailed Decision STAND.

SO ORDERED.[3] (Emphasis in the original)

The Charge

By Information[4] dated November 28, 2007, Aries Reyes *y* Hilario and Demetrio Sahagun *y* Manalili, together with Argie Reyes *y* Hilario and Arthur Hilario were charged with murder for the death of Jun Balmores, *viz*:

That on or about August 5, 2007, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and with abuse of superior strength and evident premeditation, attack, assault and use personal violence upon the person of one JUN BALMORES *Y* ATUN, by then and there stabbing the latter on his right arm, hitting him with a plastic chair and a broom and stabbing him on his back, thereby inflicting upon the said JUN BALMORES *Y* ATUN stab wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.

Arraignment and Plea

On arraignment, Aries Reyes and Demetrio Sahagun pleaded "not guilty."[5] Their co-accused Argie Reyes and Arthur Hilario have remained at large.

During the trial, Catherine Balmores, Jonalyn Balmores, Fernando S. Dela Cruz, Mary Ann B. Nuñez, Dr. Bienvenido

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[3] *Id*. at 13.

[4] Record, p. 1.

[5] *Id*. at 138 and 71.

G. Torres and PO2 Joseph Y. Kabigting testified for the prosecution. On the other hand, appellants Aries Reyes and Demetrio Sahagun, Rizalinda Hilario, Jonjon De Leon and Rosalina Reyes testified for the defense.

The Prosecution's Version

The victim Jun Balmores, appellants Demetrio Sahagun and Aries Reyes, and accused Argie Reyes and Arthur Hilario were all vendors who sold their wares along the stretch of Hidalgo Street, Quiapo, Manila. On August 5, 2007, the police apprehended the illegal vendors in the area. Jun asked brothers Aries and Argie Reyes to allow his mother to leave her wares and vegetables in their stall. But the Reyes brothers refused. An argument then ensued between them and Jun.[6]

In the late afternoon, Jun and his wife Catherine packed up their wares and prepared to go home. But before leaving the area, Jun went back to Hidalgo Street for the shoulder bag he left earlier.[7]

When Aries, Demetrio, Arthur, and Argie saw Jun, they pursued him. As Jun tried to run away, Demetrio hit him with a plastic chair in the head, causing the former to fall to the ground. Arthur and Aries then alternately hit him with broomsticks. Jun, nonetheless, managed to get back on his feet and run toward Villalobos Street. But when he reached the comer of Villalobos Street, Argie was there waiting. Argie stabbed Jun in the left side of his body. Though wounded, Jun did not stop running. Shortly after, Argie caught up with him and stabbed him a second time, hitting him in the arm. Jun fell anew. Meantime, Arthur and Aries arrived. Before they could further hit Jun, Catherine stepped in and begged them to stop. The two desisted, albeit Arthur uttered *"Putang inang yan eh!."*[8]

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[6] TSN, September 2, 2008, pp. 4-7.

[7] *Id*. at 7.

[8] *Id.* at 8-10.

Jun got rushed to the hospital where he was declared dead on arrival.[9] The Medical and Autopsy Report[10] revealed he died of "hypovolemic shock secondary to stab wound of the trunk."

The prosecution offered the following exhibits: Medical/ Autopsy Report[11] (Exhibit "A"), Certificate of Death[12] (Exhibit "B"), Handwritten Statement[13] dated August 14, 2007 of Catherine Balmores (Exhibit "C"), Sworn Statement[14] dated August 6, 2007 of Catherine Balmores (Exhibit "D"), Summary of Expenses[15] (Exhibit "E"), Funeral and Burial receipts[16] (Exhibit "F"), Receipts of medical and hospitalization expenses[17] (Exhibit "G"), Sworn Statement of Jonalyn Balmores[18] (Exhibit "H"), Sketch of the place of the incident[19] (Exhibit "I"), Advance Information dated August 10, 2007 prepared by PO2 Joseph Y. Kabigting[20] (Exhibit "J"), Affidavit of Fernando Dela Cruz[21] (Exhibit "K"), Medical Report[22] (Exhibit "L"), Medico Legal Form[23] (Exhibit "M"), Certificate of Death of Jun Balmores[24]

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[9] *Id.* at 10.

[10] Record, p. 35.

[11] *Id.* at 35.

[12] *Id.* at 38.

[13] *Id.* at 4.

[14] *Id.* at 307-308.

[15] *Id.* at 94.

[16] *Id.* at 90-92.

[17] *Id.* at 83-89.

[18] *Id.* at 7-8.

[19] *Id.* at 102.

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

[21] *Id.* at 17-18.

[22] *Id.* at 213.

[23] *Id.* at 214.

[24] *Id.* at 215.

(Exhibit "N"), and Sworn Statement of Mary Ann Nuñez[25] (Exhibit "O").

The Defense's Version

Appellants told a different story. According to them, when the stabbing incident took place, they were playing *"pusoy"* inside the Picache Building. The victim came and got into a heated argument with Argie. Jun brandished a small knife at Argie. They grappled for the knife until Argie succeeded in wresting it from Jun. The latter retreated but Argie gave chase. Argie caught up with and stabbed Jun. After Jun fell to the ground, Argie ran away. The incident had already ended when Aries, Demetrio, and Arthur arrived.[26]

Before the incident, Rosalina Reyes, mother of the Reyes brothers, received threats from Jun's brothers regarding a space she bought from Demetrio.[27]

The defense did not present any documentary evidence.

The Trial Court's Ruling

By Decision[28] dated August 27, 2014, the trial court found appellants guilty of murder, *viz*:

> WHEREFORE, the prosecution having established the guilt of accused Aries Reyes *y* Hilario and Demetrio Sahagun *y* Manalili beyond reasonable doubt, this Court finds both guilty of the crime of Murder, qualified by abuse of superior strength and aggravated by treachery, thereby sentencing them the penalty of reclusion perpetua, without eligibility for parole, and all its accessory penalties.
>
> Considering that they are detention prisoners, the period of their detention must be credited in the service of their sentence.
>
> Further, they are held solidarity liable to pay the heirs of the victim, Jun Balmores *y* Atun, the following amounts:

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[25] *Id.* at 198-199.

[26] TSN, October 16, 2012, pp. 6-13.

[27] TSN, October 24, 2013, pp. 5-13.

[28] CA *rollo*, pp. 54-75; penned by Acting Presiding Judge Rosalyn D. Mislos-Loja.

(1) ₱75,000.00 as civil indemnity;
(2) ₱32,799.65 as medical, funeral and burial expenses;
(3) ₱500,000.00 as temperate damages, in lieu of loss of earning capacity;
(4) ₱50,000.00 as moral damages; and
(5) ₱35,000.00 by way of exemplary damages.

SO ORDERED.[29]

The Proceedings before the Court of Appeals

On appeal, appellants faulted the trial court for: (1) convicting them of murder despite the prosecution's alleged failure to prove with moral certainty their complicity and conspiracy; (2) appreciating treachery and abuse of superior strength despite the clear evidence on record that Jun and the Reyes brothers had a misunderstanding prior to the stabbing incident; and (3) disregarding their defense of denial.

On the other hand, the Office of the Solicitor General (OSG) through Assistant Solicitor General Ellaine Rose A. Sanchez-Corro and State Solicitor Lucy L. Butler-Torres maintained that the prosecution was able to sufficiently prove that appellants and their co-accused conspired in killing the victim with treachery and abuse of superior strength.

The Court of Appeals' Ruling

In its assailed Decision[30] dated March 10, 2016, the Court of Appeals affirmed, with modification. It found that treachery attended the killing. As for abuse of superior strength, it ruled that the same was deemed absorbed in treachery. It further reduced the awards of actual and exemplary damages to ₱28,266.15 and ₱30,000.00, respectively; increased the award of moral damages to ₱75,000.00; and imposed six percent interest per annum on these amounts, from finality of the decision until fully paid.

The Present Appeal

Appellants now seek affirmative relief from the Court and pray anew for a verdict of acquittal. In compliance with

[29] *Id.* at 74.

[30] *Rollo*, pp. 2-14.

Resolution dated November 14, 2016, both appellants and the People manifested[31] that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellants' conviction for murder?

Ruling

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[32] of the Revised Penal Code; and (4) the killing is not parricide or infanticide.[33]

The first and fourth elements – A person was killed and the killing is not parricide or infanticide

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[31] *Id.* at 23-24, and 28-29.

[32] 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 temporal* in its maximum period 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.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[33] *Ramos v. People*, 803 Phil. 775, 783 (2017).

The presence of the first and fourth elements was undisputed. Jun Balmores was killed and the killing is not parricide or infanticide.

The second element – the accused killed the victim

Appellants assert they did not kill the victim. They point to Argie as the only one who stabbed the victim to death.

Fernando dela Cruz, a vendor in the area, testified in detail how appellants and their co-accused Argie Reyes and Arthur Hilario acted together in pursuing, hitting, and stabbing Jun Balmores to death, thus:

x x x x x x x x x

Q. While you were there in that place vending, was there any unusual incident that you can recall that happened?

A. I was shocked, sir because I saw them running after the other, sir.

Q. Who did you see running after the other?

A. I saw *Pareng* Demet, Aries, and Atoy, sir.

Q. And who was the person they are running after?

A. Jun Balmores, sir.

x x x x x x x x x

Q. And what happened when you see these persons running after Jun Balmores?

A. Someone hit Jun Balmores with a chair, sir.

Q. Who hit Jun Balmores with a chair?

A. It was Demet, sir, Demetrio.

x x x x x x x x x

Q. What happened to the man after he was hit with the chair by Demetrio Sahagun?

A. He fell on the ground, sir.

Q. And when Jun-Jun fell on the ground what happened next?

A. He was hit repeatedly, sir with a broom stick

Q. Who hit Jun-Jun with a broom stick?

A. It was Aries and Atoy, sir.

Q. Now, after that what happened next?

A. Jun had the opportunity to run away, sir and the two were still after him.

Q. Who ran after Jun-Jun after he was hit by (a) broom stick? Who again hit Jun-Jun with broom stick?

A. It was Aries and Atoy, sir.

x x x x x x x x x

Q. So, after he was hit by broom stick by Atoy and Aries Reyes, what happened next?

A. He was met by a person named Argie, sir.

Q. When you said Argie, what is the relationship of Argie Reyes, the accused in this case?

A. They are the same person, sir.

Q. You said this Argie met Jun-Jun Balmores. Up to what direction Jun-Jun was going when he met Argie?

A. Going to Villalobos, sir.

Q. And what happened after this Argie Reyes met Jun-Jun Balmores while going to Villalobos?

A. He was stabbed, sir in the left side of his body, sir.

Q. Was he hit?

A. Yes, sir.

x x x x x x x x x

Q. He said that he was hit at the left side of his body. What happened to Jun after he was hit on the left side of his body?

A. He still ran after Jun-Jun when he was running towards Mercury, sir.

Q. After that what else happened?

A. He was again stabbed, sir in his left arm.

Q. Who stabbed Jun Balmores?

A. Argie, sir.

x x x x x x x x x

FISCAL:

Now, after Jun-Jun was stabbed the second time by Argie Reyes what happened next, Mr. Witness?

ATTY. COSTO:

The witness already answered

A. *"Nabagsak na po siya eh."*

x x x x x x x x x

Q. *Ano nangyari, alam mo ba ano nangyari kay Jun-Jun nung dinala sa* hospital?

A. We just waited in Quiapo as to Jun–Jun's condition and later on, sir we knew he was already dead.[34]

Catherine Balmores,[35] Jonalyn Balmores,[36] and Mary Ann Nuñez[37] substantially corroborated Fernando's eyewitness account on all material points.

Based on the interlocking testimonies of the eyewitnesses, both the trial court and the Court of Appeals correctly ruled that appellants and their co-accused each took an active part in assaulting Jun Balmores. They in fact acted in concert toward one common purpose: to kill Jun Balmores. This is conspiracy. In conspiracy, the parties need not actually come together and

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[34] TSN, November 23, 2010, pp. 10-23.

[35] TSN, September 2, 2008, pp. 8-11.

[36] TSN, February 10, 2009, pp. 14-16.

[37] TSN, November 24, 2011, pp. 7-10.

agree in express terms to enter into and pursue a common design. It is enough that at the time of the commission of the offense, the accused or assailants had the same purpose and were united in its execution,[38] as in this case.

Thus, upon seeing Jun back on Hidalgo Street, appellants and their co-accused altogether pursued Jun. As Jun tried to run away, Demetrio hit him in the head, causing Jun to fall to the ground. Arthur and Aries then alternately hit Jun with broomstick handles. Jun managed to get back on his feet and run. When he reached the comer of Villalobos Street, Argie was there waiting. Argie then stabbed Jun in the left side part of his body. Though wounded, Jun did not stop running for his life. But Argie easily caught up with and stabbed Jun another time, hitting him in the arm. This caused Jun to fall anew and never again rose to his feet.

Per Dr. Bienvenido Torres' Medical/Autopsy Report,[39] Jun died of "hypovolemic shock secondary to stab wound of the trunk."[40] The fact that it was Argie alone who delivered the final *coup de grace* on the victim did not diminish appellants' shared culpability. In conspiracy, the act of one is the act of all.[41]

The third element – the presence of any of the qualifying circumstances under Article 248 of the Revised Penal Code

In the alternative, appellants argue that, if at all, they should be found guilty only of homicide, not murder. They vigorously claim that neither treachery nor abuse of superior strength was proved to have attended the victim's killing.[42]

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[38] See *People v. Nazareno*, 698 Phil. 187, 192 (2012).

[39] Record, p. 35.

[40] *Id.* at 213; CA *rollo*, p. 120.

[41] *People v. Bi-ay*, 652 Phil. 386, 397 (2010).

[42] CA *rollo*, p. 49.

The essence of treachery is the swift, deliberate, and unexpected manner by which the offense was committed, affording the victim no opportunity to resist, escape, much less, defend himself or herself.[43] The offender must have planned the mode of attack to ensure its execution without exposing himself to any danger which may come from the victim's act of retaliation or self-defense.[44]

Here, although Jun and the Reyes brothers got into an argument in the morning of August 5, 2007, the same appeared to have ended several hours before the killing took place. In fact, according to Jun's wife Catherine, they had packed up their things and prepared to go home in the late afternoon of August 5, 2007. Jun, however, walked back to Hidalgo Street for the shoulder bag he left earlier.

There is no showing, as none was shown, that appellants and their co-accused knew Jun was going back to the area at that late time of the day and that they had planned to attack Jun there and then. On the contrary, appellants and their co-accused appeared to have spontaneously acted as soon as they saw Jun back in the area. They instantaneously pursued him, one hit him with a plastic chair in the head, two alternately whipped him with broomstick handles, one waylaid and stabbed him in the side of his body, and later, in his arm.

People of the Philippines vs. Cañaveras[45] ruled that treachery is not present when the killing is not premeditated or where the sudden attack is not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim, or when the killing is done at the spur of the moment.

Another point, even after Jun fell to the ground and appellants alternately hit him with broomstick handles, he still managed to get back on his feet and run for his life. And although Argie

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[43] *People v. Sota*, G.R. No. 203121, November 29, 2017.

[44] *People v. Kalipayan*, G.R. No. 229829, January 22, 2018.

[45] 722 Phil. 259, 270 (2013).

subsequently waylaid and stabbed him in the left side of his body, he did not stop running. The only time he did was when Argie caught up and stabbed him another time.

Evidently, although Jun did not expect the sudden and concerted attack of his assailants who were each armed with either a chair, broomstick handles, or a knife, he was not rendered totally defenseless or prevented from escaping his assailants. In fact, he was able to get back on his feet and run for his life, albeit in the end, he still lost his life due to the stab wound he sustained in his trunk.

In conclusion, the qualifying circumstance of treachery was not shown to have attended the killing of Jun Balmores.

In another vein, We agree with the ruling of the Court of Appeals that abuse of superior strength, when absorbed in treachery, cannot be appreciated as a separate qualifying or aggravating circumstance.[46] It must be clarified though that this rule applies only when both circumstances concur. Thus, when treachery is absent, as in this case, abuse of superior strength may be appreciated as a distinct circumstance which may qualify the killing to murder.

Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor/s that is plainly and obviously advantageous to the aggressor/s and purposely selected or taken advantage of to facilitate the commission of the crime.[47] Evidence must show that the aggressor/s consciously sought the advantage, or their deliberate intent to use it.[48]

No such evidence obtains in this case. Abuse of superior strength cannot be inferred, as the trial court erroneously did, simply from the fact that Jun was outnumbered four to one.

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[46] *People v. Kalipayan*, G.R. No. 229829, January 22, 2018; *People v. Sota*, G.R. No. 203121, November 29, 2017.

[47] *People v. Villanueva*, 807 Phil. 245, 254 (2017).

[48] *People v. Beduya*, 641 Phil. 399, 411 (2010).

Mere superiority in numbers is not indicative of the presence of abuse of superior strength.[49] Neither can the Court consider as evidence thereof the fact alone that appellants and their co-accused were each armed either with broomstick handles, plastic chair, or knife. As shown, there is no evidence that appellants and their companions planned the attack or purposely sought the advantage of superior strength by arming themselves to put the victim in such notorious disadvantage to ensure the commission of the crime.

In sum, there being no qualifying circumstance attendant to the killing of Jun Balmores, appellants may only be convicted of homicide[50] under Article 249 of the Revised Penal Code, *viz*:

> Art. 249. Homicide. — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*.

Penalty

Applying the indeterminate sentence law,[51] appellants should be sentenced to eight years and one day of *prision mayor* as minimum to fourteen years, eight months and one day of *reclusion temporal* as maximum.

In accordance with prevailing jurisprudence,[52] the heirs of Jun Balmores are entitled to civil indemnity of ₱50,000.00 and

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[49] *Id*.

[50] *People v. Magbuhos*, G.R. No. 227865, November 7, 2018.

[51] *People v. Discalsota*, 430 Phil. 406, 419 (2002).

[52] *People v. Jugueta*, 783 Phil. 806, 846 (2016).

> x x x x x x x x x
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> In other crimes that resulted in the death of a victim and the penalty consists of divisible penalties, like homicide, x x x the civil indemnity awarded to the heirs of the victim shall be ₱50,000.00 and ₱50,000.00 moral damages without exemplary damages being awarded. However, an award of ₱50,000.00

moral damages of ₱50,000.00. Exemplary damages may not be awarded here since no aggravating circumstance was proved.

We affirm the award of ₱28,266.15 as actual damages for medical, funeral and burial expenses as the same were duly supported by receipts under Exhibits "F"[53] and "G".[54]

On the alleged loss of earning capacity, there is no evidence on record to prove the actual extent thereof. What the record bears is Catherine's lone testimony that her late husband, in his lifetime, used to earn ₱2,000.00 a week as vendor; ₱1,500.00 a month for each of the six students who availed of his school service; and ₱700.00 per trip as part-time personal driver. Catherine's unsubstantiated testimony thereon is not sufficient, nay competent for the purpose of awarding actual damages tor loss of earning capacity.[55]

Be that as it may, temperate damages may be awarded where the earning capacity is clearly established but no evidence was presented to prove the actual income of the offended party or the victim.[56] Article 2224 of the Civil Code so provides, thus:

> Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

Here, the Court of Appeals awarded ₱500,000.00 as temperate damages to the Heirs of Jun Balmores. But this amount appears to be in excess of the usual earnings of a typical vendor or tricycle driver in Quiapo, Manila.

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exemplary damages in a crime of homicide shall be added if there is an aggravating circumstance present that has been proven but not alleged in the information.

[53] Record, pp. 90-92.

[54] *Id.* at 83-89.

[55] *People v. Salahuddin*, 778 Phil. 529, 555 (2016).

[56] *Spouses Estrada v. Philippine Rabbit*, 831 SCRA 349, 376 (2017).

In *Tan vs. OMC Carriers, Inc.*,[57] the Court held that the award of ₱300,000.00 as temperate damages to the heirs of a deceased tailor conformed with the usually known earnings of a tailor, *viz*:

> According to the petitioners, prior to his death, Celedonio was a self-employed tailor who earned approximately ₱156,000.00 a year, or ₱13,000.00 a month. At the time of his death in 1995, the prevailing daily minimum wage was ₱145.00, or ₱3,770.00 per month, provided the wage earner had only one rest day per week. Even if we take judicial notice of the fact that a small tailoring shop normally does not issue receipts to its customers, and would probably not have any documentary evidence of the income it earns, Celedonio's alleged monthly income of ₱13,000.00 greatly exceeded the prevailing monthly minimum wage; thus, the exception set forth above does not apply.
>
> In the past, we awarded temperate damages in lieu of actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation of the injured party's actual income.
>
> In *Pleno v. Court of Appeals*, we sustained the award of temperate damages in the amount of ₱200,000.00 instead of actual damages for loss of earning capacity because the plaintiff's income was not sufficiently proven.
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> x x x x x x x x x

We adopt the same amount of ₱300,000.00 as temperate damages here. For this amount appears to approximate the earnings of Jun Balmores for his triple job as vendor, school service driver, and personal driver.

ACCORDINGLY, the appeal is **PARTLY GRANTED**, and the Decision dated March 10, 2016 of the Court of Appeals, **MODIFIED**.

Aries H. Reyes and Demetrio M. Sahagun are found guilty of homicide and sentenced to an indeterminate sentence of eight years and one day of *prision mayor*, as minimum, to fourteen years, eight months and one day of *reclusion temporal*, as maximum.

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[57] 654 Phil. 443, 456-457 (2011).

They are further ordered to jointly and severally pay the heirs of Jun Balmores ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱28,266.15 as actual damages for medical, funeral and burial expenses; and ₱300,000.00 as temperate damages, in lieu of actual damages for loss of earning capacity. These amounts shall earn a six percent interest per annum from finality of this decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 228334. June 17, 2019]

SPS. TEDY GARCIA and PILAR GARCIA, *petitioners, vs.* **LORETA T. SANTOS, WINSTON SANTOS and CONCHITA TAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF LAW OF THE CASE; THE DOCTRINE APPLIES ONLY WHEN THERE HAS BEEN A PRIOR DECISION ON THE MERITS.— The doctrine of the law of the case states that whatever has once been irrevocably established as the controlling legal rule of 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 such decision was predicated continue to be the facts of the case before the court. Citing *Mercury Group of Co., Inc. v. Home Dev't Mutual Fund*, the CA, Special 18th Division was correct in explaining that the aforesaid doctrine applies only when there has been **a prior decision on the merits**.

2. CIVIL LAW; PROPERTY; EASEMENTS OR SERVITUDES; AN EASEMENT OR SERVITUDE IS AN ENCUMBRANCE IMPOSED UPON AN IMMOVABLE FOR THE BENEFIT OF ANOTHER IMMOVABLE BELONGING TO A DIFFERENT OWNER; DOMINANT ESTATE DISTINGUISHED FROM SERVIENT ESTATE.— According to Article 613 of the Civil Code, an easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate. As defined by jurisprudence, an easement is a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement.

3. ID.; ID.; ID.; LEGAL AND VOLUNTARY EASEMENTS; LEGAL EASEMENTS ARE ONES IMPOSED BY LAW, AND WHICH HAVE FOR THEIR OBJECT, EITHER PUBLIC USE OR INTEREST OF PRIVATE PERSONS, WHILE VOLUNTARY EASEMENTS ARE ONES ESTABLISHED BY THE AGREEMENTS OF THE PARTIES; DIFFERENT LEGAL EASEMENTS, ENUMERATED.— "Easements are established either by law or by the will of the owner. The former are called legal, and the latter, voluntary easements." An easement has been described as "a real right which burdens a thing with a prestation consisting of determinate servitudes for the exclusive enjoyment of a person who is not its owner or of a tenement belonging to another." Legal easements are ones imposed by law, and which have, for their object, either public use or interest of private persons, as opposed to voluntary easements that are established by the agreements of the parties. The different legal easements are: (a) easement relating to waters; (b) right of way; (c) party wall; (d) light and view; (e) drainage; (f) intermediate distances; (g) easement against nuisance; and (h) lateral and subjacent support.

4. ID.; ID.; ID.; LEGAL EASEMENT; EASEMENT OF LIGHT AND VIEW; AN EASEMENT WHEREBY THE DOMINANT ESTATE ENJOYS THE RIGHT TO HAVE FREE ACCESS TO LIGHT, A LITTLE AIR, AND A VIEW OVERLOOKING THE ADJOINING (SERVIENT) ESTATE IS CALLED

EASEMENT OF LIGHT AND VIEW; TWO COMPONENTS OF THE EASEMENT, CONSTRUED.— The legal easement called easement of light and view refers to an easement whereby the dominant estate enjoys the right to have free access to light, a little air, and a view overlooking the adjoining estate, *i.e.*, the servient estate. The easement of light and view has two components. The easement of light or *jus luminum* has the purpose of admitting light and a little air, as in the case of small windows, not more than 30 centimeters square, at the height of the ceiling joists or immediately under the ceiling. On the other hand, the easement of view or *servidumbre prospectus* has the principal purpose of affording view, as in the case of full or regular windows overlooking the adjoining estate. Explained otherwise, the easement of light is the right to make openings under certain conditions in order to receive light from another's tenement while the easement of view is the right to make openings or windows, to enjoy the view through the estate of another and the power to prevent all constructions or works which would obstruct such view or make the same difficult. The easement of view is broader than the easement of light because the latter is always included in the former. As held by jurisprudence, the easement of light and view is intrinsically intertwined with the easement of the servient estate not to build higher or *altius non tollendi*. These two necessarily go together "because an easement of light and view requires that the owner of the servient estate shall not build to a height that will obstruct the window."

5. **ID.; ID.; ID.; POSITIVE AND NEGATIVE EASTMENTS; POSITIVE EASEMENT IS ONE WHICH IMPOSES UPON THE OWNER OF THE SERVIENT ESTATE THE OBLIGATION OF ALLOWING SOMETHING TO BE DONE OR OF DOING IT HIMSELF, WHILE NEGATIVE EASEMENT IS THAT WHICH PROHIBITS THE OWNER OF THE SERVIENT ESTATE FROM DOING SOMETHING WHICH HE COULD LAWFULLY DO IF THE EASEMENT DID NOT EXIST; AN EASEMENT OF LIGHT AND VIEW MAY EITHER BE POSITIVE OR NEGATIVE.—** Article 616 of the Civil Code states that easements may be classified into positive and negative easements. A positive easement is one which imposes upon the owner of the servient estate the obligation of allowing something to be done or of doing it himself. On the other hand, a negative easement is that which prohibits the owner of the servient estate from doing something which he could lawfully do if the easement

did not exist. What is the significance of determining whether an easement is positive or negative? Such determination is consequential in determining how an easement is acquired. x x x How then is an easement of light and view classified? Is it a positive or a negative easement? The answer is it may be both; an easement of light and view may either be positive or negative. As a general rule, an easement of light and view is a **positiv**e one if the window or opening is situated in a **party wall**, while it is a **negative** one if the window or opening is thru **one's own wall**, *i.e.*, thru a wall of the dominant estate. However, "[e]ven if the window is on one's own wall, still the easement would be positive if the window is on a balcony or projection extending over into the adjoining land."

6. ID.; ID.; ID.; EASEMENTS BY PRESCRIPTION; WHEN ACQUIRED.— According to Article 621 of the Civil Code, in order to acquire easements by prescription in positive easements, the prescriptive period shall commence from the day on which the owner of the dominant estate, or the person who may have made use of the easement, commenced to exercise it upon the servient estate. With respect to negative easements, the prescriptive period shall commence from the day on which the owner of the dominant estate forbade, by an instrument acknowledged before a notary public, the owner of the servient estate, from executing an act which would be lawful without the easement. x x x In the very early case of *Cortes v. Yu-Tibo*, the Court held that **the easement of light and view in the case of windows opened in one's own wall is negative**. As such easement is a negative one, it cannot be acquired by prescription except where sufficient time of possession has elapsed after the owner of the dominant estate, by a **formal act**, has prohibited the owner of the servient estate from doing something which would be lawful but for the easement. The phrase "formal act" would require not merely any writing, but one executed in due form and/or with solemnity. This is expressly stated in Article 668 of the Civil Code which states that the period of prescription for the acquisition of an easement of light and view shall be counted: (1) from the time of the opening of the window, if it is through a party wall; or (2) **from the time of the formal prohibition upon the proprietor of the adjoining land or tenement, if the window is through a wall on the dominant estate**.

7. ID.; ID.; ID.; EASEMENT ACQUIRED THROUGH TITLE; THE TERM "TITLE" DOES NOT NECESSARILY MEAN DOCUMENT, INSTEAD IT REFERS TO A JURIDICAL ACT OR LAW SUFFICIENT TO CREATE AN ENCUMBRANCE; IT HAS BEEN JURISPRUDENTIALLY ESTABLISHED THAT, IN A SITUATION WHEREIN TWO OR MORE ESTATES WERE PREVIOUSLY OWNED BY A SINGLE OWNER OR EVEN A SINGLE ESTATE BUT WITH TWO OR MORE PORTIONS BEING OWNED BY A SINGULAR OWNER, THERE ARISES AN EASEMENT IF AN APPARENT SIGN OF THE EXISTENCE OF EASEMENT CONTINUES TO REMAIN EVEN AFTER THE TRANSFER OF THE PROPERTY TO THE NEW OWNER, UNLESS SUCH APPARENT SIGN IS REMOVED OR THERE IS AN AGREEMENT TO THE CONTRARY; CASE AT BAR.— Aside from prescription, easements may likewise be acquired through ***title***. The term "title" does not necessarily mean a document. Instead, it refers to a juridical act or law sufficient to create the encumbrance. One such legal proviso which grants title to an easement is found in **Article 624 of the Civil Code**. x x x The mode of acquiring an easement under Article 624 is a "legal presumption or apparent sign." Article 624 finds application in situations wherein two or more estates were previously owned by a singular owner, or even a single estate but with two or more portions being owned by a singular owner. Originally, there is no true easement that exists as there is only one owner. Hence, at the outset, no other owner is imposed with a burden. Subsequently, one estate or a portion of the estate is alienated in favor of another person, wherein, in that estate or portion of the estate, **an apparent visible sign of an easement exists**. According to Article 624**, there arises a title to an easement of light and view, even in the absence of any formal act undertaken by the owner of the dominant estate, if this apparent visible sign, such as the existence of a door and windows, continues to remain and subsist**, unless, at the time the ownership of the two estates is divided, (1) the contrary should be provided in the title of conveyance of either of them, or (2) the sign aforesaid should be removed before the execution of the deed. x x x Jurisprudence has recognized that Article 624 is an exception carved out by the Civil Code that must be taken out of the coverage of the general rule that an easement of light and view in the case of windows opened in one's own wall is a negative easement that may only be acquired by

prescription, tacked from a formal prohibition relayed to the owner of the servient estate. x x x From *Amor v. Florentino* and *Gargantos v. Tan Yanon*, read together with *Cortes v. Yu-Tibo*, it has been jurisprudentially established that, in a situation wherein Article 624 of the Civil Code applies, there arises an easement if an apparent sign of the existence of an easement, *i.e.*, the existence of windows and openings on the dominant estate, **continues to remain even after the transfer of the property to the new owner, unless such apparent sign is removed or if there is an agreement to the contrary**. To reiterate, such is exactly the situation attendant in the instant case. Lot 1 and the subject property were once owned by one owner, *i.e.*, the Sps. Santos. On the subject property, a one-storey house with windows and other openings that accept light and view from Lot 1, which was idle at that time, was built. Subsequently, in 1998, the subject property was alienated in favor of the Sps. Garcia. It is undisputed that the windows and other openings on the one-storey house subsisted and remained open. It is also not disputed that there was no agreement made by the parties whatsoever to the effect that the windows and openings of the Sps. Garcia's house should be closed or removed. Hence, in accordance with Article 624 of the Civil Code, from the time the Sps. Santos transferred the subject property to the Sps. Garcia, there arose by title an easement of light and view, placing a burden on the servient estate, *i.e.*, Lot 1, to allow the Sps. Garcia's residence unobstructed access to light and view, subject to certain limitations as will be discussed hereunder.

8. ID.; ID.; ID.; ID.; WHEN THE EASEMENT OF LIGHT AND VIEW IS ESTABLISHED; REQUIREMENTS; PRESENT IN CASE AT BAR.— What the law merely states is that there must be two estates that were once owned by one owner, regardless of the existence of improvements in the (future) servient estate. What the law requires is that, at the time the ownership of the estates is divided, there must be an apparent sign of easement that exists, such as a window, door, or other opening, in the dominant estate. As exhaustively explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, the existence of an easement of light and view under Article 624 is established as long as (1) there exists an apparent sign of servitude between two estates; (2) the sign of the easement must be established by the owner of both tenements; (3) either

or both of the estates are alienated by the owner; and (4) at the time of the alienation nothing is stated in the document of alienation contrary to the easement nor is the sign of the easement removed before the execution of the document: x x x It is evident that the prior existence of another structure or building in the other estate, in addition to the apparent sign of easement existing on the dominant estate, is not a requirement for the application of Article 624. What is clear from the foregoing is that the hallmark of an easement of light and view established by an apparent sign of easement under Article 624 is the existence of an apparent sign of servitude between two estates, such as a window, door, or any other opening, that was established by the common owner of both estates prior to the division of ownership of these estates. x x x upon close reading of *Amor v. Florentino* and *Gargantos v. Tan Yanon*, there is no holding whatsoever by the Court that the application of Article 624 (formerly Article 541) is restricted to situations wherein the servient estate previously contained improvements or structures. x x x The fact that the existence of windows, doors, and other openings on the dominant estate is the apparent sign of an existing easement is not hinged whatsoever on the presence of structures on the adjacent servient estate. In short, the fact in the aforesaid cases that the servient estates therein had existing structures prior to the division of ownership is not a significant fact that is determinative of the holdings of the Court. x x x Hence, considering the foregoing discussion, the RTC and CA, Special 18th Division committed an error in holding that the Sps. Garcia failed to acquire an easement of light and view in the instant case. By virtue of Article 624 of the Civil Code and applicable jurisprudence, the Court holds that the Sps. Garcia have acquired an easement of light and view by title despite the lack of any formal notice or prohibition made upon the owner of the servient estate.

9. ID.; ID.; ID.; EASEMENT OF LIGHT AND VIEW; REGULAR OR FULL OR DIRECT VIEW WINDOWS AND RESTRICTED, OR OBLIQUE OR SIDE VIEW WINDOWS, DISTINGUISHED.— Based on Articles 669 and 670 of the Civil Code, there are two kinds of windows: (1) regular or full or direct view windows, and (2) restricted, or oblique or side view windows. As for openings, they may be *direct views* — those openings which are made on a wall parallel or almost parallel to the line that

divides the estates, in such a way that the neighboring tenement can be seen without putting out or turning the head, or *oblique views* — those openings in a wall which form an angle to the boundary line, and therefore of necessity requires in order to see the neighboring tenement to thrust the head out of the opening and look to the right or left. In the case at hand, the openings found on the property of the Sps. Garcia offer a direct view of the property of the respondents Sps. Santos.

10. ID.; ID.; ID.; ID.;DISTANCES THAT MUST BE OBSERVED BEFORE DIRECT VIEW WINDOWS OR OPENINGS CAN BE MADE OR ESTABLISHED; TWO-METER DISTANCE RULE; AS A GENERAL RULE, WHEN A WINDOW OR ANY SIMILAR OPENING AFFORDS A DIRECT VIEW OF AN ADJOINING LAND, THE DISTANCE BETWEEN THE WALL IN WHICH SUCH OPENING IS MADE AND THE BORDER OF THE ADJOINING LAND SHOULD BE AT LEAST TWO METERS.— [T]here is the two-meter distance rule under Article 670 of the Civil Code, which provides: "[n]o windows, apertures, balconies, or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of two meters between the wall in which they are made and such contiguous property." This Article is to be read in conjunction with Article 671 as the latter provides the mechanism by which the two-meter distance is to be measured, to wit: "[t]he distances x x x shall be measured in cases of direct views from the outer line of the wall when the openings do not project, from the outer line of the latter when they do, and in cases of oblique views from the dividing line between the two properties." Hence, under Article 670, which is the general rule, when a window or any similar opening affords a direct view of an adjoining land, the distance between the wall in which such opening is made and the border of the adjoining land should be at least two meters. Similarly, Republic Act No. 6541 as revised by Presidential Decree No. 1096 or the National Building Code of the Philippines provides the same two-meter distance requirement pursuant to Section 708(a), which provides that: "[t]he dwelling shall occupy not more than ninety percent of a corner lot and eighty percent of an inside lot, and subject to the provisions on Easement of Light and View of the Civil Code of the Philippines, shall be at least 2 meters from the property line."

11. ID.; ID.; ID.; ID.; ID.; THREE-METER DISTANCE RULE; IN A SITUATION WHEREIN AN EASEMENT IS ESTABLISHED OR RECOGNIZED BY TITLE OR PRESCRIPTION, AFFORDING THE DOMINANT ESTATE THE RIGHT TO HAVE DIRECT VIEW OVERLOOKING THE ADJOINING PROPERTY, THE OWNER OF THE SERVIENT ESTATE MAY NOT BUILD ON HIS OWN PROPERTY EXCEPT AT A DISTANCE OF AT LEAST THREE METERS FROM THE BOUNDARY LINE.— [T]he three-meter distance rule is embodied in Article 673 of the Civil Code, which states that whenever by any title a right has been acquired to have direct views, balconies or belvederes overlooking an adjoining property, **the owner of the servient estate cannot build thereon at less than a distance of *three meters, not two meters*, from the property line, to be measured in the manner provided in Article 671**. Article 673 is the exception to the general rule. In a situation wherein an easement is established or recognized by title or prescription, affording the dominant estate the right to have a direct view overlooking the adjoining property, *i.e.*, the servient estate, which is the exact situation in the instant case, the two-meter requirement under Article 670 is not applicable. Instead, Article 673 is the applicable rule as it contemplates the exact circumstance attendant in the instant case, *i.e.*, wherein an easement of view is created by virtue of law. This provision has already been previously applied to easements of light and view acquired under Article 624. In *Gargantos v. Tan Yanon*, the Court held that since "[therein] respondent Tan Yanon's property has an easement of light and view against petitioner's property[, b]y reason of this easement [under Article 624], [therein Gargantos] **cannot construct on his land any building unless he erects it at a distance of not less than three meters from the boundary line separating the two estates**." To reiterate, as Article 673 states a special rule covering a situation wherein a dominant estate has acquired a right "to have direct views, balconies or belvederes, overlooking the adjoining property, the owner of the servient estate may not build on his own property except at a distance of at least three meters from the boundary line," the two-meter distance as provided in Article 670 is not enough. The distance between the structures erected on the servient estate and the boundary line of the adjoining estate must be *at least three meters*.

APPEARANCES OF COUNSEL

Reyes and Reyes Law Office for petitioners.
Sayno Law Office for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule, 45 of the Rules of Court filed by petitioners Tedy Garcia (Tedy) and Pilar Garcia (Pilar) (collectively the Sps. Garcia), assailing the Decision[2] dated June 30, 2016 (assailed Decision) and Resolution[3] dated October 5, 2016 (assailed Resolution) of the Court of Appeals,[4] (CA, Special 18th Division) in CA-G.R. CEB-CV No. 05701.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision and as culled from the records of the instant case, the essential facts and antecedent proceedings of the case are as follows:

The instant case stems from a Complaint[5] for "[easements of light, air and view, lateral support, and intermediate distances and damages with prayer for writ of preliminary injunction and/or issuance of temporary restraining order]" (Complaint) filed on February 18, 2009 by the Sps. Garcia against the respondents Spouses Loreta and Winston Santos (the Sps. Santos) and

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[1] *Rollo*, pp. 5-38.

[2] *Id*. at 40-58. Penned by Associate Justice Germano Francisco D. Legaspi with Associate Justices Marilyn B. Lagura-Yap and Gabriel T. Robeniol, concurring.

[3] *Id*. at 61-62.

[4] Special Eighteenth (18th) Division and Former Special Eighteenth (18th) Division, respectively.

[5] *Rollo*, pp. 64-76.

respondent Conchita Tan (Tan) before the Regional Trial Court of Iloilo City, Branch 31 (RTC). The case was docketed as Civil Case No. 09-30023.

As alleged in the Complaint, the Sps. Garcia are the registered owners of Lot 2, Blk. 1, San Jose Street, Southville Subdivision, Molo, Iloilo City (subject property), covered by Transfer Certificate of Title (TCT) No. T-130666.[6]

The subject property, which has been occupied by the Sps. Garcia for about eleven (11) years, has a one-storey residential house erected thereon and was purchased by them from the Sps. Santos in October 1998. At the time of the purchase of the subject property from the Sps. Santos, the one-storey house was already constructed. Also, at the time of the acquisition of the subject property, the adjoining lot, Lot 1, which is owned by the Sps. Santos, was an idle land without any improvements. Lot 1 is covered by TCT No. T-114137,[7] registered under the name of the Sps. Santos. Lot 1 remained empty until the Sps. Santos started the construction of a two-storey residential house therein on January 24, 2009. Upon inquiry from the construction workers, Tedy was erroneously informed that Tan was the new owner of Lot 1.

As further alleged in the Complaint, the building constructed on Lot 1 is taller than the Sps. Garcia's one-storey residential house. As such, the Sps. Santos' building allegedly obstructed the Sps. Garcia's right to light, air, and view. The Sps. Garcia bemoaned how, prior to the construction on Lot 1, they received enough bright and natural light from their windows. The construction allegedly rendered the Sps. Garcia's house dark such that they are unable to do their normal undertakings in the bedroom, living room and other areas of the house without switching on their lights. The Sps. Garcia likewise alleged that the said structure constructed on Lot 1 is at a distance of less than three meters away from the boundary line, in alleged violation

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

[7] *Id.* at 77.

of their easement. Furthermore, the Sps. Santos allegedly made excavations on Lot 1 without providing sufficient lateral support to the concrete perimeter fence of the Sps. Garcia.

Hence, in their Complaint, aside from asking for damages, the Sps. Garcia prayed that: the RTC declare them as having acquired the easement of light, air, and view against Lot 1; the respondents be prohibited from constructing any structure on Lot 1 taller than the Sps. Garcia's one-storey residential house; the respondents be prohibited from building any structure on Lot 1 at a distance of less than three meters from the boundary line; and the respondents be prohibited from making excavations on Lot 1 that deprive sufficient lateral support to the fence located on the subject property.

On February 19, 2009, the RTC issued an Order[8] granting a Temporary Restraining Order (TRO) enjoining the Sps. Santos from further undertaking further construction work on Lot 1. The TRO was eventually lifted on March 20, 2009.[9]

In their Amended Answer with Counterclaim[10] dated February 27, 2009, the respondents asserted that Tan was incorrectly impleaded, denying that Tan is involved whatsoever in the matter at hand, with the latter not being the registered owner of Lot 1.

Further, the respondents argued that the Sps. Garcia failed to allege how they acquired the easement of light and view either by prescription or title. The respondents maintained that the mere presence of windows on the one-storey house of the Sps. Garcia in itself does not give rise to an easement by title, stressing that there was no tenement standing on Lot 1 at the time of the construction of the one-storey house standing on the subject property. The respondents also argued that the Sps. Garcia also failed to acquire an easement by prescription because they never alleged that they made a formal prohibition of the construction of a taller structure on Lot 1.

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[8] A copy of which was not attached to the instant Petition. Penned by Presiding Judge Edgardo L. Catilo.

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

[10] *Id.* at 98-108.

With respect to the Sps. Garcia's claims on easement of lateral and subjacent support, the respondents maintained that such claims are baseless because the excavation works were all made within Lot 1 and were not deep enough to deprive the Sps. Garcia subjacent and lateral support. Moreover, these excavations were already finished without causing any damage to the Sps. Garcia's house.

The trial then ensued, with the Sps. Garcia presenting their testimonial and documentary evidence.

Sps. Santos' Demurrer to Evidence (CA-G.R. SP No. 06176)

After the Sps. Garcia rested their case, the Sps. Santos filed a Motion to Dismiss (By Way of Demurrer to Evidence)[11] which the RTC denied in its Order[12] dated April 28, 2011.

The Sps. Santos then assailed the RTC's denial of their demurrer to evidence by filing a petition for *certiorari*[13] under Rule 65 of the Rules of Court before the CA. The petition was raffled to the Twentieth Division and was docketed as CA-G.R. SP No. 06176.

In its Decision[14] dated May 20, 2013, the CA, Twentieth Division denied the *certiorari* petition of the Sps. Santos for failing to prove that the RTC committed grave abuse of discretion in denying the respondents' demurrer to evidence.

The respondents filed a Motion for Reconsideration[15] dated June 17, 2013, which was denied by the CA, Special Former

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[11] A copy of which was not attached to the instant Petition.

[12] A copy of which was not attached to the instant Petition. Penned by Presiding Judge Florian Gregory D. Abalajon.

[13] A copy of which was not attached to the instant Petition.

[14] *Rollo*, pp. 122-137-A. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Ramon Paul L. Hernando (now a member of the Court) and Carmelita Salandanan-Manahan, concurring.

[15] A copy of which was not attached to the instant Petition.

Twentieth Division in its Resolution[16] dated February 22, 2016. On March 31, 2016, the Decision dated May 20, 2013 rendered by the CA, Twentieth Division became final and executory.[17]

Afterwards, the trial ensued before the RTC, with the Sps. Santos presenting their evidence.

The Ruling of the RTC

In its Decision[18] dated May 28, 2015, the RTC ruled in favor of the Sps. Santos and dismissed the Complaint. The dispositive portion of the aforesaid Decision reads:

> **WHEREFORE, EVERYTHING CONSIDERED**, the herein complaint is hereby **DISMISSED**, the counterclaims are likewise dismissed.
>
> Costs *de oficio*.
>
> SO ORDERED.[19]

In sum, the RTC held that the Sps. Garcia never acquired any easement of light and view either by title or by prescription.

Hence, the Sps. Garcia appealed the RTC's Decision before the CA, Special 18th Division.[20] The appeal was docketed as CA-G.R. CEB-CV No. 05701.

The Ruling of the CA, Special 18th Division

In its assailed Decision, the CA, Special 18th Division denied the appeal for lack of merit, the dispositive portion of which reads:

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[16] *Rollo*, pp. 141-143. Penned by Associate Justice Geraldine C. Fiel-Macaraig with Associate Justices Edgardo L. Delos Santos and Edward B. Contreras, concurring.

[17] *Id.* at 147-148.

[18] *Id.* at 109-120. Penned by Presiding Judge Rene S. Hortillo.

[19] *Id.* at 120.

[20] The instant Petition and the attached records fail to indicate whether the Sps. Garcia filed a Motion for Reconsideration of the RTC's Decision dated May 28, 2015.

WHEREFORE, the appeal is **DENIED**. The 28 May 2015 *Decision* of the Regional Trial Court of Iloilo City, Branch 31 in Civil Case No. 09-30023 is **AFFIRMED**.

SO ORDERED.[21]

Agreeing *in toto* with the RTC, the CA held that the Sps. Garcia never acquired an easement of light and view under the pertinent provisions of the Civil Code.

The Sps. Garcia filed a Motion for Reconsideration[22] dated August 4, 2016, which was denied by the CA, Former Special 18th Division in its assailed Resolution.

Hence, the instant Petition for Review on *Certiorari* filed by the Sps. Garcia under Rule 45 of the Rules of Court.

The respondents filed their Comment (To the Petition dated October 28, 2016)[23] dated June 20, 2017, to which the Sps. Garcia responded with their Reply[24] dated November 9, 2017.

Issues

Stripped to its core, the instant Petition presents two main issues for the Court's disposition: (1) whether, in view of the CA, Twentieth Division's final and executory Decision dated May 20, 2013 in CA-G.R. SP No. 06176, the doctrine of the law of the case finds application; and (2) whether the Sps. Garcia have acquired an easement of light and view with respect to Lot 1 owned by the Sps. Santos.

The Court's Ruling

In deciding the merits of the instant Petition, the Court shall resolve the issues in *seriatim*.

I. The doctrine of the law of the case not applicable in the instant case

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[21] *Rollo*, p. 58.

[22] A copy of which was not attached to the instant Petition.

[23] *Rollo*, pp. 158-184.

[24] *Id*. at 194-204.

In the instant Petition, the Sps. Garcia make the argument that the doctrine of the law of the case applies in the instant case, considering that the CA, Twentieth Division's final and executory Decision dated May 20, 2013 in CA-G.R. SP No. 06176 expressly and categorically found that "[t]here is an acquired easement of light, air and view in favor of [the Sps. Garcia]"[25] based on Article 624 of the Civil Code[26] and the decided cases of *Amor v. Florentino*[27] and *Gargantos v. Tan Yanon,*[28] and that "the contention of [the respondents] that the mere opening of windows and doors does not constitute an easement is therefore refuted."[29]

The argument is unmeritorious.

The doctrine of the law of the case states that whatever has once been irrevocably established as the controlling legal rule of 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 such decision was predicated continue to be the facts of the case before the court.[30]

Citing *Mercury Group of Co., Inc. v. Home Dev't Mutual Fund*,[31] the CA, Special 18th Division was correct in explaining that the aforesaid doctrine applies only when there has been **a prior decision on the merits**:

"Law of the case" has been defined as the opinion delivered on a former appeal. . . . **It is a rule of general application that the decision of an appellate court in a case is the law to the case on the points**

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[25] *Id.* at 132; emphasis and italics omitted.

[26] *Id.* at 132-133.

[27] *Id.* at 132; 74 Phil. 403 (1943).

[28] *Id.*; 108 Phil. 888 (1960).

[29] *Id.* at 137.

[30] *Boiser v. National Telecommunications Commission*, 251 Phil. 174, 180 (1989).

[31] 565 Phil. 510 (2007), citing *Jarantilla v. Court of Appeals,* 253 Phil. 425 (1989).

presented throughout all the subsequent proceedings in the case in both the trial and appellate courts and no question necessarily involved and decided on that appeal will be considered on a second appeal or writ of error in the same case, provided the facts and issues are substantially the same as those on which the first question rested and, according to some authorities, provided **the decision is on the merits**. x x x[32]

The CA, Twentieth Division's final and executory Decision dated May 20, 2013 relied upon by the Sps. Garcia was not a final and executory decision on the merits of the case as it dealt solely on the issue of whether the RTC committed grave abuse of discretion in denying the respondents' demurrer to evidence.

In fact, the CA, Twentieth Division was unequivocal in explaining that it discussed "the issue on easement of light, air and view not so much to address the merit of the petition but to illustrate the extent by which [the Sps. Garcia] have relentlessly pursued their claim."[33]

Hence, the first issue posed by the Sps. Garcia is denied.

II. The easement of light and view imposed on Lot 1 acquired by the Sps. Garcia

Having disposed of the first issue, the Court shall now decide whether the Sps. Garcia have indeed acquired an easement of light and view, imposing a burden on Lot 1 not to obstruct the subject property's free access to light and view. The Court notes that the issues surrounding the alleged easement of lateral and subjacent support were no longer pursued by the Sps. Garcia in the instant Petition. Hence, the Court's Decision shall focus exclusively on the easement of light and view purportedly acquired by the Sps. Garcia as against the Sps. Santos' Lot 1.

Considering that the jurisprudence on the concept of easements of light and view is not in abundance, this is an opportune time

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[32] *Id*.

[33] *Rollo*, p. 132; underscoring supplied.

for the Court to explain clearly and resolutely the rules regarding the acquisition of an easement of light and view *vis-a-vis* several parcels of land owned by separate owners that were previously owned by a single owner, and the distances that must be observed in relation thereto.

The Concept of Easements and the Easement of Light and View

According to Article 613 of the Civil Code, an easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.

As defined by jurisprudence, an easement is "a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement. Easements are established either by law or by the will of the owner. The former are called legal, and the latter, voluntary easements."[34] An easement has been described as "a real right which burdens a thing with a prestation consisting of determinate servitudes for the exclusive enjoyment of a person who is not its owner or of a tenement belonging to another."[35]

Legal easements are ones imposed by law, and which have, for their object, either public use or interest of private persons,[36] as opposed to voluntary easements that are established by the agreements of the parties. The different legal easements are: (a) easement relating to waters; (b) right of way; (c) party wall; (d) light and view; (e) drainage; (f) intermediate distances;

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[34] *Unisource Commercial and Dev't Corp. v. Chung*, 610 Phil. 642, 649 (2009).

[35] Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES*, 3rd ed., 1966, Vol. II, p. 261.

[36] Civil Code, Art. 634.

(g) easement against nuisance; and (h) lateral and subjacent support.[37]

The legal easement called easement of light and view refers to an easement whereby the dominant estate enjoys the right to have free access to light, a little air, and a view overlooking the adjoining estate, *i.e.*, the servient estate.[38]

The easement of light and view has two components. The easement of light or *jus luminum* has the purpose of admitting light and a little air, as in the case of small windows, not more than 30 centimeters square, at the height of the ceiling joists or immediately under the ceiling.[39] On the other hand, the easement of view or *servidumbre prospectus*[40] has the principal purpose of affording view, as in the case of full or regular windows overlooking the adjoining estate.[41]

Explained otherwise, the easement of light is the right to make openings under certain conditions in order to receive light from another's tenement while the easement of view is the right to make openings or windows, to enjoy the view through the estate of another and the power to prevent all constructions or works which would obstruct such view or make the same difficult.[42] The easement of view is broader than the easement of light because the latter is always included in the former.[43]

As held by jurisprudence, the easement of light and view is intrinsically intertwined with the easement of the servient estate not to build higher or *altius non tollendi*. These two necessarily

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[37] Edgardo L. Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED*, 17th ed., 2013, Vol. II, pp. 684-685.

[38] *Id.* at 715.

[39] *Id.* See CIVIL CODE, Art. 669.

[40] Also known as *jus prospectus*. Caguioa, *supra* note 35, at 309.

[41] Paras, *supra* note 37, at 715.

[42] Caguioa, *supra* note 35, at 309-310, citations omitted.

[43] *Id.* at 310.

go together "because an easement of light and view requires that the owner of the servient estate shall not build to a height that will obstruct the window."[44]

In the instant case, the Sps. Garcia assert that since they have acquired by title an easement of light and view, the owner of the adjacent servient estate, *i.e.*, the Sps. Santos, is proscribed from building a structure that obstructs the window of their one-storey house.

Classification of Easements as Positive and Negative Easements

Article 616 of the Civil Code states that easements may be classified into positive and negative easements. A positive easement is one which imposes upon the owner of the servient estate the obligation of allowing something to be done or of doing it himself. On the other hand, a negative easement is that which prohibits the owner of the servient estate from doing something which he could lawfully do if the easement did not exist.

What is the significance of determining whether an easement is positive or negative? Such determination is consequential in determining how an easement is acquired.

According to Article 621 of the Civil Code, in order to acquire easements by prescription in positive easements, the prescriptive period shall commence from the day on which the owner of the dominant estate, or the person who may have made use of the easement, commenced to exercise it upon the servient estate.

With respect to negative easements, the prescriptive period shall commence from the day on which the owner of the dominant estate forbade, by an instrument acknowledged before a notary public, the owner of the servient estate, from executing an act which would be lawful without the easement.

Easement of Light and View as a Positive and Negative Easement

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[44] *Amor v. Florentino*, *supra* note 27, at 409.

How then is an easement of light and view classified? Is it a positive or a negative easement?

The answer is it may be both; an easement of light and view may either be positive or negative.

As a general rule, an easement of light and view is a **positiv**e one if the window or opening is situated in a **party wall**, while it is a **negative** one if the window or opening is thru **one's own wall**, *i.e.*, thru a wall of the dominant estate.[45] However, "[e]ven if the window is on one's own wall, still the easement would be positive if the window is on a balcony or projection extending over into the adjoining land."[46]

In the instant case, it is not disputed that the windows and other openings, which are allegedly now prevented from receiving light and view due to the structure built by the Sps. Santos on Lot 1, are made in the wall of Sps. Garcia's one-storey-house. There is no party wall alleged to be co-owned by the parties.

In the very early case of *Cortes v. Yu-Tibo*,[47] the Court held that **the easement of light and view in the case of windows opened in one's own wall is negative**. As such easement is a negative one, it cannot be acquired by prescription

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[45] Paras, *supra* note 37, at 716-717, citing *Cortes v. Yu-Tibo*, 2 Phil. 24 (1903).

[46] *Id.* at 717, citing *Fabie v. Lichauco*, 11 Phil. 14 (1908). This observation should be read in the light of Article 670 of the Civil Code, which provides that:

> x x x No windows, apertures, balconies, or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of two meters between the wall in which they are made and such contiguous property.
>
> Neither can side or oblique views upon or towards such conterminous property be had, unless there be a distance of sixty centimeters.
>
> The nonobservance of these distances does not give rise to prescription.

[47] *Supra* note 45.

except where sufficient time of possession has elapsed after the owner of the dominant estate, by a **formal act**, has prohibited the owner of the servient estate from doing something which would be lawful but for the easement.[48]

The phrase "formal act" would require not merely any writing, but one executed in due form and/or with solemnity.[49] This is expressly stated in Article 668 of the Civil Code which states that the period of prescription for the acquisition of an easement of light and view shall be counted: (1) from the time of the opening of the window, if it is through a party wall; or (2) **from the time of the formal prohibition upon the proprietor of the adjoining land or tenement, if the window is through a wall on the dominant estate**.

It is from these legal premises that the RTC and CA, Special 18th Division based their holdings that the Sps. Garcia "never acquired an easement of light and view under Article 668 of the Civil Code for failure to serve a notarial prohibition."[50] It is not disputed that the Sps. Garcia never sent the Sps. Santos any formal notice or notarial prohibition enjoining the latter from constructing any building of higher height on Lot 1. Hence, the RTC and CA, Special 18th Division made the conclusion that the Sps. Garcia failed to acquire an easement of light and view in relation to the adjacent Lot 1.

Nevertheless, the Court finds that the aforesaid holding of the RTC and CA, Special 18th Division is ***incorrect*** **in view of Article 624 of the Civil Code**.

Article 624 – The Existence of an Apparent Sign of Easement between Two Estates formerly owned by a Single Owner considered a Title to Easement of Light and View

While it is a general rule that a window or opening situated on the wall of the dominant estate involves a negative easement,

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[48] *Id.*

[49] *Cid v. Javier*, 108 Phil. 850, 852 (1960).

[50] *Rollo*, p. 56.

and, thus, may only be acquired by prescription, tacked from the time of the formal prohibition upon the proprietor of the servient estate, it is not true that all windows or openings situated on the wall of the dominant estate may only be acquired through prescription.

Aside from prescription, easements may likewise be acquired through ***title***.[51] The term "title" does not necessarily mean a document. Instead, it refers to a juridical act or law sufficient to create the encumbrance.[52] One such legal proviso which grants title to an easement is found in **Article 624 of the Civil Code**.

Article 624 of the Civil Code reads:

> x x x. The existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless, at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them, or the sign aforesaid should be removed before the execution of the deed. This provision shall also apply in case of the division of a thing owned in common by two or more persons.

The aforesaid article is based on Article 541 of the Spanish Civil Code, which reads:

> x x x. The existence of an apparent sign of an easement between two estates established by the owner of both shall be considered, should one of them be alienated, as a title for the active and passive continuation of the easement, unless, at the time of the division of the ownership of the two properties, the contrary should be expressed in the deed of conveyance of either of them, or the sign is obliterated before the execution of the instrument.

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[51] ART. 620. Continuous and apparent easements are acquired either by virtue of a title or by prescription of ten years.

x x x x x x x x x

ART. 622. Continuous nonapparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of a title.

[52] Paras, *supra* note 37, at 659.

The mode of acquiring an easement under Article 624 is a "legal presumption or apparent sign."[53] Article 624 finds application in situations wherein two or more estates were previously owned by a singular owner, or even a single estate but with two or more portions being owned by a singular owner.[54] Originally, there is no true easement that exists as there is only one owner. Hence, at the outset, no other owner is imposed with a burden.[55] Subsequently, one estate or a portion of the estate is alienated in favor of another person, wherein, in that estate or portion of the estate, **an apparent visible sign of an easement exists**. According to Article 624**, there arises a title to an easement of light and view, even in the absence of any formal act undertaken by the owner of the dominant estate, if this apparent visible sign, such as the existence of a door and windows, continues to remain and subsist**, unless, at the time the ownership of the two estates is divided, (1) the contrary should be provided in the title of conveyance of either of them, or (2) the sign aforesaid should be removed before the execution of the deed.

This is precisely the situation that has occurred in the instant case. Prior to the purchase of the subject property by the Sps. Garcia in 1998, the subject property and its adjoining lot, *i.e.*, Lot 1, were both owned by singular owners, *i.e.*, the Sps. Santos. On the subject property, a one-storey house laden with several windows and openings was built and the windows and openings remained open. Then on October 1998, the subject property, together with the one-storey structure, was alienated in favor of the Sps. Garcia, while the Sps. Santos retained the adjoining Lot 1.

Jurisprudence has recognized that Article 624 is an exception carved out by the Civil Code that must be taken out of the coverage of the general rule that an easement of light and view in the case of windows opened in one's own wall is a negative

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[53] Caguioa, *supra* note 35, at 276.

[54] Paras, *supra* note 37, at 671.

[55] *Id.* at 667.

easement that may only be acquired by prescription, tacked from a formal prohibition relayed to the owner of the servient estate.

As explained in *Amor v. Florentino*, the very decision in *Cortes v. Yu-Tibo*, while holding that the easement of light and view in situations involving openings situated on the wall of the dominant estate is a negative easement that may only be acquired by prescription tacked from formal prohibition, "**distinguishes that case from the situation foreseen in Article 541 [now Article 624 of the Civil Code]**."[56]

In *Cortes v. Yu-Tibo*, there were two different owners of two separate houses from the beginning, which is a situation different from that presented under Article 624 where there is only one original owner of the two structures. *Cortes v. Yu-Tibo* itself explicitly differentiates the situation presented therein and the special situation contemplated under then Article 541 of the Spanish Civil Code, which is now Article 624 of the Civil Code, wherein no formal act is needed to acquire easement of light and view:

> x x x It is true that the supreme court of Spain, in its decisions of February 7 and May 5, 1896, has classified as positive easements of lights which were the object of the suits in which these decisions were rendered in cassation, and from these it might be believed at first glance[,] that the former holdings of the supreme court upon this subject had been overruled. But this is not so, as a matter of fact, inasmuch as there is no conflict between these decisions and the former decisions above cited.
>
> **In the first of the suits referred to, the question turned upon two houses which had formerly belonged to the same owner, who established a service of light on one of them for the benefit of the other.** These properties were subsequently conveyed to two different persons, but at the time of the separation of the property nothing was said as to the discontinuance of the easement, nor were the windows which constituted the visible sign thereof removed. The new owner of the house subject to the easement endeavored to free it from the incumbrance, notwithstanding the fact that the easement had been in existence for thirty-five years, and alleged that the owner

[56] *Amor v. Florentino*, *supra* note 27, at 413; emphasis supplied.

of the dominant estate had not performed any act of opposition which might serve as a starting point for the acquisition of a prescriptive title. The supreme court, in deciding this case, on the 7th of February, 1896, held that **the easement in this particular case was positive, because it consisted in the *active* enjoyment of the light. This doctrine is doubtless based upon Article 541 of the Code**, which is of the following tenor: "The existence of apparent sign of an easement between two tenements, established by the owner of both of them, shall be considered, should one be sold, as a title for the active and passive continuance of the easement, unless, at the time of the division of the ownership of both tenements, the contrary should be expressed in the deed of conveyance of either of them, or such sign is taken away before the execution of such deed."

The word "*active*" used in the decision quoted in classifying the particular enjoyment of light referred to therein, presupposes on the part of the owner of the dominant estate a right to such enjoyment arising, in the particular case passed upon by that decision, from the voluntary act of the original owner of the two houses, by which he imposed upon one of them an easement for the benefit of the other. It is well known that easements are established, among other cases, by the will of the owners. (Article 536 of the Code) It was an act which was, in fact, respected and acquiesced in by the new owner of the servient estate, since he purchased it without making any stipulation against the easement existing thereon, but, on the contrary, acquiesced in the continuance of the apparent sign thereof. As is stated in the decision itself, "It is a principle of law that upon a division of a tenement among various persons—in the absence of any mention in the contract of a mode of enjoyment different from that to which the former owner was accustomed—such easements as may be necessary for the continuation of such enjoyment are understood to subsist." It will be seen, then, that the phrase "active enjoyment" involves an idea directly opposed to the enjoyment which is the result of a mere tolerance on the part of the adjacent owner, and which, as it is not based upon an absolute, enforceable right, may be considered as of a merely passive character. **Therefore, the decision in question is not in conflict with the former rulings of the supreme court of Spain upon the subject, inasmuch as it deals with an easement of light established by the owner of the servient estate, and which continued in force after the estate was sold, in accordance with the special provisions of Article 541 of the Civil Code.**[57]

[57] *Cortes v. Yu-Tibo*, *supra* note 45, at 29-31; emphasis supplied.

Application of the Court's Decisions in Amor v. Florentino, and Gargantos v. Tan Yanon to the Instant Case

The rulings of the Court in *Amor v. Florentino* and *Gargantos v. Tan Yanon*, which involve situations that are almost completely analogous to the instant case, are enlightening.

In these cases, like the case at hand, several properties were once owned by a single owner, wherein in one of the properties, a structure with windows and other openings was put up. Subsequently, the adjacent property was transferred to a different owner, wherein a structure was built thereon obstructing the windows and other openings found on the adjacent lot.

In *Amor v. Florentino*, one Maria Florentino (Maria) owned a house and a *camarin* or warehouse located in Vigan, Ilocos Sur. The house had, on the north side, three windows on the upper storey, and a fourth one on the ground floor. Through these windows, the house received light and air from the adjacent lot where the *camarin* stood.

On September 6, 1885, Maria made a will, devising the house and the land on which it was situated to Gabriel Florentino, one of the respondents therein, and to Jose Florentino, father of the other respondents therein. In said will, the testatrix also devised the warehouse and the lot where it was situated to Maria Encarnacion Florentino (Maria Encarnacion). Upon the death of the testatrix in 1892, nothing was said or done by the devisees in regard to the windows in question. On July 14, 1911, Maria Encarnacion sold her lot and the warehouse thereon to the petitioner therein, Severo Amor (Amor). In January 1938, therein Amor destroyed the old warehouse and started to build instead a two-storey house.

In deciding the case, the Court first explained that easements may be acquired either through title or prescription and enumerated the different acts by which an easement may be acquired by virtue of title, namely: (1) a deed of recognition by the owner of the servient estate; (2) a final judgment; and (3) **an apparent sign between two estates, established by the owner of both, referring to Article 541 (now Article 624)**

of the Civil Code. Citing decisions of the Supreme Tribunal of Spain, the Court explained that "under Article 541 [now Article 624] of the Civil Code, **the visible and permanent sign of an easement 'is the title that characterizes its existence'** ('*es el titulo caracteristico de su existencia*.')"[58]

Applying Article 541 (now Article 624) of the Civil Code, the Court held that **the existence of the four windows constructed on the subject house was an apparent sign of an easement of light and view**, the subsistence of which after the lots were segregated to different owners created an easement of light and view by title without the need of any formal notice to the servient estate. The Court explained that **the moment of the constitution of the easement of light and view, together with that of *altius non tollendi*, was the time of the transfer of the other property adjacent to the lot where the windows were located**, which, in that case, was the death of the original owner of both properties:

> It will thus be seen that **under Article 541 the existence of the apparent sign in the instant case, to wit, the four windows under consideration, had for all legal purposes the same character and effect as a title of acquisition of the easement of light and view by the respondents upon the death of the original owner,** Maria Florentino. Upon the establishment of that easement of light and view, the concomitant and concurrent easement of *altius non tollendi* was also constituted, the heir of the *camarin* and its lot, Maria Encarnacion Florentino, not having objected to the existence of the windows. The theory of Article 541, of making the existence of the apparent sign equivalent to a title, when nothing to the contrary is said or done by the two owners, is sound and correct, because as it happens in this case, **there is an implied contract between them that the easements in question should be constituted**.
>
> Analyzing Article 541 further, it seems that its wording is not quite felicitous when it says that the easement should continue. Sound juridical thinking rejects such an idea because, properly speaking, the easement is not created till the division of the property, inasmuch as a predial or real easement is one of the rights in another's property,

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[58] *Amor v. Florentino*, *supra* note 27, at 410; emphasis and italics supplied.

or *jura in re aliena* and nobody can have an easement over his own property, *nemini sua res servit*. In the instant case, therefore, when the original owner, Maria Florentino, opened the windows which received light and air from another lot belonging to her, she was merely exercising her right of dominion. Consequently, the moment of the constitution of the easement of light and view, together with that of *altius non tollendi*, was the time of the death of the original owner of both properties. At that point, the requisite that there must be two proprietors — one of the dominant estate and another of the servient estate was — fulfilled.[59]

Subsequently, in 1960, the Court rendered its Decision in the case of *Gargantos v. Tan Yanon*.

In the said case, the late Francisco Sanz (Sanz) was the former owner of a parcel of land with the buildings and improvements thereon, situated in the *poblacion* of Romblon. He subdivided the lot into three (3) and then sold each portion to different persons. One portion was purchased by Guillermo Tengtio who subsequently sold it to Vicente Uy Veza. Another portion, with the house of strong materials thereon, was sold in 1927 to Tan Yanon, the respondent therein. This house had on its northeastern side, doors and windows overlooking the third portion, which, together with the *camarin* and small building thereon, after passing through several hands, was finally acquired by Juan Gargantos (Gargantos), the petitioner therein. In 1955, Gargantos tore down the roof of the *camarin* and constructed a combined residential house and warehouse on his lot.

The Court held that Article 538 (now Article 621) of the Civil Code and the doctrine in *Cortes v. Yu-Tibo* that the easement of light and view in situations involving openings situated on the wall of the dominant estate is a negative easement that may only be acquired by prescription tacked from formal prohibition "[is] not applicable herein because the two estates, that now owned by petitioner, and that owned by respondent, were formerly owned by just one person, Francisco Sanz."[60]

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[59] *Id*. at 410-411; emphasis and underscoring supplied; citations omitted.

[60] *Gargantos v. Tan Yanon*, *supra* note 28, at 890; underscoring supplied.

The Court further explained that the existence of the doors and windows on the northeastern side of the house was equivalent to a title, for the visible and permanent sign of an easement was the title that characterized its existence:

> x x x It was Sanz who introduced improvements on both properties. On that portion presently belonging to respondent, he constructed a house in such a way that the northeastern side thereof extends to the wall of the *camarin* on the portion now belonging to petitioner. On said northeastern side of the house, there are windows and doors which serve as passages for light and view. These windows and doors were in existence when respondent purchased the house and lot from Sanz. The deed of sale did not provide that the easement of light and view would not be established. **This then is precisely the case covered by Article 541, O.C.C. (now Article 624, N.C.C.) which provides that the existence of an apparent sign of easement between two estates, established by the proprietor of both, shall be considered, if one of them is alienated, as a title so that the easement will continue actively and passively, unless at the time the ownership of the two estates is divided, the contrary is stated in the deed of alienation of either of them, or the sign is made to disappear before the instrument is executed. The existence of the doors and windows on the northeastern side of the aforementioned house, is equivalent to a title, for the visible and permanent sign of an easement is the title that characterizes its existence** (*Amor vs. Florentino*, 74 Phil., 403). It should be noted, however, that while the law declares that the easement is to "continue" the easement actually arises for the first time only upon alienation of either estate, inasmuch as before that time there is no easement to speak of, there being but one owner of both estates (Article 530, O.C.C., now Article 613, N.C.C.).[61]

From *Amor v. Florentino* and *Gargantos v. Tan Yanon*, read together with *Cortes v. Yu-Tibo*, it has been jurisprudentially established that, in a situation wherein Article 624 of the Civil Code applies, there arises an easement if an apparent sign of the existence of an easement, *i.e.*, the existence of windows and openings on the dominant estate, **continues to remain even after the transfer of the property to the new owner, unless such apparent sign is removed or if there is an agreement to the contrary**.[62]

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[61] *Id.* at 890-891; emphasis and underscoring supplied.

[62] Paras, *supra* note 37, at 669-670.

To reiterate, such is exactly the situation attendant in the instant case. Lot 1 and the subject property were once owned by one owner, *i.e.*, the Sps. Santos. On the subject property, a one-storey house with windows and other openings that accept light and view from Lot 1, which was idle at that time, was built. Subsequently, in 1998, the subject property was alienated in favor of the Sps. Garcia. It is undisputed that the windows and other openings on the one-storey house subsisted and remained open. It is also not disputed that there was no agreement made by the parties whatsoever to the effect that the windows and openings of the Sps. Garcia's house should be closed or removed.

Hence, in accordance with Article 624 of the Civil Code, from the time the Sps. Santos transferred the subject property to the Sps. Garcia, there arose by title an easement of light and view, placing a burden on the servient estate, *i.e.*, Lot 1, to allow the Sps. Garcia's residence unobstructed access to light and view, subject to certain limitations as will be discussed hereunder.

The core of the RTC and CA, Special 18th Division's Decisions dismissing the Sps. Garcia's Complaint centers on the argument that the cases of *Amor v. Florentino*, and *Gargantos v. Tan Yanon* are not applicable to the instant case because in the latter, "the previous owner only made improvements on the [subject property] of [the Sps. Garcia] at the time of the transfer of the alleged dominant estate to [the Sps. Garcia.] This takes the instant case out of the factual milieu of *Amor* and *Gargantos*."[63] According to the CA, Special 18th Division, "[t]he rulings in *Amor* and *Gargantos* appear to be premised on the fact that the previous owner made improvements on both properties prior to the transfer of one of these properties."[64]

After a close reading of *Amor v. Florentino* and *Gargantos v. Tan Yanon*, the Court holds that the RTC and CA, Special

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[63] *Rollo*, p. 53.

[64] *Id.* at 55.

18th Division were mistaken in not applying the aforesaid cases to the instant case.

First and foremost, the subject Civil Code provision dealt with by these two cases, *i.e.*, Article 624 (formerly Article 541) of the Civil Code, merely states that what is involved in this particular situation is "an apparent sign of easement **between two estates**."[65]

There is nothing in the aforesaid provision that requires the presence or establishment of structures or improvements on both estates at the time the ownership of the two estates is divided. The conclusion of the CA, Special 18th Division that Article 624 applies only when the (future) servient estate has an improvement thereon at the time of the transfer of the ownership of either or both of the estates finds no textual support. What the law merely states is that there must be two estates that were once owned by one owner, regardless of the existence of improvements in the (future) servient estate. What law requires is that, at the time the ownership of the estates is divided, there must be an apparent sign of easement that exists, such as a window, door, or other opening, in the dominant estate.

As exhaustively explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, the existence of an easement of light and view under Article 624 is established as long as (1) there exists an apparent sign of servitude between two estates; (2) the sign of the easement must be established by the owner of both tenements; (3) either or both of the estates are alienated by the owner; and (4) at the time of the alienation nothing is stated in the document of alienation contrary to the easement nor is the sign of the easement removed before the execution of the document:

> x x x In this case[,] the owner of two estates has established an apparent sign of the easement between two estates. It is apparent inasmuch as since it is the owner establishing it in his own property in favor of an estate belonging to himself there is no easement but merely an exercise of the right of ownership. Should, however, one

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[65] Emphasis and underscoring supplied.

or both of the estates be alienated or after partition in case of a property owned in common, then that sign established by the owner will constitute a title for the establishment of the easement, both actively or passively, except in case the contrary should be provided in the document of conveyance of either estate or in case before the alienation is made the sign is removed by the owner. Hence, in order that this article will apply[,] the following are the requisites: **(1) That there exist an apparent sign of servitude between two estates; (2) That the sign of the easement be established by the owner of both tenements because the article will not apply when the easement is established by a person different from the owner; (3) That either or both of the estates are alienated by the owner; and (4) That at the time of the alienation nothing is stated in the document of alienation contrary to the easement nor is the sign of the easement removed before the execution of the document.**[66]

It is evident that the prior existence of another structure or building in the other estate, in addition to the apparent sign of easement existing on the dominant estate, is not a requirement for the application of Article 624. What is clear from the foregoing is that the hallmark of an easement of light and view established by an apparent sign of easement under Article 624 is the existence of an apparent sign of servitude between two estates, such as a window, door, or any other opening, that was established by the common owner of both estates prior to the division of ownership of these estates.

Second, upon close reading of *Amor v. Florentino* and *Gargantos v. Tan Yanon*, there is no holding whatsoever by the Court that the application of Article 624 (formerly Article 541) is restricted to situations wherein the servient estate previously contained improvements or structures. The RTC and CA, Special 18th Division failed to explain the rationale for making a differentiation as to situations wherein the servient estate was idle at the time of the division of the ownership of the two estates. Instead, the RTC and CA, Special 18th Division merely nitpicked this singular factual difference and concluded, without sufficient explanation, that the factual milieu of the

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[66] Caguioa, *supra* note 35, at 276; emphasis supplied.

instant case differs from those of *Amor v. Florentino* and *Gargantos v. Tan Yanon*.

It must be stressed that the presence of a minor factual difference does not preclude the application of judicial precedent. It must be explained how the factual difference in a case makes the doctrine established in the decided case inapplicable therein. In the instant case, the cases of *Amor v. Florentino* and *Gargantos v. Tan Yanon* clearly and plainly explain that there arises an easement if an apparent sign of the existence of an easement, *i.e.,* the existence of windows and openings on the dominant estate, continues to remain even after the transfer of the property to the new owner, without making any holding whatsoever that there should have been a prior structure that was put up on the servient estate. The fact that the existence of windows, doors, and other openings on the dominant estate is the apparent sign of an existing easement is not hinged whatsoever on the presence of structures on the adjacent servient estate. In short, the fact in the aforesaid cases that the servient estates therein had existing structures prior to the division of ownership is not a significant fact that is determinative of the holdings of the Court.

In fact, the Court notes that in *Amor v. Florentino*, the improvement originally constructed on the servient estate, *i.e.*, the warehouse, was actually totally demolished and that, after the transfer of ownership of the dominant estate, a new two-storey house was thereafter built in its stead. This does not differ substantially from a situation wherein new constructions are done in the servient estate that was previously completely empty.

Further, in *Gargantos v. Tan Yanon*, the Court, in applying Article 624 of the Civil Code, held that "[b]y reason of this easement, petitioner cannot construct on his land any building."[67]

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[67] *Gargantos v. Tan Yanon*, *supra* note 28, at 891. It must be noted, however, that Article 673 of the Civil Code must be observed in the construction of improvements on the servient estate if by any title there are, in the dominant estate, openings with direct views, balconies or belvederes overlooking that adjoining servient estate.

The Court did not say that the petitioner therein was barred only from adding or increasing the height of existing structures or improvements.

Hence, considering the foregoing discussion, the RTC and CA, Special 18th Division committed an error in holding that the Sps. Garcia failed to acquire an easement of light and view in the instant case. By virtue of Article 624 of the Civil Code and applicable jurisprudence, the Court holds that the Sps. Garcia have acquired an easement of light and view by title despite the lack of any formal notice or prohibition made upon the owner of the servient estate.

The Three-Meter Distance Rule

Now that the existence of an easement of light and view has been established in favor of the Sps. Garcia, the Court shall now delve on whether to grant Sps. Garcia's prayer that "respondents should therefore remove from Lot 1 their building or structure which blocks or impedes petitioners' air, light and view."[68]

The Court answers the question with a qualified yes.

Based on Articles 669[69] and 670 of the Civil Code, there are two kinds of windows: (1) regular or full[70] or direct view[71]

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[68] *Rollo*, p. 33.

[69] ART. 669. When the distances in Article 670 are not observed, the owner of a wall which is not a party wall, adjoining a tenement or piece of land belonging to another, can make in it openings to admit light at the height of the ceiling joints or immediately under the ceiling, and of the size of thirty centimeters square, and, in every case, with an iron grating imbedded in the wall and with a wire screen.

Nevertheless, the owner of the tenement or property adjoining the wall in which the openings are made can close them should he acquire part-ownership thereof, if there be no stipulation to the contrary.

He can also obstruct them by constructing a building on his land or by raising a wall thereon contiguous to that having such openings, unless an easement of light has been acquired. (581a)

[70] Paras, *supra* note 37, at 720.

[71] CIVIL CODE, Art. 670. Caguioa, *supra* note 35, at 314.

windows, and (2) restricted,[72] or oblique or side view[73] windows. As for openings, they may be *direct views* — those openings which are made on a wall parallel or almost parallel to the line that divides the estates, in such a way that the neighboring tenement can be seen without putting out or turning the head, or *oblique views* — those openings in a wall which form an angle to the boundary line, and therefore of necessity requires in order to see the neighboring tenement to thrust the head out of the opening and look to the right or left.[74] In the case at hand, the openings found on the property of the Sps. Garcia offer a direct view of the property of the respondents Sps. Santos.

In relation to direct view windows or openings, the Civil Code provides two distance rules or distances that must be observed before they can be made or established.

Firstly, there is the two-meter distance rule under Article 670 of the Civil Code, which provides: "[n]o windows, apertures, balconies, or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of two meters between the wall in which they are made and such contiguous property." This Article is to be read in conjunction with Article 671 as the latter provides the mechanism by which the two-meter distance is to be measured, to wit: "[t]he distances x x x shall be measured in cases of direct views from the outer line of the wall when the openings do not project, from the outer line of the latter when they do, and in cases of oblique views from the dividing line between the two properties."

Hence, under Article 670, which is the general rule, when a window or any similar opening affords a direct view of an adjoining land, the distance between the wall in which such opening is made and the border of the adjoining land should be at least two meters.

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[72] Paras, *supra* note 37, at 718.

[73] CIVIL CODE, Art. 670. Caguioa, *supra* note 35, at 314.

[74] Caguioa, *supra* note 35, at 314, citation omitted.

Similarly, Republic Act No. 6541 as revised by Presidential Decree No. 1096 or the National Building Code of the Philippines provides the same two-meter distance requirement pursuant to Section 708(a), which provides that: "[t]he dwelling shall occupy not more than ninety percent of a corner lot and eighty percent of an inside lot, and subject to the provisions on Easement of Light and View of the Civil Code of the Philippines, shall be at least 2 meters from the property line."

Secondly, the three-meter distance rule is embodied in Article 673 of the Civil Code, which states that whenever by any title a right has been acquired to have direct views, balconies or belvederes overlooking an adjoining property, **the owner of the servient estate cannot build thereon at less than a distance of *three meters, not two meters*, from the property line, to be measured in the manner provided in Article 671**. Article 673 of the Civil Code reads:

> ART. 673. Whenever by any title a right has been acquired to have direct views, balconies or belvederes overlooking an adjoining property, the owner of the servient estate cannot build thereon at less than a distance of three meters to be measured in the manner provided in Article 671. Any stipulation permitting distances less than those prescribed in Article 670 is void.

Article 673 is the exception to the general rule. In a situation wherein an easement is established or recognized by title or prescription, affording the dominant estate the right to have a direct view overlooking the adjoining property, *i.e.*, the servient estate, which is the exact situation in the instant case, the two-meter requirement under Article 670 is not applicable. Instead, Article 673 is the applicable rule as it contemplates the exact circumstance attendant in the instant case, *i.e.*, wherein an easement of view is created by virtue of law.

This provision has already been previously applied to easements of light and view acquired under Article 624. In *Gargantos v. Tan Yanon*, the Court held that since "[therein] respondent Tan Yanon's property has an easement of light and view against petitioner's property[, b]y reason of this

easement [under Article 624], [therein Gargantos] **cannot construct on his land any building unless he erects it at a distance of not less than three meters from the boundary line separating the two estates**."[75]

To reiterate, as Article 673 states a special rule covering a situation wherein a dominant estate has acquired a right "to have direct views, balconies or belvederes, overlooking the adjoining property, the owner of the servient estate may not build on his own property except at a distance of at least three meters from the boundary line,"[76] the two-meter distance as provided in Article 670 is not enough. The distance between the structures erected on the servient estate and the boundary line of the adjoining estate must be *at least three meters*.

In the instant case, the records show that Roberto Planton Baradas (Baradas), the construction project engineer who supervised the construction of the Sps. Santos' house located on Lot 1, testified that "[t]here is a distance of ***two meters*** between [the Sps. Garcia's] fence and the wall of [the respondents] spouses Santos."[77] Simply stated, the distance between the structure erected by the Sps. Santos on Lot 1 and the boundary line is only two meters, which is less than the three-meter distance required under Article 673.

Therefore, considering that the Sps. Garcia have acquired by title an easement of light and view in accordance with Article 624 of the Civil Code, **the Sps. Santos should necessarily demolish or renovate portions of their residential building so that the three-meter distance rule as mandated under Article 673 of the Civil Code is observed**.

WHEREFORE, the instant appeal is hereby **GRANTED**. The Decision dated June 30, 2016 and Resolution dated October

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[75] *Gargantos v. Tan Yanon*, *supra* note 28, at 891; emphasis and underscoring supplied.

[76] Caguioa, *supra* note 35, at 317.

[77] *Rollo*, p. 46; emphasis, underscoring and italics supplied.

5, 2016 of the Court of Appeals in CA-G.R. CEB-CV No. 05701 are hereby **REVERSED AND SET ASIDE**. Necessarily, the Decision dated May 28, 2015 rendered by the Regional Trial Court of Iloilo City, Branch 31 is likewise **REVERSED AND SET ASIDE**.

The Court declares the **EXISTENCE OF AN EASEMENT OF LIGHT AND VIEW** in favor of the petitioners Sps. Tedy and Pilar Garcia. The respondents Sps. Loreta and Winston Santos are hereby ordered to **REMOVE** from Lot 1 such portions of their building or structure in order to comply with the three-meter rule as mandated under Article 673 of the Civil Code.

No pronouncement as to costs.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Reyes, J. Jr.*, and *Lazaro, Javier, JJ.*, concur.

FIRST DIVISION

[G.R. No. 230337. June 17, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOCELYN MANECLANG *y* ABDON,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; TWO ELEMENTS OF A WARRANTLESS ARREST; ESTABLISHED IN CASE AT BAR.— In sustaining appellant's conviction, the CA ruled that this was a clear case of an "*in flagrante delicto* warrantless arrest" under paragraph (a) of Section 5, Rule 113 of the Revised Rules on Criminal Procedure,

x x x A warrantless arrest under paragraph (a) of Section 5 is valid when these two elements are present: (1) the person to be arrested must perform an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act was done in the presence or within the view of the arresting officer. Here, both conditions concurred. Appellant was caught in *flagrante delicto* selling illegal drugs by PO2 Aresta. In turn, PO2 Aresta effected the arrest since he had personal knowledge of facts indicating that appellant had committed a criminal act. The fact that appellant was not the target person of the buy-bust operation was of no moment. As long as an accused performs some overt act that would indicate that he has committed, is actually committing, or is attempting to commit an offense, the warrantless arrest is justified.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— For the conviction of illegal sale of *shabu*, it was incumbent upon the prosecution to prove: "(1) identities of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor." "On the other hand, in illegal possession of [*shabu*], the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug." In addition, the identity of the dangerous drugs must be established with moral certainty; it must be shown that the items offered in court were the very same substances seized during the buy-bust operation. The prosecution must be able to prove an unbroken chain of custody over the illegal drugs.

3. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; IN ORDER TO ENSURE THE INTEGRITY AND EVIDENTIARY VALUE OF THE CONFISCATED ITEMS WERE PROPERLY PRESERVED; FOUR LINKS MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY; ENUMERATED.— "It bears emphasis that x x x strict adherence to the mandatory requirements of Section (1) of RA 9165, x x x may be excused as long as the integrity and the evidentiary value of the confiscated items [were] properly preserved." And in order to ensure that the integrity and

evidentiary value were indeed preserved, the proper chain of custody of the seized items must be shown. There are four links that must be established in the chain of custody, to wit: "1) the seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer; 2) the turnover of the seized drug by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of said item to the forensic chemist for examination; and, 4) the turnover and submission thereof from [the] forensic chemist to the court."

4. ID.; ID.; ID.; ID.; OWING TO THE BREACHES OF PROCEDURE COMMITTED BY THE APPREHENDING OFFICERS, THE PROSECUTION MISERABLY FAILED TO PROVE THE *CORPUS DELICTI* OF THE CRIMES AND TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY, THEREFORE, THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY CANNOT BE ACCORDED TO THE APPREHENDING OFFICERS; CASE AT BAR.— To establish the chain of custody, Section 21, Article II of RA 9165, prior to its amendment by RA 10640 pertinently provided: x x x The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x The law mandates that the insulating witnesses be present during the actual inventory and photographing of the seized drugs to deter the common practice of planting evidence. While non-compliance will not render the seizure and custody over the items invalid, honest-to-goodness efforts must be made to effect compliance. In the instant case, PO2 Aresta testified that the police team was unable to procure a representative from the media, from the DOJ, and an elected public official because it was night time. PO2 Aresta's allegation will not hold because there was no genuine attempt to comply with the law. Although PO2 Aresta alleged that the police team exerted efforts to procure the attendance of these witnesses; this is all allegation – he did not adduce specific evidence that he and his fellow

police officers did in fact exert genuine efforts to secure the attendance or presence of a representative from the media, a representative from the DOJ, or an elected public official to witness the actual inventory and the photographing of the seized prohibited drugs. In the recent case of *People v. Lim*, a similar procedural lapse resulted in the undoing of the government's case. x x x In ruling for the acquittal of the accused, this Court ruled therein that the reason for non-compliance proffered by the arresting team was "unacceptable as there was no genuine and sufficient attempt to comply with the law." The Court held that mere statements that the required witnesses were unavailable, absent serious and actual attempts to contact them were unacceptable reasons for non-compliance; earnest efforts to secure the attendance of the necessary witnesses must be proved. x x x In fine, owing to the breaches of procedure committed by the apprehending officers, we find that the prosecution miserably failed to prove the *corpus delicti* of the crimes and to establish an unbroken chain of custody. The presumption of regularity in the performance of official duty accorded to the apprehending officers cannot, therefore, arise.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the August 16, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07649 which affirmed the conviction of appellant Jocelyn Maneclang *y* Abdon for violation of Section 5 (illegal sale of dangerous drugs) and Section 11 (illegal possession of dangerous drugs), Article II of Republic

[1] CA *rollo*, pp. 96-110; penned by Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Sesinando E. Villon and Pedro B. Corales.

Act (RA) No. 9165,[2] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Antecedent Facts

Appellant was charged with violation of Sections 5 and 11, Article II of RA 9165 in two separate Informations docketed as Criminal Case Nos. 11-284738 and 11-284739 which alleged these material facts:

Criminal Case No. 11-284738

That on or about July 2, 2011, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, delivery[,] transport or distribute any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale to a police officer/poseur buyer one (1) heat-sealed transparent plastic sachet containing ZERO POINT ZERO ONE SIX [0.016] gram of white crystalline substance commonly known as *shabu* containing Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[3]

Criminal Case No. 11-284739

That on or about July 2, 2011, in the City of Manila, Philippines, the said accused without being authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in [her] possession and under her custody and control four (4) heat-sealed transparent plastic sachets containing ZERO POINT ZERO ZERO EIGHT [0.008 gram], ZERO POINT ZERO ONE ONE [0.011 gram], ZERO POINT ZERO ZERO NINE [0.009] gram and ZERO POINT ZERO ONE FOUR [0.014 gram], all in the total of ZERO POINT ZERO FOUR TWO (0.042) GRAM of white crystalline substance known as "*shabu*" containing Methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.[4]

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[2] 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.

[3] Records of Criminal Case No. 11-284738, p. 2.

[4] Records of Criminal Case No. 11-284739, unpaginated.

Arraigned therein, appellant entered a negative plea to these crimes charged against her.

Version of the Prosecution

PO2 Mario Anthony Aresta (PO2 Aresta) testified that on July 2, 2011, at around 10:00 a.m., they received information from a regular confidential informant (CI) regarding alleged illegal drug activities of a certain *alias* "Muslim" along Loreto Extension Street in Sampaloc, Manila.[5] Acting on this information, Police Superintendent Jemar Modequillo (P/Supt Modequillo), Station Commander of the Sampaloc Police Station, Manila Police District (MPD), conducted a briefing and planned a buy-bust operation. PO2 Aresta was designated as poseur-buyer with PO3 Allan Bacani (PO3 Bacani), PO2 Renato Salinas (PO2 Salinas), PO1 Jonathan Acido (PO1 Acido), PO1 Ronnie Tan (PO1 Tan), and PO2 Jaycee John Galutera (PO2 Galutera) as the back-up team.[6] Pursuant to the buy-bust plan, PO2 Aresta was given three pieces of one hundred (Php 100.00) peso bills imprinted with the letters "MAA" as marked money.[7]

Upon arrival at the target area, the CI asked appellant about the whereabouts of "Muslim".[8] Appellant answered that Muslim was not around. At the same time she uttered: "*Ako meron ditong item*."[9] The CI introduced PO2 Aresta to appellant saying: "*Ito pinsan ko bibili ng bato*."[10] Appellant then asked PO2 Aresta: "*Magkano kukunin mo?*" and the latter replied: "*Three hundred lang*."[11] Appellant handed over to PO2 Aresta one heat-sealed transparent plastic sachet containing white crystalline substance suspected to be *shabu* after receiving from the latter

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[5] TSN, October 10, 2012, pp. 9 and 28-29.

[6] *Id.* at 6.

[7] *Id*. at 7.

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

[9] *Id*. at 13.

[10] *Id*.

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

the buy-bust money.[12] PO2 Aresta removed his bull cap as a pre-arranged signal that the transaction had been consummated.[13] The back-up team rushed toward the crime scene, and PO2 Aresta immediately grabbed appellant's wrist, introduced himself as a police officer, and asked appellant to empty her pockets, which yielded four more heat-sealed plastic sachets containing white crystalline substance along with the buy-bust money.[14]

The other members of the buy-bust team tried to get in touch with the barangay officials in the area but no one responded.[15] At the place of arrest, PO2 Aresta marked the plastic sachet that he purchased from appellant with "JMA" and the other four additional sachets recovered with "JMA-1", "JMA-2", "JMA-3", and "JMA-4",[16] while PO2 Galutera took photographs of the seized items.[17] However, no inventory of the seized items was conducted at the place of arrest because a commotion took place when several persons attempted to help appellant escape.[18] These persons who tried to help appellant were nonetheless able to run away when pursued by the buy-bust team.[19] The police officers then immediately brought appellant to the police station,[20] where PO2 Aresta turned over the evidence to the investigator, PO3 Carlos Rivera (PO3 Rivera),[21] for inventory, documentation and investigation.[22] PO2 Aresta then

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[12] *Id.* at 14-15.

[13] *Id.* at 9.

[14] *Id.* at 15-17.

[15] *Id.* at 17.

[16] *Id.*

[17] *Id.* at 22 and 32.

[18] *Id.* at 33.

[19] *Id.*

[20] *Id.* at 33-34.

[21] *Id.* at 36.

[22] *Id.* at 20.

brought the evidence to the MPD Crime Laboratory Service for laboratory examination.

The prosecution dispensed with the testimony of Police Chief Inspector Erickson Calabocal (PCI Calabocal) of the MPD Crime Laboratory after a stipulation by the parties that PCI Calabocal conducted a laboratory examination on July 3, 2011 of the drug specimen contained in five plastic sachets which PCI Calabocal found positive for metamphetamine hydrochloride as per his Chemistry Report.[23] The prosecution likewise dispensed with the testimony of PO3 Rivera as the prosecution and defense agreed that the seized items were turned over to PO3 Rivera for investigation by PO2 Bacani, PO2 Aresta, PO2 Salinas, PO1 Acido, PO1 Tan and PO2 Galutera. The prosecution and the defense moreover stipulated that, in the course of the investigation, PO3 Rivera prepared the Letter Request for Laboratory Examination, Joint Affidavit of Arrest, Booking Sheet and Arrest Report, Letter Referral for Inquest, and the Chemistry Report; and that no elected official nor representatives from the media and the Department of Justice (DOJ) were present when PO3 Rivera prepared an Inventory of Items or Property Seized.[24]

Version of the Defense

Appellant denied the charges against her. She claimed that on July 2, 2011, at around 3:00 to 4:00 p.m., she was tending to her grandchild in front of her house at 1503 Loreto Street, Sampaloc, Manila, when five to six police officers in civilian clothes approached, arrested and brought her to the police station.[25] At the Sampaloc Police Station, the police officers told her that she was being charged with violation of Sections 5 and 11, Article 11 of RA 9165.[26]

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[23] RTC Order dated February 8, 2012, Records of Criminal Case No. 11-284738, p. 75.

[24] RTC Order dated May 28, 2013, *id*. at 106.

[25] TSN, April 8, 2014, pp. 3-6.

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

Ruling of the Regional Trial Court

In a September 16, 2014 Decision,[27] the Regional Trial Court (RTC) of Manila, Branch 53, found appellant guilty beyond reasonable doubt as charged. The RTC gave full credence to the version of the prosecution witnesses who were presumed to have regularly discharged their duties as police officers. The RTC ruled that all the elements of the crimes charged had been proved and that the identity of the *corpus delicti* had been established by the prosecution. The dispositive portion of the RTC Decision reads:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused JOCELYN MANECLANG *y* ABDON @Jocelyn/@Iling GUILTY beyond reasonable doubt:
>
> 1. In *CRIM. CASE NO. 11-284738*, of the crime of [v]iolation of Sec. 5, Article II, Republic Act [No.] 9165, and is hereby sentenced to suffer [l]ife [i]mprisonment and to pay fine in the amount of ₱500,000.00; and
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> 2. In *CRIM. CASE NO. 11-284739*, of the crime of [violation of Sec. 11(3), Article II, Republic Act [No.] 9165, and is hereby sentenced to suffer imprisonment of [Twelve] (12) years and one (1) day, as minimum to Fifteen (15) years, as maximum, and to pay fine in the amount of ₱300,000.00.
>
> Cost against the accused.
>
> SO ORDERED.[28]

From this judgment, appellant appealed to the CA.

Ruling of the Court of Appeals

The appellant insisted on her innocence and argued that her warrantless arrest was illegal and that the apprehending officers failed not only to preserve the integrity of the seized items but also failed to establish an unbroken chain of custody thereof.

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[27] Records of Criminal Case No. 11-284738, pp. 133-138; penned by Judge Reynaldo A. Alhambra.

[28] *Id.* at 138.

But, in its August 16, 2016 Decision,[29] the CA gave short shrift to appellant's arguments and sustained the RTC. Like the RTC, the CA upheld the presumption of regularity in the performance of duty on the part of the police officers, thus, ruling that appellant's weak denial could not prevail over the positive assertions of these police officers. The CA also upheld the appellant's warrantless arrest, and ruled that the search and seizure incidental to this lawful arrest was likewise reasonable and valid.

The CA also held that there was sufficient compliance with the requirements of Section 21 of RA 9165 relative to the preservation of the seized item's evidentiary integrity under the Chain of Custody Rule. It agreed with the RTC that the prosecution was able to preserve and keep intact the five plastic sachets of *shabu* from the time these were seized by PO2 Aresta until these were examined and tested by PCI Calabocal and even up to the time these were offered in evidence.

Hence, the present appeal. Appellant contends that her guilt was not proven beyond reasonable doubt because the prosecution failed to demonstrate that the apprehending officers did in fact comply with the safeguards provided by RA 9165 for the preservation of the seized items' evidentiary integrity under the Chain of Custody Rule. Appellant likewise maintains that her warrantless arrest was illegal, in consequence of which the warrantless search and seizure of the prohibited drugs were likewise invalid and illegal.

Our Ruling

The appeal has merit.

The warrantless arrest and the warrantless search and seizure are valid.

Normally, police officers must be armed with a valid warrant to make a lawful arrest.[30] However, there may be instances

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[29] CA *rollo*, pp. 96-110.

[30] *Veridiano v. People*, G.R. No. 200370, June 7, 2017, 826 SCRA 382, 399.

when arrests are allowed even without a warrant.[31] Rule 113, Section 5 of the Revised Rules of Criminal Procedure provides:

> 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 sustaining appellant's conviction, the CA ruled that this was a clear case of an "in *flagrante delicto* warrantless arrest" under paragraph (a) of Section 5, Rule 113 of the Revised Rules on Criminal Procedure, as above-quoted.

The Court agrees.

A warrantless arrest under paragraph (a) of Section 5 is valid when these two elements are present: (1) the person to be arrested must perform an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act was done in the presence or within the view of the arresting officer.[32] Here, both conditions concurred. Appellant was caught in *flagrante delicto* selling illegal drugs by PO2 Aresta. In turn, PO2 Aresta effected the arrest since he had personal knowledge of facts indicating that appellant had committed a criminal act. The fact that appellant was not the target person of the buy-bust operation was of no moment. As long as an accused performs some overt act that would indicate that he has committed, is actually committing,

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[31] *Id*.

[32] *People v. Villareal*, 706 Phil. 511, 517-518 (2013).

or is attempting to commit an offense, the warrantless arrest is justified.[33]

Appellant's contention that it was contrary to human experience for her to sell illegal drugs to total strangers does not persuade. We have long observed that "[p]eddlers of illicit drugs have been known with ever increasing casualness and recklessness to offer and sell their wares for the right price to anybody, be they strangers or not. Moreover, drug-pushing when done on a small-scale x x x belongs to those types of crimes that may be committed any time and at any place."[34]

Appellant must nonetheless be acquitted as the chain of custody of evidence was not established.

Even as the sachets of *shabu* purportedly seized from appellant were admissible in evidence, we find that the prosecution failed to preserve the integrity and evidentiary value of the seized drugs. The prosecution not only failed to prove the *corpus delicti* of the crimes charged; it also failed to establish an unbroken chain of custody thereof, in violation of Section 21, Article II of RA 9165.

For the conviction of illegal sale of *shabu*, it was incumbent upon the prosecution to prove: "(1) identities of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor."[35] "On the other hand, in illegal possession of [*shabu*], the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug."[36] In addition, the identity of the dangerous drugs must be established with moral certainty; it

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[33] *People v. Nuevas*, 545 Phil. 356, 371-372 (2007).

[34] *People v. Mendoza*, G.R. No. 220759, July 24, 2017.

[35] *People v. Lorenzo*, 633 Phil. 393, 402 (2010).

[36] *Id.* at 403.

must be shown that the items offered in court were the very same substances seized during the buy-bust operation.[37] The prosecution must be able to prove an unbroken chain of custody over the illegal drugs.[38]

To establish the chain of custody, Section 21, Article II of RA 9165, prior to its amendment by RA 10640[39] pertinently provided:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

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[37] *People v. Dahil*, 750 Phil. 212, 226 (2015).

[38] *People v. Bugtong*, G.R. No. 220451, February 26, 2018.

[39] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002". Approved July 15, 2014.

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

Going by the evidence on record, after arresting appellant, PO2 Aresta took custody of the five plastic sachets of *shabu* sold to him by, and confiscated from the possession of, the appellant. At the place of arrest, PO2 Aresta marked the five plastic sachets while PO2 Galutera took photographs of the same. The apprehending officers, however, failed to make an inventory because of a commotion at the scene of the crime. An inventory of the seized items was made nonetheless at the police station upon their turnover by PO2 Aresta to the investigating officer, PO3 Rivera. It bears notice, however, that no insulating witnesses were present at said turnover; no elected public official was present, and likewise no representatives from the DOJ and the media were present during the physical inventory of the seized items. Indeed, the Inventory Receipt did not contain the signatures of the required witnesses. During the cross-examination, PO2 Aresta even testified:

Atty. Mendoza:

Q: When you arrived at the Police Station[,] that was the time the inventory was prepared?
A: Yes, sir.

Q: There [was] no x x x elected official [present] during the preparation of that inventory?
A: When the inventory was being prepared by the investigator[,] one *Kagawad* Francis Barredo arrived and he was present during the preparation of the inventory, sir.

Q: Why is it that you never mentioned that *Kagawad* Barredo in your affidavit?
A: I think it was mention[ed] in our affidavit at the second page of our affidavit, sir.

Q: Did he sign the inventory?
A: No, sir. He was just questioning the [buy-bust] operation [conducted by the officers of the Station Anti-Illegal Drugs].

Court:
Q: When you said he was questioning the operation, what do you mean?

Witness:
A: He said that the operation was improper, Your Honor.

Court:
Q: He was insisting that your operation was improper?
A: Yes, Your Honor.

Atty. Mendoza:
Q: So in short[,] he was not there to witness the preparation of the inventory?
A: Yes, sir.

Q: There was no representative from the Department of Justice during the preparation of the inventory?
A: Yes, sir.

Q: There was no x x x media representative during the preparation of the inventory?
A: None, sir.[40]

The law mandates that the insulating witnesses be present during the actual inventory and photographing of the seized drugs to deter the common practice of planting evidence.[41] While non-compliance will not render the seizure and custody over the items invalid, honest-to-goodness efforts must be made to effect compliance.[42] In the instant case, PO2 Aresta testified that the police team was unable to procure a representative

[40] TSN, October 10, 2012, pp. 34-36.

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

[42] *People v. Crispo*, G.R. No. 230065, March 14, 2018.

from the media, from the DOJ, and an elected public official because it was night time.[43] PO2 Aresta's allegation will not hold because there was no genuine attempt to comply with the law. Although PO2 Aresta alleged that the police team exerted efforts to procure the attendance of these witnesses; this is all allegation – he did not adduce specific evidence that he and his fellow police officers did in fact exert genuine efforts to secure the attendance or presence of a representative from the media, a representative from the DOJ, or an elected public official to witness the actual inventory and the photographing of the seized prohibited drugs.

In the recent case of *People v. Lim*,[44] a similar procedural lapse resulted in the undoing of the government's case. The buy-bust team in that case conducted the physical inventory without the attendance of an elected public official and representatives from the DOJ as well as the media because it was allegedly late in the evening; there were no available media representative or *barangay* officials, despite alleged efforts to contact them. In ruling for the acquittal of the accused, this Court ruled therein that the reason for non-compliance proffered by the arresting team was "unacceptable as there was no genuine and sufficient attempt to comply with the law." The Court held that mere statements that the required witnesses were unavailable, absent serious and actual attempts to contact them were unacceptable reasons for non-compliance; earnest efforts to secure the attendance of the necessary witnesses must be proved.

"It bears emphasis that x x x strict adherence to the mandatory requirements of Section (1) of RA 9165, x x x may be excused as long as the integrity and the evidentiary value of the confiscated items [were] properly preserved."[45] And in order to ensure that the integrity and evidentiary value were indeed preserved,

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[43] TSN, October 10, 2012, pp. 38-39.

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

[45] *Id*.

the proper chain of custody of the seized items must be shown. There are four links that must be established in the chain of custody, to wit: "1) the seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer; 2) the turnover of the seized drug by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of said item to the forensic chemist for examination; and, 4) the turnover and submission thereof from [the] forensic chemist to the court."[46]

In the case under review, it was shown that the five sachets of *shabu* were marked by PO2 Aresta with "JMA", "JMA-1", "JMA-2", "JMA-3", and "JMA-4" at the place of the arrest.[47] At the police station, PO2 Aresta turned over the seized items to the investigating officer, PO3 Rivera, who conducted the inventory, documentation and investigation.[48] The plastic sachets of *shabu* were then delivered by PO2 Aresta to the MPD Crime Laboratory Service for examination.[49] At this point, it was uncertain who received the seized drugs after it was brought to the forensic laboratory. The Request for Laboratory Examination[50] indicated that it was received by PCI Calabocal, the forensic chemist who tested the nature of the drugs. It is significant to note, however, that PCI Calabocal did not affix his signature thereon. And PCI Calabocal was not presented as a government witness, because his testimony was dispensed with by the prosecution. While there was a stipulation on the testimony of PCI Calabocal, this stipulation merely covered the result of the examination conducted on the drug specimen and not on the source of the substance. There was no stipulation that he indeed received the seized drugs from PO2 Aresta. This, to the Court's mind, constituted an unbridgeable gap in the link of the chain of custody.

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[46] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

[47] TSN, October 10, 2012, p. 17.

[48] *Id*. at 20 and 36.

[49] Records of Criminal Case No. 11-284738, p. 7.

[50] *Id*. at 116.

In fine, owing to the breaches of procedure committed by the apprehending officers, we find that the prosecution miserably failed to prove the *corpus delicti* of the crimes and to establish an unbroken chain of custody. The presumption of regularity in the performance of official duty accorded to the apprehending officers cannot, therefore, arise.[51]

WHEREFORE, the appeal is **GRANTED**. The August 16, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07649 is **REVERSED AND SET ASIDE**. Appellant Jocelyn Maneclang *y* Abdon is **ACQUITTED** of the charges as her guilt has not been established beyond reasonable doubt. Her immediate release from detention is ordered, unless other lawful and valid ground for her detention exists.

SO ORDERED.

Bersamin, C.J., Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

FIRST DIVISION

[G.R. No. 230909. June 17, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RYAN GONZALES *y* VILLA, ANGELO GUEVARRA *y* BUENO *alias* "ELO", ALVIN EUGENIO *y* LACAY and ROGELIO TALENS *alias* "MONG",** *accused-appellants.*

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[51] *People v. Gayoso*, G.R. No. 206590, March 27, 2017, 821 SCRA 516, 533-534.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 6539 (ANTI-CARNAPPING ACT OF 1972, AS AMENDED); CARNAPPING; ELEMENTS.—** The elements of carnapping as defined and penalized under RA 6539, as amended, are as follows: 1. That there is an actual taking of the vehicle; 2. That the vehicle belongs to a person other than the offender himself; 3. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and 4. That the offender intends to gain from the taking of the vehicle.

2. **ID.; ID.; ID.; FOR THE CRIME TO BE CONSIDERED A SPECIAL COMPLEX CRIME OF CARNAPPING WITH HOMICIDE; IT MUST BE PROVEN THAT THE VICTIM WAS KILLED IN THE COURSE OF THE COMMISSION OF THE CARNAPPING OR ON THE OCCASION THEREOF.—** For the crime to be considered a special complex crime of carnapping with homicide, it must be proven that the victim was killed "in the course of the commission of the carnapping or on the occasion thereof." Thus, the prosecution must not only establish the essential elements of carnapping, but it must also show that such act of carnapping was the original criminal intent of the culprit and that the killing was committed in the course of executing the act of carnapping or on the occasion thereof.

3. **ID.; CONSPIRACY; DIRECT PROOF OF CONSPIRACY IS NOT ESSENTIAL AS IT MAY BE INFERRED FROM THEIR CONDUCT BEFORE, DURING, AND AFTER THE COMMISSION OF THE CRIME, THAT THEY ACTED WITH A COMMON PURPOSE AND DESIGN.—** "Direct proof [of conspiracy among the accused-appellants] is not essential as it may be inferred from their conduct before, during, and after the commission of the crime, that they acted with a common purpose and design." Where the pieces of evidence presented by the prosecution are consistent with one another, the only rational proposition that can be drawn therefrom is that the accused-appellants killed their victim for the purpose of taking the latter's vehicle to be used for their own benefit.

4. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL, AS DEFENSES; BOTH ALIBI AND DENIAL ARE INHERENTLY WEAK DEFENSES; FOR THE COURT TO CONSIDER ALIBI AS A VALID DEFENSE, THE ACCUSED MUST PROVE WITH CLEAR AND CONVINCING EVIDENCE THAT HE WAS IN A PLACE OTHER THAN THE SCENE WHERE THE CRIME WAS COMMITTED AND IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE THERE WHEN THE CRIME WAS COMMITTED; CASE AT BAR.— All the accused-appellants invariably interposed alibi and denial as their defense. Needless to say, both are inherently weak defenses as they constitute self-serving negative evidence and may be easily fabricated, and thus, cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. Before the Court may consider alibi as a valid defense, the accused must first prove with clear and convincing evidence that (1) he was in a place other than the *situs criminis* at the time when the crime was committed, and (2) it was physically impossible for him to be at the scene of the crime when the crime was committed. x x x Here, the accused-appellants utterly failed to satisfactorily prove that it was physically impossible for them to be at the crime scene when the crime was perpetrated. Indeed, the eyewitness account of Verde puts accused-appellants within the vicinity and with the victim Benjamin himself, at or about the time the latter died. Moreover, the accused-appellant's failure to justify their possession of the victim's tricycle further casts serious doubts on the legitimacy of their defenses. Hence, both the RTC and the CA were correct in finding accused-appellants guilty of the crime charged.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the September 30, 2016 Decision[1] the Court of Appeals (CA) in CA-G.R. CR-HC No. 07885, which affirmed with modification the August 5, 2015 Decision[2] of the Regional Trial Court (RTC), Branch 27, Cabanatuan City, convicting accused-appellants Ryan Gonzales *y* Villa (Gonzales), Angelo Guevarra *y* Bueno *alias* "Elo" (Guevarra), Alvin Eugenio *y* Lacay (Eugenio), and Rogelio Talens *alias* "Mong" (Talens) of the crime of carnapping with homicide, as defined and penalized by Republic Act (RA) No. 6539 (Anti-Carnapping Act of 1972), as amended by RA 7659.

Antecedent Facts

Accused-appellants were charged with the crime of carnapping with homicide in an Information[3] which reads:

> That on or about the 7th day of September 2007, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable [C]ourt, the above-named accused, conspiring, confederating and mutually aiding and abetting with one another, with intent to gain and by means of force, violence and intimidation against person, did then and there, wilfully, unlawfully and feloniously take, steal and carry away, a Suzuki Motorcycle with side-car, described as Make: Suzuki, Series GS150TD; Engine No. QS157FMJ-A0505185121; Chassis No. NG 46A-104784; Plate No. 2187CE, registered in the name of Nena Cardenas Carlos and driven by her husband Benjamin Carlos Jr. *y* Banalagay, against the latter's will and consent and to his damage and prejudice and, on the occasion of such act of carnapping, the above-named accused,

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[1] *Rollo*, pp. 2-20; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

[2] Records (Vol. 1), pp. 264-278; penned by Presiding Judge Angelo C. Perez.

[3] *Id*. at 1-2.

did then and there unlawfully and feloniously assault and use personal violence upon the person of the said BENJAMIN CARLOS JR[.], that is, by bashing the latter in the back of the head [with] a piece of rock and thereafter by repeatedly stabbing the latter nineteen times on various parts of his body, thereby inflicting upon him multiple stab wounds which caused his death.

CONTRARY TO LAW.[4]

The accused-appellants pleaded not guilty when arraigned. During pre-trial, the parties stipulated that the victim, Benjamin Carlos, Jr. (Benjamin), was a driver of the tricycle registered under the name of his wife, Nena Carlos (Nena), as evidenced by Certificate of Registration No. 5181256-3 and Official Receipt No. 475663440. Pre-trial was terminated on August 5, 2008 and trial on the merits ensued thereafter.[5]

The prosecution presented the testimonies of (1) the victim's wife, Nena, (2) Melquiades Verde (Verde), (3) Eugene De Ocampo (De Ocampo), (4) PO3 Alejandro Santos (PO3 Santos), and (5) Dr. Jun B. Concepcion (Dr. Concepcion).[6]

The facts of the case, as summarized by the trial court and adopted by the CA, are as follows:

On September 7, 2007, around 11:30 P.M., 61-year old tricycle driver Benjamin Carlos, Jr. was plying his route looking for passengers on the streets of Cabanatuan City. He was found dead the following day along Vergara Highway, Barangay Sta. Arcadia, Cabanatuan City with nineteen (19) stab wounds and a bashed head. The result of his autopsy showed that he was killed between 11:00 P.M. and 12:00 midnight of September 7, 2007. Tricycle driver Melquiades Verde saw accused-appellants Ryan Gonzales *y* Villa, Alvin Eugenio *y* Lacay and Rogelio Talens x x x on board the victim's tricycle, while x x x accused-appellant Angelo Guevarra x x x was on board another tricycle, about 11:00 to 11:30 P.M. of September 7, 2007. On September 10, 2007, the victim's tricycle was found at Cantarilla, Barangay Valdefuente, Cabanatuan City

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[4] *Id*. at 1.

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

[6] *Id*. at 6.

x x x in the process of being dismantled by accused-appellants Ryan Gonzales *y* Villa and Alvin Eugenio *y* Lacay.

x x x x x x x x x

Accused-appellant Rogelio Talens, however, claims that on the night of September 7, 2007, he was having a drinking session with his friends 'Ace' and 'Tarry' at the waiting shed of Brgy. Vijandre, Cabanatuan City, and they all went home to their respective houses after the drinking session around 11:30 P.M. Accused-appellant Alvin Eugenio *y* Lacay claims that at the time of the incident, he was with his parents in their house at Perigola, Valdefuente, Cabanatuan City.[7]

Ruling of the Regional Trial Court

In its August 5, 2015 Decision,[8] the RTC convicted all accused-appellants of carnapping with homicide, *viz*.:

WHEREFORE, premises considered, the Court finds accused Ryan Gonzales *y* Villa, Angelo Guevarra *y* Bueno *alias* Elo, Alvin Eugenio *y* Lacay, and Rogelio Talens *alias* Mong **GUILTY** beyond reasonable doubt of the crime of carnapping as defined and penalized by Republic Act [No.] 6539 (Anti-Carnapping Act of 1972) as amended by R.A. 7659, with homicide. Accordingly, they are hereby sentenced to suffer the penalty of *reclusion perpetua*. Said accused are further sentenced to indemnify the heirs of Benjamin Carlos, Jr., jointly and severally, the sum of Php50,000.00 as death indemnity, Php50,000.00 as moral damages, and Php25,000.00 as temperate damages, with interest on all these damages awarded at the rate of 6% per annum from the date of finality of this Decision until fully paid.

SO ORDERED.[9]

The RTC found the testimonies of PO3 Santos and Verde to be straightforward, credible, and unrehearsed. It also ruled that the defense failed to establish ill motive on the part of the prosecution witnesses.[10]

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

[8] Records (Vol. 1), pp. 264-278.

[9] *Id*. at 278. Emphasis in the original.

[10] *Id*. at 274.

The RTC disregarded the accused-appellants' defense of alibi for being inherently weak vis-à-vis the positive identification by the prosecution witnesses, and considering that the victim's tricycle was found in the possession of accused-appellant Gonzales and Eugenio.[11] It also held that accused-appellants had conspired with one another in the execution of the felony as shown by their concerted actions, community of design and unity of purpose.[12]

Aggrieved, accused-appellants elevated the case to the CA.[13]

Ruling of the Court of Appeals

In the assailed Decision,[14] the CA disposed of the appeal in this wise:

> **WHEREFORE**, the trial court's Decision dated August 5, 2015 is affirmed, subject to modification that accused-appellants are ordered to pay jointly and severally the heirs of the victim civil indemnity in the increased amount of Php75,000.00, moral damages in the increased amount of Php75,000.00 and exemplary damages of Php75,000.00, in addition to the temperate damages of Php25,000.00 awarded by the trial court. The Decision dated August 5, 2015 is affirmed in all other respects.
>
> **SO ORDERED.**[15]

In affirming the conviction of accused-appellants for the crime of carnapping with homicide, the CA similarly gave weight to the testimony of Verde who positively identified the accused-appellants as the persons last seen with Benjamin before the latter was found dead the following morning. The CA also accorded credence to the corroborating testimonies of Dr. Concepcion, who determined the approximate time

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[11] *Id*. at 274-275.

[12] *Id*. at 275-276.

[13] *Id*. at 285.

[14] *Rollo*, pp. 2-20.

[15] *Id*. at 19.

of death of the victim and the number of his assailants; as well as the testimony of PO3 Santos, who caught accused-appellants Gonzales and Eugenio in the act of repainting the victim's dismantled tricycle.[16]

The appellate court noted that the defense failed to show that the prosecution witnesses were prompted by any ill motive to falsely testify against the accused-appellants. It also pointed out that accused-appellants failed to dispute the fact that Benjamin's tricycle was found in their possession by the police. The CA gave short shrift to the accused-appellants' denial and alibi for being inherently weak and unreliable, especially since the accused-appellants failed to show that it was physically impossible for them to have been at the crime scene when the crime was perpetrated. Finally, the CA affirmed the penalties imposed by the trial court, but increased the awards of civil indemnity, moral damages, and exemplary damages,[17] in accordance with this Court's ruling in *People v. Jugueta*.[18]

Hence, this appeal.

Issue

Whether or not accused-appellants are guilty of carnapping with homicide.

The Court's Ruling

The appeal lacks merit.

The elements of carnapping as defined and penalized under RA 6539, as amended, are as follows:

1. That there is an actual taking of the vehicle;
2. That the vehicle belongs to a person other than the offender himself;

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[16] *Id.* at 9-15.

[17] *Id.* at 15-19.

[18] 783 Phil. 806, 848 (2016).

3. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and

4. That the offender intends to gain from the taking of the vehicle.[19]

For the crime to be considered a special complex crime of carnapping with homicide, it must be proven that the victim was killed "in the course of the commission of the carnapping or on the occasion thereof."[20] Thus, the prosecution must not only establish the essential elements of carnapping, but it must also show that such act of carnapping was the original criminal intent of the culprit and that the killing was committed in the course of executing the act of carnapping or on the occasion thereof.

In this case, the prosecution satisfactorily proved all the elements of the crime. It sufficiently established that the vehicle did not belong to the accused-appellants. Prosecution witnesses Nena and De Ocampo testified that the tricycle subject of the carnapping was purchased from Royce Motors on installment basis and registered in Nena's name.[21] Moreover, it was shown that the tricycle was forcibly taken from Benjamin with the intent to gain from such taking.

Prosecution witness Verde testified that, sometime past 11:00 p.m. of September 7, 2007, he saw the three accused-appellants alight from Guevarra's tricycle and flag down a red Suzuki tricycle with galvanized side car being driven by a man around the age of 60;[22] and that, he later knew the identity of the 60-year old driver of the red Suzuki tricycle

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[19] *People v. Donio*, G.R. No. 212815, March 1, 2017, 819 SCRA 56, 67.

[20] *Id.* at 67-68.

[21] TSN, November 4, 2008, pp. 3-5; TSN, January 27, 2009, pp. 3-4.

[22] TSN, September 13, 2011, pp. 5-12.

when Benjamin's lifeless body was discovered the following morning along Vergara Highway in Brgy. Sta. Arcadia.[23]

Corroborating Verde's testimony, PO3 Santos testified that, after learning that a cadaver of a male person was found at the vicinity of Brgy. Sta. Arcadia on September 8, 2007, his team went to the crime scene and discovered the dead body of Benjamin.[24] He also confirmed that Verde went to the police station and narrated what he saw the previous night.[25] PO3 Santos further stated that on September 10, 2007, a civilian informant arrived at the police station to report that a tricycle, which fits the description of Benjamin's stolen tricycle, was being dismantled at the vicinity of Brgy. Valdefuente. Upon receipt of this information, the police conducted a follow-up operation. When PO3 Santos and his companions reached Sitio Cantarilla, they discovered that the tricycle had already been dismantled and its motorcycle about to be repainted by accused-appellants Eugenio and Gonzales, thereby prompting PO3 Santos and his team to immediately arrest Eugenio and Gonzales.[26]

Dr. Concepcion, a medico-legal examiner, testified that he performed the autopsy on the cadaver of Benjamin; that based on his autopsy, the victim's time of death occurred on September 7, 2007, between 11:00 p.m. to 12:00 midnight; that the cadaver sustained 19 stab wounds of different sizes and depth, which were probably caused by sharp, long, and pointed instruments; and that, as the stab wounds were found on the chest and at the back, he deduced that there could have been a commotion during the stabbing incident and the stab wounds may have been committed by two or more persons.[27] Based on the examination he conducted, Dr.

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[23] *Id.* at 6-8.

[24] TSN, October 5, 2010, pp. 3-5.

[25] *Id.* at 5-7.

[26] *Id.* at 7-9.

[27] TSN, May 7, 2012, pp. 4-7.

Concepcion prepared an illustrative sketch of the stab wounds, an Autopsy Report, and a Death Certificate which he all submitted and identified before the trial court.[28]

Taking into account all these circumstances, it is clear that the crime of carnapping with homicide was committed. "Direct proof [of conspiracy among the accused-appellants] is not essential as it may be inferred from their conduct before, during, and after the commission of the crime, that they acted with a common purpose and design."[29] Where the pieces of evidence presented by the prosecution are consistent with one another, the only rational proposition that can be drawn therefrom is that the accused-appellants killed their victim for the purpose of taking the latter's vehicle to be used for their own benefit.[30]

We agree with the following finding of the RTC:

> The testimonies of both PO3 Alejandro Santos and Melquiades Verde in open Court were straightforward, credible and have no sign of being coached or rehearsed. Despite lengthy cross-examination, no plausible reason was shown why they would testify falsely and neither of the witness[es] has a grudge or axe to grind against any of the accused. Hence, their testimony is entitled to full faith and credit by the Court. The Supreme Court ruled in a number of cases that[,] in the absence of any evidence indicating that the principal witness for the prosecution was moved by any improper motive, the presumption is that he was not so moved, and his testimony is thus entitled to full faith and credit.[31]

Similarly, we subscribe to the following finding of the CA:

> Equally important is the fact that accused-appellants Ryan Gonzales y Villa and Alvin Eugenio y Lacay failed to dispute that the victim's tricycle was found in their possession at Valdefuente,

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[28] *Id.* at 9-12.

[29] *People v. Lagat*, 673 Phil. 351, 369 (2011), citing *People v. Sube*, 449 Phil. 165, 176-177 (2003).

[30] *People v. Lagat*, *id.*

[31] Records (Vol. 1), p. 274.

Cabanatuan City. It has been held that '[i]n the absence of an explanation of how one has come into the possession of stolen effects belonging to a person wounded and treacherously killed, he must necessarily be considered the author of the aggression and death of the said person and of the robbery committed on him.' x x x[32]

All the accused-appellants invariably interposed alibi and denial as their defense. Needless to say, both are inherently weak defenses as they constitute self-serving negative evidence and may be easily fabricated, and thus, cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[33] Before the Court may consider alibi as a valid defense, the accused must first prove with clear and convincing evidence that (1) he was in a place other than the *situs criminis* at the time when the crime was committed, and (2) it was physically impossible for him to be at the scene of the crime when the crime was committed.[34] That much is clear from the following teaching of this Court in the recent case of *People v. Bongos*,[35] to wit:

Basic is the rule that for alibi to prosper, the accused must prove that he was somewhere else when the crime was committed and that it was physically impossible for him to have been at the scene of the crime. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places. Where there is the least chance for the accused to be present at the crime scene, the defense of alibi must fail.[36]

Here, the accused-appellants utterly failed to satisfactorily prove that it was physically impossible for them to be at the

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[32] *Rollo*, p. 15.

[33] *People v. Umapas*, 807 Phil. 975, 989-990 (2017).

[34] *People v. Badillos*, G.R. No. 215732, June 6, 2018.

[35] *People v. Bongos*, G.R. No. 227698, January 31, 2018.

[36] *Id.*

crime scene when the crime was perpetrated. Indeed, the eyewitness account of Verde puts accused-appellants within the vicinity and with the victim Benjamin himself, at or about the time the latter died. Moreover, the accused-appellant's failure to justify their possession of the victim's tricycle further casts serious doubts on the legitimacy of their defenses. Hence, both the RTC and the CA were correct in finding accused-appellants guilty of the crime charged.

Both the CA and the RTC correctly imposed upon accused-appellants the penalty of *reclusion perpetua*. The CA also properly modified the amounts of damages awarded, in consonance with this Court's ruling in *People v. Jugueta*.[37] However, the award of temperate damages in the amount of ₱25,000.00 must be upgraded to ₱50,000.00 in light of recent jurisprudence.[38]

WHEREFORE, the appeal is hereby **DISMISSED**. The September 30, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07885 is **AFFIRMED with MODIFICATION** that accused-appellants are ordered to indemnify the heirs of Benjamin Carlos, Jr. the amount of ₱50,000.00 instead of ₱25,000.00 as temperate damages.

SO ORDERED.

Bersamin, C.J., Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

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[37] *Supra* note 18.

[38] *People v. Macaranas*, 811 Phil. 610, 625 (2017).

THIRD DIVISION

[G.R. No. 231306. June 17, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PIERRE ADAJAR *y* TISON @ SIR PAUL,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS, ESPECIALLY ITS ASSESSMENT OF THE CREDIBILITY OF WITNESSES, ARE ACCORDED GREAT WEIGHT AND RESPECT AND BINDING UPON THE COURT, PARTICULARLY WHEN AFFIRMED BY THE COURT APPEALS.—** After a careful review of the records of this case, however, the Court finds no cogent reason to reverse the ruling of the CA. Basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the CA, as in the instant case. At the trial, AAA was able to narrate all the details of the sexual abuses she suffered in Adajar's hands. We, therefore, find that her account of her ordeal being straightforward, candid, and corroborated by the medical findings of the examining physician, as well as her positive identification of Adajar as the perpetrator of the crime, are, thus, sufficient to support a conviction of rape.

2. **CRIMINAL LAW; RAPE; THE PRESENCE OF PEOPLE IN A CERTAIN PLACE IS NO GUARANTEE THAT RAPE WILL NOT AND CANNOT BE COMMITTED, AS IT IS UNNECESSARY FOR THE PLACE TO BE IDEAL, OR THE WEATHER TO BE FINE FOR RAPE TO BE COMMITTED, AS RAPISTS BEAR NO RESPECT FOR PLACE AND TIME WHEN THEY EXECUTE THEIR EVIL DEED.—** Adajar persistently insists that he could not possibly have done those acts accused of him since the house where he allegedly committed them was always filled with people. Unfortunately for him, however, this contention had already been refuted many

times before. Settled is the rule that the presence of people in a certain place is no guarantee that rape will not and cannot be committed. Time and again, the Court has held that for rape to be committed, it is unnecessary for the place to be ideal, or the weather to be fine, for rapists bear no respect for place and time when they execute their evil deed. Rape may be committed inside a room in a crowded squatters' colony and even during a wake.

3. **REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; WHERE THE RAPE VICTIM TESTIFIED IN A CATEGORICAL AND CONSISTENT MANNER WITHOUT ANY ILL MOTIVE, HER POSITIVE IDENTIFICATION OF THE ACCUSED AS THE SEXUAL OFFENDER MUST PREVAIL OVER THE ACCUSED'S DEFENSES OF DENIAL AND ALIBI.—** [A]dajar's defense of denial must necessarily fail. Being a negative defense, the defense of denial, if not substantiated by clear and convincing evidence, as in the instant case, deserves no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses, like AAA, who testified on affirmative matters. Since AAA testified in a categorical and consistent manner without any ill motive, her positive identification of Adajar as the sexual offender must prevail over his defenses of denial and *alibi*.

4. **CRIMINAL LAW; STATUTORY RAPE; ELEMENTS; PROVED; EVEN IF THE GIRL WHO IS BELOW TWELVE (12) YEARS OLD CONSENTS TO THE SEXUAL INTERCOURSE, IT IS ALWAYS A CRIME OF STATUTORY RAPE UNDER THE REVISED PENAL CODE BECAUSE THE LAW PRESUMES THAT SHE IS INCAPABLE OF GIVING A RATIONAL CONSENT.—** [I]n Criminal Case Nos. Q-11-170195 and Q-11-170198, We sustain Adajar's conviction of statutory rape defined under Article 266-A, paragraph 1(d), in relation to Article 266-B of the RPC. Under said Article 266-A, paragraph 1(d), the crime of rape may be 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. Thus, regardless of whether there was force, threat, or intimidation or grave abuse of authority, it is enough that the following elements of statutory rape are proven: (1) that the offended party is under twelve (12) years of age; and (2) that the accused had carnal knowledge of the victim. We recently ruled in *People v. Tulagan,* that even if the girl who is below twelve (12) years old consents to the sexual intercourse, it is always a crime of statutory rape under the RPC because the law presumes that she is incapable of giving a rational consent. Here, the prosecution sufficiently proved that AAA was merely ten (10) years old when Adajar had sexual intercourse with her.

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL JUDGES ARE IN THE BEST POSITION TO ASSESS WHETHER THE WITNESS IS TELLING A TRUTH OR LIE AS THEY HAVE THE DIRECT AND SINGULAR OPPORTUNITY TO OBSERVE THE FACIAL EXPRESSION, GESTURE AND TONE OF VOICE OF THE WITNESS WHILE TESTIFYING.—** As the trial court observed, moreover, AAA was able to narrate in detail the abusive acts done to her by Adajar x x x. According to the trial court, the x x x account constitutes AAA's direct, positive, and convincing narration of what transpired on that fateful day. Time and again, the Court has held that "trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility." As such, We find no cogent reason to deviate from the lower courts' findings of fact.

6. **CRIMINAL LAW; RAPE; PROPER IMPOSABLE PENALTY; IN CASES WHERE DEATH PENALTY IS NOT WARRANTED, THE CONVICTED PERSONS WHO ARE PENALIZED WITH AN INDIVISIBLE PENALTY ARE NOT ELIGIBLE FOR PAROLE.—** [I]n line with our pronouncement in *Tulagan,* Adajar was correctly convicted of rape under Article 266-A, paragraph 1 (d), in relation to Article 266-B of the RPC, and sentenced to suffer the penalty of *reclusion perpetua.* The Court, however, notes that there is no need to qualify the sentence of *reclusion*

perpetua with the phrase "without eligibility for parole," as held by the appellate court. This is pursuant to the A.M. No. 15-08-02-SC, in cases where death penalty is not warranted, such as this case, it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole.

7. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— [P]ursuant to *People* v. *Jugueta,* the amount of exemplary damages awarded by the CA should be increased to ₱75,000.00. Also, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

8. ID.; ID.; SEXUAL ASSAULT; IF THE ACTS CONSTITUTING SEXUAL ASSAULT ARE COMMITTED AGAINST A VICTIM UNDER 12 YEARS OF AGE OR IS DEMENTED, THE NOMENCLATURE OF THE OFFENSE SHOULD NOW BE SEXUAL ASSAULT UNDER PARAGRAPH 2, ARTICLE 266-A OF THE REVISED PENAL CODE IN RELATION TO SECTION 5(B), ARTICLE III OF R.A. NO. 7610.— In Criminal Case No. Q-11-170196, the Court does not find any reason to reverse the factual findings of the RTC, as affirmed by the CA. As duly found by the trial court, AAA was able to recount, in a clear and straightforward manner, how Adajar sexually abused her by inserting his finger into her vagina x x x. In view of the *Tulagan* doctrine, however, a modification of the penalty imposed, damages awarded, and nomenclature of the crime is in order. 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 v. People,* and *People v. Caoili,* We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of the RPC in relation to Section 5(b), Article III of R.A. No. 7610" instead of "rape by sexual assault under Article 266-A, paragraph 2 and penalized under 266-B of the RPC," as held by the CA.

9. ID.; ID.; ACTS OF LASCIVIOUSNESS; 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; R.A. NO. 7610 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.— With respect to the penalty imposed by the appellate court of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor,* as maximum, We rule that the same must also be modified. 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." 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 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." Thus, instead of applying the penalty under Article 266-B of the RPC, which is *prision mayor,* the proper penalty

should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period. This is because AAA was below twelve (12) years of age at the time of the commission of the offense, and that the act of inserting his finger in AAA's private part undeniably amounted to "lascivious conduct."

10. ID.; ID.; ID.; ACTS OF LASCIVIOUSNESS UNDER ARTICLE 336 OF THE REVISED PENAL CODE, IN RELATION TO SECTION 5 (b) OF REPUBLIC ACT NO. 7610; CIVIL LIABILITY OF ACCUSED-APPELLANT.— As for the damages awarded, moreover, the Court deems it necessary to fix the civil indemnity, moral damages, and exemplary damages at ₱50,000.00 each, in line with our ruling in *Tulagan.* The amount of damages awarded shall also earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

11. ID.; ID.; RAPE BY SEXUAL ASSAULT, ELEMENTS THEREOF; ACTS OF LASCIVIOUSNESS, ELEMENTS THEREOF, PROVED.— In the present case, both the trial court and the appellate court were fully convinced by the evidences presented during trial that Adajar committed sexual assault against AAA by inserting his finger inside her vagina. The elements of rape by sexual assault are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others. The Information against Adajar, however, did not accuse him of inserting his finger inside AAA's vagina but only charged him with holding AAA's private parts and kissing her on the lips. To the Court, this nonetheless constitutes acts of lasciviousness. Pursuant to Article 336 of the RPC, acts of lasciviousness is consummated when the following essential elements are present: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex; and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age. As thus used, 'lewd' is defined as obscene, lustful, indecent, lecherous; it signifies that form

of immorality that has relation to moral impurity; or that which is carried on a wanton manner.

12. ID.; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610); LASCIVIOUS CONDUCT, DEFINED; ACCUSED'S INSERTION OF HIS FINGER INSIDE THE VICTIM'S VAGINA CONSTITUTES LASCIVIOUS CONDUCT.— The fact, moreover, that AAA was only ten (10) years old at the time of the commission of the lascivious act calls for the application of Section 5(b) of Republic Act No. 7610 defining sexual abuse of children and prescribing the penalty therefor x x x. In addition, lascivious conduct is defined by Section 2(h) of the rules implementing R.A. 7610 as: [T]he **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. In view of the facts that were proven by the prosecution evidence, specifically that Adajar committed lascivious acts against AAA when he inserted his finger inside her vagina, We find that the elements of acts of lasciviousness under Article 336 of the RPC and of lascivious conduct under R.A. 7610 were established in the present case. Thus, applying the variance doctrine, Adajar can be convicted of the lesser crime of acts of lasciviousness, which was the offense charged, because it is included in the sexual assault, the offense proved. In effect, therefore, he is being held liable for the offense as precisely charged in the Information. Hence, it cannot be claimed that there was a violation of his constitutional right to be informed of the nature and cause of the accusation against him.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

For consideration of the Court is the appeal of the Decision[1] dated September 24, 2015 of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 06550 which affirmed, with modification, the Decision[2] dated December 9, 2013 of the Regional Trial Court (*RTC*) of [redacted], finding accused-appellant Pierre T. Adajar guilty beyond reasonable doubt of four (4) counts of rape under Article 266-A, paragraphs (1) and (2), and Article 266-B of the Revised Penal Code (*RPC*).

The antecedent facts are as follows.

In four (4) separate Informations, Adajar was charged with four (4) counts of rape under Article 266-A, paragraphs (1) and (2), and Article 266-B of the RPC, the accusatory portions of which read:

Criminal Case No. Q-11-170195

That on or about the period between January and February, 2010, in [redacted], Philippines, the said accused by means of force, violence and intimidation, did then and there willfully, unlawfully, and feloniously with lewd design commit an act of sexual abuse against [AAA], 10 years of age, a minor, by then and there inserting his organ to her vagina while lying on the foam inside complainant's bedroom, all against her will and without her consent to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[3]

Criminal Case No. Q-11-170196

That on or about the period between January and February, 2010, in [redacted], Philippines, the said accused by means of force, violence

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[1] Penned by Associate Justice Rosmari D. Carandang (now a member of this Court), with Associate Justices Mario V. Lopez and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 2-15.

[2] Penned by Judge Roslyn M. Rabara-Tria; CA *rollo*, pp. 41-48.

[3] Records, p. 2.

and intimidation, did then and there willfully, unlawfully, and feloniously with lewd design commit an act of sexual abuse against [AAA], 10 years of age, a minor, by then and there inserting his middle finger into complainant's private parts, undressed himself and forcibly asked complainant to hold his male organ while both were at complainant's bathroom, all against her will and without her consent, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[4]

Criminal Case No. Q-11-170197

That on or about the period between January and February, 2010, in [redacted], Philippines, the said accused by means of force, violence and intimidation, did then and there willfully, unlawfully, and feloniously with lewd design commit an act of sexual abuse against [AAA], 10 years of age, a minor, by then and there holding complainant's private parts and kissed the latter on her lips while both were at complainant's bedroom, all against her will and without her consent, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[5]

Criminal Case No. Q-11-170198

That on or about the period between January and February, 2010, in [redacted], Philippines, the said accused by means of force, violence and intimidation, did then and there willfully, unlawfully, and feloniously with lewd design commit an act of sexual abuse against [AAA], 10 years of age, a minor, by then and there while at the CR undressed complainant and accused took off his briefs and shorts up to his knees and inserted his organ to complainant's vagina, all against her will and without her consent to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[6]

During arraignment, Adajar, assisted by counsel, pleaded not guilty to the charge. During pre-trial, the parties stipulated

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[4] *Id.* at 8.

[5] *Id.* at 14.

[6] *Id.* at 20.

on the identity of the accused as the one charged and that victim AAA is a minor, being only ten (10) years old at the time of the commission of the offense. Subsequently, trial on the merits ensued. The prosecution presented three (3) witnesses – victim AAA;[7] victim's mother, BBB; and Dr. Shanne Lore Dettabali.

It was established by the prosecution that AAA was born on July 20, 1999 and was only ten (10) years of age in 2010 when she was sexually abused by her dance instructor, Adajar, whom she called "*Sir Paul*" Adajar was AAA's ballet instructor at the Quezon City Performing Arts (*QCPA*). When he resigned from the QCPA, he, together with AAA and other persons, formed a new group and competed in several dance competitions.[8]

Sometime in August 2009, Adajar asked permission from BBB, AAA's mother, if he could stay in BBB's internet shop near the place where they rehearse. BBB accommodated his request. When AAA's family transferred to their new residence, Adajar went along with them. BBB accepted and treated him as part of their family since he told her that his own mother had already passed away and that he considers his students as family. Since then, Adajar and AAA were always together. He endeared himself to AAA, buying her gifts and allowing

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

[8] *Rollo*, p. 6.

her to use his cellular phone. He courted her and sent her romantic messages.

Sometime in February 2010, the special closeness of AAA and Adajar caught the attention of BBB and other members of the household. BBB also noticed that every time she talks to her daughter, Adajar stayed close. One night, when AAA was already asleep, BBB looked at AAA's cellular phone and discovered a text message wherein Adajar called AAA "Mi." There was also another text message from him which states: "*Dapat walang ibang pwedeng makagawa ng ginagawa ko sa iyo kundi ako lang;*""*Mahal na mahal kita! Huwag ka sanang magbabago at tutuparin mo ang pangako natin sa isa't isa*." BBB, likewise, discovered an autograph book wherein Adajar called AAA "*wife*." Immediately, BBB confronted AAA about her discovery. AAA then revealed the things Adajar has been doing to her.[9]

AAA testified that from January to February 2010, Adajar raped and sexually assaulted her. In one occasion in January 2010, AAA just came home from school and was about to change her clothes in her room when Adajar entered. He kissed her on the lips, placed his hand inside her jogging pants, and inserted his finger inside her vagina. She was surprised by what he did and felt pain in her private part. In another occasion, Adajar followed AAA to her bedroom. He removed his shorts and briefs, and asked AAA to hold his penis. When AAA refused, Adajar took her hand and forced her to hold his penis. Thereafter, he inserted his finger into her vagina. In yet another instance, when AAA was inside the bathroom, Adajar entered and locked the door behind him. He pulled down to his knees his shorts and briefs, undressed AAA, held her on her waist, and carried her while inserting his penis inside her vagina.[10] Finally, another instance happened when Adajar followed AAA to her room and locked the door behind him. He removed AAA's jogging pants and panties. He told her to lie down beside him on the

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

[10] *Id.* at 7.

foam facing him. Then, he inserted his penis into her vagina. Adajar warned AAA not to tell anyone about what he did to her because her mother will get mad at her.[11]

Upon learning of the incidents, AAA and BBB reported the same to the Police Women's Desk in Camp Caringal where AAA was referred to the Philippine National Police (*PNP*) Crime Laboratory for medico-legal examination. Dr. Shanne Lore A. Dettabali, who conducted the physical and genital examination on AAA, found the presence of a deep healed laceration on her hymen at the 6 o'clock position and concluded that the "finding shows evidence of blunt force or penetrating trauma."[12]

For its part, the defense presented the lone testimony of Adajar who denied the accusations against him. According to Adajar, he knew no reason why AAA would file a case of rape against him considering that he had no misunderstanding with her or her family. He insisted that the alleged incidents could not have happened because there were other people residing in AAA's house, namely, her two (2) grandmothers, her three (3) siblings, BBB, and BBB's boyfriend, Mark.[13]

On December 9, 2013, the RTC rendered its Decision finding Adajar guilty of the crimes charged, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered:
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> 1. Finding accused Pierre Adajar *y* Tison @ Sir Paul guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A[,] paragraph 1[,] and [Article] 266-B of the Revised Penal Code, as amended in Criminal Cases Nos. Q-11-170195 and Q-11-170198 and sentencing him to suffer the penalty of *reclusion perpetua* without the eligibility [for] parole in each case and that accused is additionally ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages in each case;

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[11] CA *rollo*, p. 44.

[12] *Id.* at 45.

[13] *Rollo*, p. 10.

2. Finding accused Pierre Adajar *y* Tison @ Sir Paul guilty beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A[,] paragraph 2[,] and [Article] 266-B of the Revised Penal Code, as amended in Criminal Cases Nos. Q-11-170196 and Q-11-170197 and sentencing him to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional*[,] as minimum, to eight (8) years and one (1) day of *prision mayor*[,] as maximum[,] in each case and that accused is additionally ordered to pay AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages in each case.

SO ORDERED.[14]

The RTC found that AAA had consistently, positively, and categorically identified Adajar as her abuser and that her testimony was direct, candid, and replete with details of the rape.[15]

In a Decision dated September 24, 2015, the CA affirmed with modification the RTC Decision, disposing of the case as follows:

WHEREFORE, premises considered, the assailed RTC Decision dated December 9, 2013 is hereby AFFIRMED with MODIFICATIONS:

1. In Criminal Case Nos. Q-11-170195 and Q-11-170[1]98, We find accused-appellant Pierre Adajar *y* Tison @ Sir Paul guilty beyond reasonable doubt of the crime of rape through sexual intercourse defined under Article 266-A[,] paragraph 1[,] and penalized under [Article] 266-B of the Revised Penal Code, as amended; and, sentencing him to suffer the penalty of *reclusion perpetua* without the eligibility [for] parole in each case. Accused-appellant Adajar is 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. Q-11-170196, We find accused-appellant Adajar guilty beyond reasonable doubt of the crime of rape by sexual assault defined under Article 266-A[,] paragraph 2[,]

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[14] CA *rollo*, pp. 47-48.

[15] *Id.* at 45.

and penalized under [Article] 266-B of the Revised Penal Code, as amended; and, is hereby sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correctional*[,] as minimum, to eight (8) years and one (1) day of *prision mayor*[,] as maximum; and, to pay the victim AAA ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

3. In Criminal Case No. Q-11-170197, We find accused-appellant Adajar guilty beyond reasonable doubt of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code, as amended. He is sentenced to indeterminate prison terms of six (6) months of *arresto mayor*, as minimum[,] to four (4) years and two (2) months of *prision correctional*, as maximum; and, is ordered to pay the victim AAA ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱10,000.00 as exemplary damages.

SO ORDERED.[16]

The CA affirmed the Solicitor General's contention that in Criminal Case No. Q-11-170197, Adajar cannot be convicted of sexual assault since there was no allegation in the Information that he inserted his finger into AAA's genitalia, merely stating that he held her private parts. But pursuant to the *Variance* doctrine, he can still be held liable for the lesser crime of acts of lasciviousness defined and penalized under Article 336 of the RPC.

Now before Us, Adajar manifested that he would no longer file a Supplemental Brief as he has exhaustively discussed the assigned errors in his Appellant's Brief.[17] The Office of the Solicitor General (*OSG*) similarly manifested that it had already discussed its arguments in its Appellee's Brief.[18] As Adajar argued before the courts below, he must be acquitted because the evidence against him, particularly AAA's testimony, is full of inconsistencies and contradictions. Again, he could not have

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[16] *Rollo*, pp. 13-14.

[17] *Id*. at 28.

[18] *Id*. at 22.

committed the alleged sexual abuses against AAA in a house full of her relatives.

After a careful review of the records of this case, however, the Court finds no cogent reason to reverse the ruling of the CA. Basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the CA, as in the instant case.[19] At the trial, AAA was able to narrate all the details of the sexual abuses she suffered in Adajar's hands. We, therefore, find that her account of her ordeal being straightforward, candid, and corroborated by the medical findings of the examining physician, as well as her positive identification of Adajar as the perpetrator of the crime, are, thus, sufficient to support a conviction of rape.

Adajar persistently insists that he could not possibly have done those acts accused of him since the house where he allegedly committed them was always filled with people. Unfortunately for him, however, this contention had already been refuted many times before. Settled is the rule that the presence of people in a certain place is no guarantee that rape will not and cannot be committed. Time and again, the Court has held that for rape to be committed, it is unnecessary for the place to be ideal, or the weather to be fine, for rapists bear no respect for place and time when they execute their evil deed. Rape may be committed inside a room in a crowded squatters' colony and even during a wake.[20]

In this regard, Adajar's defense of denial must necessarily fail. Being a negative defense, the defense of denial, if not substantiated by clear and convincing evidence, as in the instant case, deserves no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses, like AAA, who testified on affirmative matters. Since AAA testified

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[19] *People v. Andres Talib-og y Tuganan*, G.R. No. 238112, December 5, 2018.

[20] *People v. Soriano*, 560 Phil. 415, 420 (2007).

in a categorical and consistent manner without any ill motive, her positive identification of Adajar as the sexual offender must prevail over his defenses of denial and *alibi*.[21]

Hence, in Criminal Case Nos. Q-11-170195 and Q-11-170198, We sustain Adajar's conviction of statutory rape defined under Article 266-A, paragraph 1(d), in relation to Article 266-B of the RPC. Under said Article 266-A, paragraph 1(d), the crime of rape may be 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. Thus, regardless of whether there was force, threat, or intimidation or grave abuse of authority, it is enough that the following elements of statutory rape are proven: (1) that the offended party is under twelve (12) years of age; and (2) that the accused had carnal knowledge of the victim.[22] We recently ruled in *People v. Tulagan*,[23] that even if the girl who is below twelve (12) years old consents to the sexual intercourse, it is always a crime of statutory rape under the RPC because the law presumes that she is incapable of giving a rational consent. Here, the prosecution sufficiently proved that AAA was merely ten (10) years old when Adajar had sexual intercourse with her. As the trial court observed, moreover, AAA was able to narrate in detail the abusive acts done to her by Adajar, *viz*.:

> Q: What about on the 3rd incident, madam witness. Could you recall if he did anything to you
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> x x x x x x x x x
>
> A: The third incident happened in February 2010, I also went inside the C.R. and Sir Paul suddenly entered the C.R. also

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[21] *People v. Salvador Tulagan*, G.R. No. 227363, March 12, 2019.

[22] *People v. Andres Talib-og y Tuganan, supra* note 19.

[23] *Supra* note 21.

and he lowered his shorts and brief up to his knee then he undressed me.

x x x x x x x x x

Q: After undressing you, what happened next?
A: He held my waist then he lifted me.

x x x x x x x x x

Q: And what happened next? What did he do next?
A: He inserted his penis into my vagina.

Q: Did you feel his penis inside your vagina?
A: Yes, ma'am.

Q: How did it feel?
A: *Sobrang sakit po*.

x x x x x x x x x

Q: And what did you do when you felt pain?
A: I was crying and I told him to stop but he still continue[d] doing it.

x x x x x x x x x

Q: Was that incident, the insertion of the penis, ever repeated?
A: Yes, ma'am.

x x x x x x x x x

Q: Can you tell us how it happened?
A: February of 2010 I went up to our room and he suddenly also went up.

Q: And what happened next?
A: He forced me to lay (*sic*) down.

Q: And what happened next?
A: He also laid (*sic*) down and *hinarap n'ya po ako sa kanya*.

x x x x x x x x x

Q: And can you tell us what happened?
A: He undressed me and he also undressed and then he inserted his penis into my vagina, ma'am.

x x x x x x x x x

Q: And did you feel his penis inside your vagina?
A: Yes, ma'am.

Q: Did you feel pain?
A: *Sobrang sakit po*.[24]

According to the trial court, the above account constitutes AAA's direct, positive, and convincing narration of what transpired on that fateful day. Time and again, the Court has held that "trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility."[25] As such, We find no cogent reason to deviate from the lower courts' findings of fact.

Thus, in line with our pronouncement in *Tulagan*, Adajar was correctly convicted of rape under Article 266-A, paragraph 1(d), in relation to Article 266-B of the RPC, and sentenced to suffer the penalty of *reclusion perpetua*.[26] The Court, however, notes that there is no need to qualify the sentence of *reclusion perpetua* with the phrase "without eligibility for parole," as held by the appellate court. This is pursuant to the A.M. No. 15-08-02-SC,[27] in cases where death penalty is not warranted, such as this case, it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole. Moreover, pursuant to *People v. Jugueta*,[28] the amount of exemplary damages awarded by the CA should be increased

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[24] TSN, April 23, 2012, pp. 17-22.

[25] *People v. Jelmer Matutina y Maylas, et al.*, G.R. No. 227311, September 26, 2018.

[26] *People v. Salvador Tulagan, supra* note 21.

[27] Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, August 4, 2015.

[28] 783 Phil. 806 (2016).

to ₱75,000.00. Also, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

Similarly, in Criminal Case No. Q-11-170196, the Court does not find any reason to reverse the factual findings of the RTC, as affirmed by the CA. As duly found by the trial court, AAA was able to recount, in a clear and straightforward manner, how Adajar sexually abused her by inserting his finger into her vagina, to wit:

Q: What happened to you on the second incident?
A: February 2010 I went inside the C.R. then suddenly Sir Paul entered the C.R. also and he inserted his hand inside my jogging pants and then he inserted his middle finger into my vagina and he kissed me.

x x x x x x x x x

Q: And did you feel pain when he inserted, according to you, his middle finger?
A: Yes, ma'am.

Q: What was your reaction?
A: I was crying, ma'am.[29]

In view of the *Tulagan*[30] doctrine, however, a modification of the penalty imposed, damages awarded, and nomenclature of the crime is in order. 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 v. People*,[31] and *People v. Caoili*,[32] We hold that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under paragraph 2, Article 266-A of

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[29] TSN, April 23, 2012, pp. 16-17.

[30] *Supra* note 21.

[31] 771 Phil. 641 (2015).

[32] G.R. Nos. 196342 & 196848, August 8, 2017, 835 SCRA 107.

the RPC in relation to Section 5(b), Article III of R.A. No. 7610" instead of "rape by sexual assault under Article 266-A, paragraph 2 and penalized under 266-B of the RPC," as held by the CA.

With respect to the penalty imposed by the appellate court of two (2) years, four (4) months and one (1) day of *prision correccional* as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, We rule that the same must also be modified. In *Dimakuta v. People*[33] 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." 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*[34] 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 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.'"

Thus, instead of applying the penalty under Article 266-B of the RPC, which is *prision mayor*, the proper penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610,

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[33] *Supra* note 31, at 670.

[34] 661 Phil. 208, 222-223 (2011).

which is *reclusion temporal* in its medium period. This is because AAA was below twelve (12) years of age at the time of the commission of the offense, and that the act of inserting his finger in AAA's private part undeniably amounted to "lascivious conduct." Applying the Indeterminate Sentence Law, the maximum term of the indeterminate penalty shall be that which could be properly imposed under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. On the other hand, the minimum term shall be within the range of the penalty next lower in degree, which is *reclusion temporal* in its minimum period, or twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Adajar should, therefore, be meted the indeterminate sentence of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. As for the damages awarded, moreover, the Court deems it necessary to fix the civil indemnity, moral damages, and exemplary damages at ₱50,000.00 each, in line with our ruling in *Tulagan*.[35] The amount of damages awarded shall also earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

Finally, We, likewise, sustain the ruling of the CA in Criminal Case No. Q-11-170197 finding Adajar guilty of acts of lasciviousness and not of sexual assault, due to the fact that the Information failed to allege that there was an insertion of Adajar's finger into AAA's genitalia. A cursory perusal of said Information would reveal that Adajar committed an act of sexual abuse by "holding complainant's private parts and kissing the latter on her lips while both were at complainant's bedroom, all against her will and without her consent, to the damage and prejudice of the said offended party." Nevertheless, as aptly ruled by the appellate court, Adajar may still be convicted of the lesser crime of acts lasciviousness defined and penalized under Article 336 of the RPC, pursuant to the *Variance* doctrine

[35] *Supra* note 21.

embodied in embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Court, which reads:

> Sec. 4. Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, **the accused shall be convicted** of the offense proved which is included in the offense charged, or **of the offense charged which is included in the offense proved.**
>
> Sec. 5. When an offense includes or is included in another. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged In the complaint or information, constitute the latter. **And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter**.[36]

In the present case, both the trial court and the appellate court were fully convinced by the evidences presented during trial that Adajar committed sexual assault against AAA by inserting his finger inside her vagina. The elements of rape by sexual assault are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others.[37]

The Information against Adajar, however, did not accuse him of inserting his finger inside AAA's vagina but only charged him with holding AAA's private parts and kissing her on the lips. To the Court, this nonetheless constitutes acts of lasciviousness. Pursuant to Article 336 of the RPC, acts of lasciviousness is consummated when the following essential elements are present: (a) the offender commits any act of lasciviousness or lewdness upon another person of either sex;

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[36] CA *rollo*, p. 129. (Emphasis supplied)

[37] *People v. Caoili, supra* note 32, at 141.

and (b) the act of lasciviousness or lewdness is committed either (i) by using force or intimidation; or (ii) when the offended party is deprived of reason or is otherwise unconscious; or (iii) when the offended party is under 12 years of age. As thus used, 'lewd' is defined as obscene, lustful, indecent, lecherous; it signifies that form of immorality that has relation to moral impurity; or that which is carried on a wanton manner.[38]

The fact, moreover, that AAA was only ten (10) years old at the time of the commission of the lascivious act calls for the application of Section 5(b) of Republic Act No. 7610 defining sexual abuse of children and prescribing the penalty therefor, as follows:

> Section 5. *Child Prostitution and Other Sexual Abuse*. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:
>
> x x x x x x x x x
>
> (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the [victim] is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x

In addition, lascivious conduct is defined by Section 2(h) of the rules implementing R.A. 7610 as:

> [T]he **intentional touching, either directly or through clothing, of the genitalia**, anus, groin, breast, inner thigh, or buttocks, or the

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[38] *Edmisael Lutap v. People*, G.R. No. 204061, February 5, 2018.

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.[39]

In view of the facts that were proven by the prosecution evidence, specifically that Adajar committed lascivious acts against AAA when he inserted his finger inside her vagina, We find that the elements of acts of lasciviousness under Article 336 of the RPC and of lascivious conduct under R.A. 7610 were established in the present case. Thus, applying the variance doctrine, Adajar can be convicted of the lesser crime of acts of lasciviousness, which was the offense charged, because it is included in the sexual assault, the offense proved. In effect, therefore, he is being held liable for the offense as precisely charged in the Information. Hence, it cannot be claimed that there was a violation of his constitutional right to be informed of the nature and cause of the accusation against him. Pursuant to our pronouncement in *People v. Caoili*,[40] however, Adajar must be convicted of the offense designated as "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of R.A. 7610" since AAA, the minor victim in this case, is below 12 years old. Moreover, the imposable penalty shall be *reclusion temporal* in its medium period.

Nevertheless, We resolve to modify the indeterminate prison term imposed by the CA of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum. Applying the Indeterminate Sentence Law, and in the absence of mitigating or aggravating circumstances, the minimum term shall be taken from the penalty next lower than *reclusion temporal* medium, which is *reclusion temporal* minimum, which ranges from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The maximum term shall be that which could be properly imposed

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[39] Emphasis supplied.

[40] *Supra* note 32, at 153.

under the law, which is fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*. Accordingly, the prison term is modified to twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.[41] Further, in line with *Tulagan*, Adajar is ordered to pay AAA civil indemnity, moral damages, and exemplary damages in the amount of ₱50,000.00 each.[42] As with the foregoing, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Decision dated December 9, 2013 of the Regional Trial Court of [redacted], in Criminal Case Nos. Q-11-170195-8, as affirmed by the Court of Appeals Decision dated September 24, 2015 in CA-G.R. CR HC No. 06550, is **AFFIRMED** with **MODIFICATIONS**. We find accused-appellant Pierre Adajar *y* Tison @ Sir Paul, guilty beyond reasonable doubt:

1. In Criminal Case Nos. Q-11-170195 and Q-11-170198, of **Statutory Rape under Article 266-A (1) (d) and penalized under Article 266-B of the Revised Penal Code** and is sentenced to suffer the penalty of *reclusion perpetua*. Appellant is **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

2. In Criminal Case No. Q-11-170196, of **Sexual Assault under paragraph 2, Article 266-A of the Revised Penal Code, in relation to Section 5 (b) of Republic Act No. 7610**, and is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*,

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[41] *Edmisael Lutap v. People, supra* note 38.

[42] *People v. Salvador Tulagan, supra* note 21.

as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Appellant is **ORDERED** to **PAY** AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

3. In Criminal Case No. Q-11-170197, of **Acts of Lasciviousness under Article 336 of the Revised Penal Code, in relation to Section 5 (b) of Republic Act No. 7610**, and is sentenced to suffer the indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum. Appellant is **ORDERED** to **PAY** AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages.

Legal interest of six percent (6%) *per annum* is imposed on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

Leonen, Reyes, A. Jr., and *Inting, JJ.*, concur.

Hernando, J., on official business.

SECOND DIVISION

[G.R. No. 233401. June 17, 2019]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF THE ESTATE OF MARIANO and ANGELA *VDA. DE* VENERACION, namely: PORFERIA V. VIDOLA, ENRIQUETA Q. VENERACION, SONIA *VDA. DE* VENERACION, REMEDIOS *VDA. DE* MARASIGAN, SOLDELICIA V. FLORES, JOSE Q. VENERACION, ROSARIO *VDA. DE* VENERACION, and CRISOSTOMO Q. VENERACION, represented by their Attorney-in-Fact, CRISOSTOMO Q. VENERACION, represented by their Attorney-in-Fact, CRISOSTOMO Q. VENERACION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DAR AO NO. 1, SERIES OF 2010 WAS THE GOVERNING RULES AND REGULATIONS TO DETERMINE THE JUST COMPENSATION; RULE WHERE THE JUST COMPENSATION IS COMPUTED PURSUANT TO THE FORMULA UNDER THE DAR AO NO. 5, SERIES OF 1998. — It is undisputed that DAR AO No. 1, Series of 2010 which was issued in line with Section 31 of Republic Act No. (RA) 9700 (further amending RA 6657, as amended) was the governing rules and regulations to determine the just compensation for the subject land. Among the notable provisions under the said AO is the reckoning of the Annual Gross Production (AGP) and Selling Price (**SP**) to the latest available 12 month's data immediately preceding June 30, 2009 (hereinafter, *current prices)* instead of the values at the time of taking, in this case, the issuance of (EPs) in favor of the FBs. x x x in cases where the just compensation is computed pursuant to the formula under DAR AO No. 5, Series of 1998, the Court has imposed **legal interest on the amount of just compensation reckoned from the time of taking,** or the time when the landowner was deprived of the use and benefit of his property, such as when the EPs

are issued by the governemnt-**for the delay in thepayment of the just compensation to the owner since the obligation is deemed to be an effective forbearance on the part of the State.** However, it must be emphasized that the allowance of **legal interest on the value of the acquired property, as an effective forbearance, is intended to eradicate the issue of the constant variability of the value of the currency over time, and to limit the opportunity loss of the owner from non-payment of just compensation** that can drag from days to decades. Notably, the CNI factor in the DAR formulas refers to the **Income Capitalization Approach under the standard appraisal approaches** which is considered the most applicable valuation technique for income-producing properties such as agricultural landholdings. Under this approach, the value of the land is determined by taking the sum of the net present value (NPV) of the streams of income, in perpetuity, that will be forgone by the landowner due to the coverage of his landholding under the government's agrarian reform laws. The operational assumption is that the agricultural properties to be valued are, in general, operating on a stabilized basis, or are expected to produce on a steady basis. While both DAR AO No. 5, Series of 1998 and DAR AO No. 1, Series of 2010 commonly use a capitalization rate of 12%, the NPV of the streams of income are computed using different values reckoned from different points in time. Thus, the use of the higher prices from a later time under DAR AO No. 1, Series of 2010 assumes that the property to be acquired is already operating at such capacity as of the earlier time of taking, and will continue operating at such capacity in perpetuity.

2. ID.; ID.; ID.; JUST COMPENSATION CONTEMPLATES PROMPT PAYMENT; DISCUSSED. — It is doctrinal that the concept of just compensation contemplates of just and timely payment (**prompt payment**). It embraces not only the correct determination of the amount to be paid to the landowner, but also the payment of the land within a reasonable time from its taking, as otherwise compensation cannot be considered "just," for the owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for years before actually receiving the amount necessary to cope with his loss. **Verily, prompt payment encompasses the payment in full of the just compensation to the landholders**

as finally determined by the courts. Thus, it cannot be said that there is already prompt payment of just compensation when there is none or only a partial payment thereof.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Expedito B. Mapa for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated April 25, 2017 and the Resolution[3] dated August 10, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 132400, affirming the Decision[4] dated September 6, 2013 of the Regional Trial Court of Naga City, Branch 23 (RTC) in Civil Case No. 99-4225, which fixed the just compensation for the subject land at ₱1,523,204.50[5] using the formula[6] under Department of Agrarian Reform (DAR) Administrative Order (AO) No. 1, Series of 2010,[7] with the modification imposing legal interest on the just compensation at 12% per annum (p.a.) to run from 1998 up to June 30, 2013, and thereafter, at 6% p.a. until full payment.[8]

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[1] *Rollo*, pp. 12-29.

[2] *Id*. at 37-47. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion, concurring.

[3] *Id*. at 50-51.

[4] Not attached to the petition.

[5] See *rollo*, p. 40.

[6] See *id*. at 18.

[7] Re: Rules and Regulations on Valuation and Landowners Compensation Involving Tenanted Rice and Corn Lands under Presidential Decree (P.D.) No. 27 and Executive Order (E.O.) No. 228, adopted on February 12, 2010.

[8] See *rollo*, p. 46.

The Facts

Respondents Heirs of the Estate of Mariano and Angela Vda. De Veneracion, namely: Porferia V. Vidola, Enriqueta Q. Veneracion, Sonia Vda. De Veneracion, Remedios Vda. De Marasigan, Soldelicia V. Flores, Jose Q. Veneracion, Rosario Vda. De Veneracion, and Crisostomo Q. Veneracion, represented by their attorney-in-fact, Crisostomo Q. Veneracion (respondents) are the co-owners of a 24.4170 hectare (ha.) parcel of riceland located in Barrio Taguilid (now Veneracion), Batang, Pamplona, Camarines Sur covered by Transfer Certificate of Title No. RT 1405 (4487). A 21.8513 ha. portion (subject land) of the said land was acquired by the DAR in 1972, and distributed to farmer-beneficiaries[9] pursuant to Presidential Decree No. (PD) 27.[10]

On February 3, 1999, respondents filed a petition for the fixing of just compensation, accounting, collection of rental arrears, and damages against the Land Bank of the Philippines (LBP) President and the DAR Secretary[11] before the RTC, designated as the Special Agrarian Court. They alleged that they have not yet received the just compensation for the subject land which they claimed to be a first class irrigated rice land that should be valued at not less than ₱300,000.00/ha.[12]

The LBP countered that the petition states no cause of action against it as it has yet to receive the Claim Folder (CF) for the subject land from the DAR.[13]

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[9] See *id*. at 38.

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

[11] The farmer-beneficiaries were initially impleaded as party-respondents to the case but eventually dropped upon respondents' motion. See *rollo*, p. 39.

[12] See *id*. at 38-39.

[13] See *id*. at 39.

On the other hand, respondents and the DAR stipulated on the existence of the Certificates of Land Transfer (CLTs) and Emancipation Patents (EPs) awarded to the farmer-beneficiaries (FBs).[14]

Thereafter, the parties presented their respective evidence.[15] The LBP valued the land at ₱69,707.73/ha. or a total of ₱1,523,204.50[16] using the formula under DAR AO No. 1, Series of 2010,[17] *i.e.*, **LV = (CNI x 0.90) x (MV x 0.10)**.[18]

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[14] See *id*.

[15] See *id*. at 40.

[16] Computed as follows:

Computed land value/ha.	₱ 69,707.73
Area acquired (in ha.)	x 21.8513
Just compensation for the subject land	₱ 1,523,204.50

[17] See *rollo*, p. 18.

[18] Where:

LV = Land Value
CNI = Capitalized Net Income which refers to the gross sales (AGP x SP) with assumed net income rate of 20% capitalized at 0.12
Expressed in equation form:

$$CNI = \frac{(AGP \times SP) \times 0.20}{0.12}$$

Where:

AGP =Annual Gross Production corresponding to the latest available 12 month's gross production immediately preceding 30 June 2009. The AGP shall be secured from the Department of Agriculture (DA) or Bureau of Agriculture Statistics (BAS). The AGP data shall be gathered from the *barangay* or municipality where the property is located. In the absence thereof, AGP may be secured within the province or region.

SP = The average of the latest available 12 months' selling prices prior to 30 June 2009 such prices to be secured from the Department of Agriculture (DA) or Bureau of Agricultural Statistics (BAS). If possible, SP data shall be gathered from the *barangay* or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

The RTC Ruling

In a Decision[19] dated September 6, 2013, the RTC adopted the LBP's computation fixing the just compensation for the subject land at ₱1,523,204.50 but further directed the LBP to pay interest at the rate of 12% p.a. reckoned from 1998, the year tax declarations were issued to the FBs,[20] until full payment.[21]

Dissatisfied, the LBP filed a motion for partial reconsideration raising the sole challenge against the imposition of interest,[22] but the same was denied in an Order[23] dated October 11, 2013, prompting it to appeal before the CA.[24]

The CA Ruling

In a Decision[25] dated April 25, 2017, the CA affirmed the RTC ruling but imposed legal interest on the just compensation at 12% p.a. to run from 1998 up to June 30, 2013, and thereafter, at 6% until full payment, in line with the amendment introduced by Bangko Sentral ng Pilipinas Monetary Board (BSP-MB) Circular No. 799,[26] Series of 2013.[27]

MV = Market Value per Tax Declaration which is the latest Tax Declaration and Schedule of Unit of Market Value (SUMV) issued prior to 30 June 2009. MV shall be grossed-up up to 30 June 2009.

The reckoning date of the AGP and SP shall be June 30, 2009.

See Item IV (1) of DAR AO No. 1, Series of 2010.

[19] Not attached to the petition.

[20] See *rollo*, p. 18.

[21] See *id*. at 40.

[22] *Id.*

[23] Not attached to the petition.

[24] See *rollo*, p. 40.

[25] *Id*. at 37-47.

[26] Rate of interest in the absence of stipulation; dated June 21, 2013.

[27] *Rollo*, p. 46.

Unperturbed, the LBP moved for reconsideration,[28] which was denied by the CA in a Resolution[29] dated August 10, 2017; hence, the instant petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in adjudging the LBP liable to pay legal interest on the amount of just compensation.

The Court's Ruling

It is undisputed that DAR AO No. 1, Series of 2010 which was issued in line with Section 31 of Republic Act No. (RA) 9700[30] (further amending RA 6657, as amended) was the governing rules and regulations to determine the just compensation for the subject land. Among the notable provisions under the said AO is the reckoning of the Annual Gross Production (AGP) and Selling Price (SP)[31] to the latest available 12 month's data immediately preceding June 30, 2009[32] (hereinafter, *current prices*) instead of the values at the time of taking,[33] in this case, the issuance of EPs in favor of the FBs.

***Prior to the passage of RA 6657*,** lands acquired under PD 27 and EO 228 were valued in accordance with the formula under EO 228, as amended by DAR AO No. 13, Series of 1994,[34] as

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[28] See Motion for Reconsideration (Re: Decision dated April 25, 2017) dated May 12, 2017; *id*. at 54-60.

[29] *Id*. at 50-51.

[30] See Item VIII of DAR AO 1, Series of 2010 on "Effectivity."

[31] AGP and SP are factors essential in the computation of the Capitalized Net Income (CNI) of the subject land.

[32] See Item IV (1) of DAR AO 1, Series of 2010.

[33] See *id.*

[34] Re: Rules and Regulations Governing the Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands covered by Presidential Decree No. 27 and Executive Order No. 228 dated October 27, 1994 issued by then DAR Secretary Ernesto D. Garilao.

amended[35] *i.e.*, LV = (AGP x 2.5 x ₱35.00) x $(1.06)^n$,[36] which included 6% incremental interest. **The purpose of the incremental interest under DAR AO No. 13 is to compensate the landowners for unearned interests.** Had they been paid in 1972 when the Government Support Price (GSP) for *palay* was valued at ₱35.00, and such amount was deposited in a bank, they would have earned a compounded interest of 6% p.a.[37] The grant of said incremental interest was reckoned from October 21, 1972 if tenanted as of that date, or the date the land was actually tenanted if later, up to the time of actual payment.[38]

After the enactment of RA 6657, when the acquisition process under PD 27 is still incomplete, such as where the just compensation due the landowner has yet to be settled, just compensation is to be determined and the process concluded considering the factors under RA 6657,[39] as translated into a basic formula by the DAR, such as DAR AO No. 5, Series of

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[35] As amended by DAR AO No. 06, Series of 2008 (re: Amendment to DAR Administrative Order No. 2. S of 2004 on the Grant of Increment of Six Percent (6%) Yearly Interest Compounded Annually on Lands Covered by Presidential Decree (PD) No. 27 and Executive Order (EO) No. 228 dated July 28, 2008 issued by then DAR Secretary Nasser C. Pangandaman.

[36] Where:

LV = Land Value
AGP = Average Gross Production in cavan of 50 kilos in accordance with DAR Memorandum Circular No. 26, series of 1973
₱35.00 = Government Support Price (GSP) of *palay* in 1972 pursuant to Executive Order No. 228
n = number of years from date of tenancy up to the effectivity date of DAR AO No. 13, series of 1994, as amended by DAR AO No. 06-08.

[37] See *LBP v. Rivera*, 705 Phil. 139, 149 (2013).

[38] See Item II of DAR AO No. 06, Series of 2008. It must be noted that the term "actual payment" in the said AO is to be interpreted as "full payment" of just compensation, pursuant to the rulings in *LBP v. Obias* (684 Phil. 296, 302 [2012]), and *LBP v. Soriano* (634 Phil. 426, 435 [2010]).

[39] See *Heirs of Feliciano v. LBP*, 803 Phil. 253, 260-261 (2017).

1998,[40] *i.e.*, **LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)**.[41] While the formula under DAR AO No. 5, Series of 1998 and DAR AO No. 1, Series of 2010 are basically similar,[42] they materially vary in the reckoning point of the AGP and SP which are factors essential in computing the CNI or the Capitalized Net Income.[43] As opposed to the latter AO which uses *current prices*, in the former, the AGP corresponds to the latest available 12-months' gross production immediately preceding the date of field investigation (FI), and the SP is the average of the latest available 12-months' selling prices prior to the date of receipt of the CF by the LBP for processing.

However, in cases where the just compensation is computed pursuant to the formula under DAR AO No. 5, Series of 1998, the Court has imposed **legal interest on the amount of just compensation reckoned from the time of taking**, or the time when the landowner was deprived of the use and benefit of his property,[44] such as when EPs[45] are issued by the government[46]

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[40] *Alfonso v. LBP*, 801 Phil. 217, 321 (2016).

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

[42] Under DAR AO No. 1, Series of 2010, the formula, LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1), applies to lands falling under Phase 1 of RA 9700 [see item IV (2)].

[43] Under Item IV (1) of DAR AO No. 10, Series of 2010, Capitalized Net Income refers to the gross sales with assumed net income rate of 20% capitalized at 0.12.

[44] See *LBP v. Santos*, 779 Phil. 587, 610-611 (2016).

[45] In *LBP v. Heirs of Domingo* (567 Phil. 593, 608 [2008]), Court explained why the date of taking of the acquired land for purposes of computing just compensation should be reckoned from the issuance dates of the emancipation patents, to wit:

> "[A]n emancipation patent constitutes the conclusive authority for the issuance of a Transfer Certificate of Title in the name of the grantee. It is from the issuance of an emancipation patent that the grantee can acquire the vested right of ownership in the landholding, subject to the payment of just compensation to the landowner."

– **for the delay in the payment of the just compensation to the owner since the obligation is deemed to be an effective forbearance on the part of the State.**[47]

However, it must be emphasized that the allowance of **legal interest on the value of the acquired property, as an effective forbearance, is intended to eradicate the issue of the constant variability of the value of the currency over time,**[48] **and to limit the opportunity loss of the owner from non-payment of just compensation** that can drag from days to decades.[49]

Notably, the CNI factor in the DAR formulas refers to the **Income Capitalization Approach under the standard appraisal approaches** which is considered the most applicable valuation technique for income-producing properties such as agricultural landholdings. Under this approach, the value of the land is determined by taking the sum of the net present value (NPV) of the streams of income, in perpetuity, that will be forgone by the landowner due to the coverage of his landholding under the government's agrarian reform laws.[50] The operational assumption is that the agricultural properties to be valued are, in general, operating on a stabilized basis, or are expected to produce on a steady basis.[51]

While both DAR AO No. 5, Series of 1998 and DAR AO No. 1, Series of 2010 commonly use a capitalization rate[52] of 12%, the NPV of the streams of income are computed using different values reckoned from different points in time. Thus,

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[46] *LBP v. Lajom*, 741 Phil. 655, 665 (2014).

[47] *LBP v. Santos*, *supra* note 44, at 610.

[48] See *Republic v. CA*, 433 Phil. 106, 123 (2002).

[49] See *Sy v. Local Government of Quezon City*, 710 Phil. 549, 559 (2013).

[50] See *Alfonso v. LBP*, *supra* note 40, at 305.

[51] *Id*. at 312.

[52] Capitalization rate is the interest rate used in calculating the present value of future periodic payments. See *Black's Law Dictionary*, Eight Edition, p. 223.

the use of the higher prices from a later time under DAR AO No. 1, Series of 2010 assumes that the property to be acquired is already operating at such capacity as of the earlier time of taking, and will continue operating at such capacity in perpetuity. **Hence, the apparent purpose of using the higher prices reckoned from the 12 month-period immediately preceding June 30, 2009 instead of the lower prices as of the time of taking is to address the issue of the variability of the value of the currency between the time of taking and the said period, and thus, to "update" the value of the property.**

Nonetheless, it is well to point out that despite the use of current or updated prices, the just compensation remains unpaid as of June 30, 2009, while the landowners, herein respondents, have already been deprived of the use and benefit of their property with the issuance of CLTs and EPs in favor of the FBs. In *LBP v. Orilla*,[53] the Court elucidated the concept of just compensation, to wit:

> Constitutionally, "just compensation" is the sum equivalent to the market value of the property, broadly described as 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 the one who receives and the one who desires to sell, it being fixed at the time of the actual taking by the government. Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by this Court that **the true measure is not the taker's gain but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that the equivalent to be given for the property to be taken shall be real, substantial, full, and ample**. (Emphasis supplied)

It is doctrinal that the concept of just compensation contemplates of just and timely payment (**prompt payment**). It embraces not only the correct determination of the amount to be paid to the landowner, but also the payment of the land within a reasonable time from its taking, as otherwise compensation cannot be considered "just," for the owner is made

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[53] 578 Phil. 663, 676 (2008).

to suffer the consequence of being immediately deprived of his land while being made to wait for years before actually receiving the amount necessary to cope with his loss.[54] **Verily, prompt payment encompasses the payment in full of the just compensation to the landholders as finally determined by the courts.** Thus, it cannot be said that there is already prompt payment of just compensation when there is none or only a partial payment thereof.[55]

Certainly, respondents' entitlement to prompt payment for the taking of their property cannot be disregarded by the mere absence of the CFs covering the same, as otherwise, the Court would be abetting the perpetration of a grave injustice against them, occasioned by the undue delay and unjustified failure of the DAR to forward to the LBP the said folders even after the taking of the subject land and the issuance of CLTs and EPs to the FBs.[56] Consequently, the Court cannot subscribe to the LBP's argument that it shall only be liable to pay interest from the time that the RTC decision fixing the just compensation for the subject land becomes final.

However, the Court finds that it will not be fair and just to reckon the rate of imposable legal interest on the just compensation for the subject land (or any other property/ies valued under DAR AO No. 1, Series of 2010) from the time of taking since the land had been valued using *current prices* and had already considered income that the same would have earned and/or the variability of the value of the currency between the time of taking and June 30, 2009. Accordingly, interest on the unpaid balance of the just compensation is hereby imposed at the rate of 12% p.a. reckoned from June 30, 2009 up to June 30, 2013, and thereafter, at 6% p.a. until full payment, in line with the amendment introduced by BSP-MB Circular No. 799, Series of 2013.

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[54] *LBP v. Santos*, *supra* note 44, at 609.

[55] *LBP v. Orilla*, *supra* note 53, at 677.

[56] See *DAR v. Beriña*, 738 Phil. 605, 617 (2014).

WHEREFORE, the petition is **DENIED**. The Decision dated April 25, 2017 and the Resolution dated August 10, 2017 of the Court of Appeals in CA-G.R. SP No. 132400 are hereby **AFFIRMED with MODIFICATION** imposing legal interest on the just compensation at 12% per annum reckoned from June 30, 2009 up to June 30, 2013, and thereafter, at 6% per annum until full payment.

SO ORDERED.

Carpio (*Chairperson*), *Caguioa, Reyes, J. Jr.*, and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 233413. June 17, 2019]

CELIA R. ATIENZA, *petitioner, vs.* **NOEL SACRAMENTO SALUTA,** *respondent*.

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY ERRORS OF LAW ARE GENERALLY REVIEWED BY THE SUPREME COURT, HOWEVER, THIS RULE ADMITS EXCEPTIONS LIKE IN LABOR CASES WHERE THE COURT MAY LOOK INTO THE FACTUAL ISSUES WHEN THE FACTUAL FINDINGS OF THE LABOR ARBITER, THE NLRC, AND THE CA ARE CONFLICTING.— It must be pointed out that the issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact. As a rule, this Court is not a trier of facts and this applies with greater force in labor cases. Only errors of law are generally reviewed by this Court. However, this rule is not absolute and admits of exceptions

like in labor cases where the Court may look into factual issues when the factual findings of the Labor Arbiter, the NLRC, and the CA are conflicting. In this case, the findings of the Labor Arbiter differed from those of the NLRC and the CA necessitating this Court to review and to reevaluate the factual issues and to look into the records of the case and reexamine the questioned findings.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST TO DETERMINE THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP, ENUMERATED.—** To ascertain the existence of an employer-employee relationship, jurisprudence has invariably adhered to the four-fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test." Although no particular form of evidence is required to prove the existence of an employer-employee relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. In this case, a scrutiny of the records will bear out that the respondent failed to substantiate his claim that he was a company driver of CRV Corporation.

3. **ID.; ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; ILLEGAL DISMISSAL; ABSENT ANY SHOWING OF AN OVERT OR POSITIVE ACT PROVING THAT THE EMPLOYER DISMISSED ITS EMPLOYEE, THE LATTER'S CLAIM OF ILLEGAL DISMISSAL CANNOT BE SUSTAINED, AS THE SAME WOULD BE SELF-SERVING, CONJECTURAL, AND OF NO PROBATIVE VALUE.—** It must be emphasized that the rule of thumb remains: the *onus probandi* falls on the respondent to establish or substantiate his claim by the requisite quantum of evidence given that it is axiomatic that whoever claims entitlement to the benefits provided by law should establish his or her right thereto. x x x It is axiomatic that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause. However, there are cases wherein the facts and the evidence

do not establish *prima facie* that the employee was dismissed from employment. Before the employer is obliged to prove that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof. x x x The Court reiterates the basic rule of evidence that each party must prove his affirmative allegation, that mere allegation is not evidence. The Court must also stress that the evidence presented to show the employee's termination from employment must be clear, positive, and convincing. Absent any showing of an overt or positive act proving that petitioner had dismissed the respondent, the latter's claim of illegal dismissal cannot be sustained — as the same would be self-serving, conjectural, and of no probative value.

4. ID.; ID.; ID.; ABANDONMENT, AS A GROUND; ABANDONMENT IS A MATTER OF INTENTION AND CANNOT BE LIGHTLY INFERRED OR LEGALLY PRESUMED FROM CERTAIN EQUIVOCAL ACTS; TWO FACTORS TO CONSIDER FOR A VALID FINDING OF ABANDONMENT, ENUMERATED; NOT ESTABLISHED IN CASE AT BAR.— Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts. In *Protective Maximum Security Agency, Inc. v. Fuentes*, this Court held: x x x For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the [employee] has no more intention to work. x x x The burden of proving abandonment is upon the employer who, whether pleading the same as a ground for dismissing an employee or as a mere defense, additionally has the legal duty to observe due process. The Court finds that there is no abandonment in this case. Aside from his absence from work, petitioner failed to present any proof of respondent's overt conduct which clearly manifested his desire to end his employment. Settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work. This is especially so in light of his having filed a case for illegal dismissal which is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work.

The filing of such complaint is proof enough of his desire to return to work, thus, negating any suggestion of abandonment.

5. ID.; REPUBLIC ACT NO. 10361 (DOMESTIC WORKERS ACT OR *BATAS KASAMBAHAY*); THE *KASAMBAHAY LAW* MADE NO MENTION OF THE FAMILY DRIVERS IN THE ENUMERATION OF THOSE WORKERS WHO ARE COVERED BY LAW AND THE SAME FAMILY DRIVERS ARE CATEGORICALLY EXCLUDED BY THE IMPLEMENTING RULES AND REGULATIONS OF THE LAW.— Article 141, Chapter III, Book III on Employment of Househelpers of the Labor Code provides that family drivers are covered in the term domestic or household service. x x x Thus, under the Labor Code, the rules for indemnity in case a family driver is terminated from the service shall be governed by Article 149 thereof x x x However, Section 44 of Republic Act No. 10361, otherwise known as the "Domestic Workers Act" or "*Batas Kasambahay*" (*Kasambahay Law*), expressly repealed Chapter III (Employment of Househelpers) of the Labor Code, which includes Articles 141 and 149 mentioned above. The *Kasambahay* Law, on the other hand, made no mention of family drivers in th enumeration of those workers who are covered by the law. This is unlike Article 141 of the labor Code. x x x Thus, Section 4(d) of the *Kasambahay* Law pertaining to who are included in the enumeration of domestic or household help cannot also be interpreted to include family drivers because the latter category of worker is clearly not included. It is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others — this is expressed in the familiar maxim, *expressio unius est exclusio alterius*. Moreover, Section 2 of the Implementing Rules and Regulations of the *Kasambahay* Law provides: x x x The following are ***not* covered**: (a) Service providers; (b) **Family drivers**; (c) Children under foster family arrangement; and (d) Any other person who performs work occasionally or sporadically and not on an occupational basis. x x x The aforecited administrative rule clarified the status of family drivers as among those *not* covered by the definition of domestic or household help as contemplated in Section 4(d) of the *Kasambahay* Law. Such provision should be respected by the courts, as the interpretation of an administrative government agency, which is tasked to implement the statute, is accorded great respect and ordinarily controls the construction of the

courts. Moreover, the statutory validity of the same administrative rule was never challenged.

6. CIVIL LAW; SPECIAL CONTRACTS; HOUSEHOLD SERVICES; THE CIVIL CODE PROVISIONS, NOT REPEALED BY THE *KASAMBAHAY* LAW, SHALL GOVERN THE INDEMNITY TO BE GIVEN TO FAMILY DRIVERS IN CASES OF SEPARATION FROM SERVICE; CASE AT BAR.— Due to the express repeal of the Labor Code provisions pertaining to househelpers, which includes family drivers, by the *Kasambahay* Law; and the non-applicability of the *Kasambahay* Law to family drivers, there is a need to revert back to the Civil Code provisions, particularly Articles 1689, 1697 and 1699, Section 1, Chapter 3, Title VIII, Book IV thereof. x x x Since what were expressly repealed by the *Kasambahay* Law were only Articles 141 to 152, Chapter III of the Labor Code on Employment of Househelpers; and the Labor Code did not repeal the Civil Code provisions concerning household service which impliedly includes family drivers as they minister to the needs of a household, the said Civil Code provisions stand. To rule otherwise would leave family drivers without even a modicum of protection. Certainly, that could not have been the intent of the lawmakers. Pursuant to Article 1697 of the Civil Code, respondent shall be paid the compensation he had already earned plus that for 15 days by way of indemnity if he was unjustly dismissed. However, if respondent left his employment without justifiable reason, he shall forfeit any salary due him and unpaid for not exceeding 15 days. Given that there is neither dismissal nor abandonment in this case, none of the party is entitled to claim any indemnity from the other. Verily, in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss. Otherwise stated, the respondent's act of not reporting to work after a verbal miscommunication cannot justify the payment of any form of remuneration. x x x As found by the Labor Arbiter, the ₱9,000.00 salary respondent receives a month is reasonable and in accordance with Article 1689 of the Civil Code. Hence, petitioner may not be made to pay the respondent wage differentials. Petitioner is not also liable to the respondent for the payment of holiday pay, 13th month pay and service incentive leave pay because persons

in the personal service of another, such as family drivers, are exempted from the coverage of such benefits pursuant to Articles 82, 94 and 95 of the Labor Code, and Section 3(d) of the implementing rules of Presidential Decree No. 851.

7. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; A REVERSAL OF JUDGMENT ON APPEAL IS BINDING ON THE PARTIES TO THE SUIT, BUT SHALL NOT BENEFIT THE PARTIES AGAINST WHOM THE JUDGMENT WAS RENDERED IN THE COURT *A QUO*, BUT WHO DID NOT JOIN THE APPEAL; EXCEPTION, NOT PRESENT IN CASE AT BAR.— It is not lost on this Court that only the petitioner appealed the CA Decision which found the respondent to have been illegally dismissed and ordered both the CRV Corporation and the petitioner liable to the respondent for the payment of backwages, separation pay, wage differentials, holiday pay, 13th month pay and service incentive leave pay. Considering that CRV Corporation did not appeal the decision of the appellate court, the same stands insofar as the corporation is concerned. At this juncture, this Court takes this opportune time to emphasize that a reversal of a judgment on appeal is binding on the parties to the suit, but shall not benefit the parties against whom the judgment was rendered in the court *a quo*, but who did not join in the appeal, unless their rights and liabilities and those of the parties appealing are so interwoven and dependent as to be inseparable, in which case a reversal as to one operates as a reversal as to all. It is basic that under the general doctrine of separate juridical personality, stockholders of a corporation enjoy the principle of limited liability: the corporate debt is not the debt of the stockholder. This is because a corporation has a separate and distinct personality from those who represent it. Here, it was not disputed that CRV Corporation had been impleaded, duly notified of the suit, and properly served with legal processes, but it never participated in the case by sending an authorized representative or filing a single pleading. x x x Although a reversal of the judgment as to one would operate as a reversal as to all where the rights and liabilities of those who did not appeal and those of the party appealing are so interwoven and dependent on each other as to be inseparable, CRV Corporation and petitioner have no commonality of interest because each bears the injury of an adverse judgment.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Pericleo L. Solis, Jr. for respondent.

D E C I S I O N

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

The Facts and the Case

Before the Court is a Petition for Review on *Certiorari* seeking to reverse and set aside the April 21, 2017 Decision[1] and the August 9, 2017 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 147356. The questioned CA Decision affirmed with modification the April 27, 2016 Decision[3] and the June 21, 2016 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000121-16 which reversed and set aside the October 29, 2015 Decision[5] of the Labor Arbiter in NLRC NCR Case No. 04-04089-15, while the questioned CA Resolution denied petitioner's motion for reconsideration.

The instant case stemmed from the complaint for illegal dismissal, non-payment of wages, overtime pay, holiday pay, premium pay for work on holidays and rest day, illegal deduction, and issuance of a certificate of employment filed by Noel Sacramento Saluta (respondent) against Celia R. Atienza (petitioner) and CRV Corporation before the NLRC.

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[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Japar B. Dimaampao and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 28-39.

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

[3] *Id*. at 70-92.

[4] *Id*. at 96-98.

[5] *Id*. at 178-191.

Respondent alleged that he was hired as a company driver by CRV Corporation in May 2012. He was assigned to drive for the petitioner, one of the company's top officials and received ₱9,000.00 monthly salary.

On December 11, 2014, while driving along North Luzon Expressway, respondent hit the rear portion of the vehicle in front of him. Thus, he was made to pay the amount of ₱15,000.00 to answer for the damages caused to the said vehicle. The amount was first advanced by the company, but will be deducted from his monthly salary. On the said occasion, the authorities confiscated his driver's license and issued him a Temporary Operator's Permit (TOP).

On December 23, 2014, respondent told the petitioner that he needed to absent himself from work because he had to claim his driver's license since his TOP had already expired. According to him, petitioner refused to excuse him from work because she had appointments lined up that day. As it was illegal for him to drive without a license, he was constrained to get his license the following day, December 24, 2014; thus, he failed to report for work. However, before going on leave, he first requested another company driver to drive for the petitioner. When petitioner learned that he was not around, she immediately called him up saying, "*kung hindi ka makakapag-drive ngayon, mabuti pa maghiwalay na tayo.*" Upon hearing such words, respondent concluded that he had been verbally terminated.

When respondent went to CRV Corporation at around 3:00 p.m. on the same day, Rodolfo Reyes (Reyes), the General Manager of the company, confirmed that he was already terminated from work. As it was Christmas Eve, he requested that he be given his last salary, but this was refused on the ground that he has yet to reimburse the company the ₱15,000.00 it had advanced.[6]

Thus on April 7, 2015, respondent filed a complaint against CRV Corporation and the petitioner for illegal dismissal, non-

[6] *Id.* at 267-268.

payment of wages, overtime pay, holiday pay, premium pay for work on holidays and rest day, illegal deduction, and issuance of a certificate of employment.

For her part, petitioner contended that respondent was not dismissed from work, rather he abandoned his job when he refused to report for work and took a leave of absence without permission. Petitioner claimed that respondent was not an employee of CRV Corporation, but was hired by the petitioner as her personal/family driver with a monthly salary of ₱9,000.00 and free board and lodging. His duty was simply to drive for her and her family to anywhere they wish to go. His monthly salary was coursed through Reyes.

Sometime in December 2014, while driving her brother-in-law's car, respondent was involved in a vehicular accident. Since respondent readily admitted his fault, she agreed to lend him ₱15,000.00 so that he could immediately pay for the damages he caused.

On the night of December 22, 2014, respondent asked for permission if he could go to Pampanga as he needed to sign some papers. She agreed on the condition that respondent would report for work the following day. On December 23, 2014, respondent did not report for work as instructed. Instead, he simply called petitioner to inform her that he will be absent because he had to renew his expired driver's license. That was the last time she had heard from the respondent. She subsequently learned that on December 27, 2014, respondent asked Reyes for his remaining salary of ₱2,100.00 for the period covering December 16 to 22, 2014. Because respondent had not yet paid his ₱15,000.00 loan, he was told that his salary could not be released. Nevertheless, Reyes extended to him a personal loan in the amount of ₱4,000.00 which respondent promised to pay. Respondent communicated with Reyes for the last time on January 7, 2015 when the former told the latter that he will no longer return to work. Thus, petitioner was surprised to learn that on April 7, 2015, or more than three months from

the time he failed to report for work, respondent filed a complaint for illegal dismissal.[7]

In a Decision[8] dated October 29, 2015, the Labor Arbiter dismissed respondent's complaint except insofar as his claim for illegal deduction and request for the issuance of a certificate of employment are concerned. The Labor Arbiter held that respondent failed to prove by substantial evidence that he was an employee of CRV Corporation. Given the admission of the petitioner that respondent was her personal driver and considering that the employer-employee relationship between CRV Corporation and the respondent had not been established, respondent was deemed an employee of the petitioner. Being a personal driver, his compensation for work and indemnity for dismissal were governed by Articles 1689, 1697 and 1699 of the Civil Code. The monthly salary of ₱9,000.00 being received by the respondent was reasonable and in accordance with Article 1689 of the Civil Code. His claims for overtime pay, holiday pay and premium for work done on holidays, as well as premium for work done on rest day cannot be granted as the Labor Code exempts from coverage househelpers and persons in the personal service of another from such benefits. The Labor Arbiter further held that the amount of ₱15,000.00 cannot be charged against the respondent as it had not been proved that he was the one responsible for the vehicular accident that transpired in December 2014. As for respondent's request to be issued an employment certificate, the same must be granted as he was entitled thereto pursuant to Article 1699 of the Civil Code. The Labor Arbiter also dismissed the complaint for illegal dismissal for lack of showing that respondent was illegally terminated from the service, or that he was prevented from returning to work. On the contrary, the Labor Arbiter found the respondent to have left his employment without justifiable reason. For such reason, he was deemed to have forfeited the

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

[8] *Supra* note 5.

salary due him and unpaid pursuant to Article 1697 of the Civil Code.

On appeal, the NLRC reversed and set aside the decision of the Labor Arbiter in a Decision[9] dated April 27, 2016. The NLRC held that while it may be true that the respondent failed to present substantial evidence to prove that he was under the employ of CRV Corporation as one of its drivers, it is also true that petitioner did not dispute that respondent was driving for her. By alleging that the respondent was her personal driver, it becomes incumbent upon her to prove their employer-employee relationship which she failed to do. The respective allegations of the parties show that respondent was an employee of CRV Corporation. Furthermore, the allegation put forward by petitioner that respondent customarily reported for work to Reyes, the General Manager, and the act of the latter of extending a personal loan to the former proved that respondent was indeed under the employ of the company.

On whether respondent was illegally dismissed from work or had abandoned his job, the NLRC held that both parties failed to adduce evidence to support their respective contentions. Apart from his uncorroborated statement that he was verbally terminated from work, no other evidence was presented by the respondent. On the other hand, petitioner relied on the information relayed to him by Reyes that respondent will no longer be reporting back for work. Be that as it may, considering that petitioner failed to disprove that she verbally terminated respondent, coupled by the fact that when respondent was asking for his December 2014 salary, the same was not released to him, it could reasonably be inferred that respondent was indeed dismissed from work. The NLRC rejected the defense of abandonment raised by the petitioner for lack of proof indicating respondent's clear intention to sever his employer-employee relationship with the company. For failure of the petitioner to discharge the burden of proof that respondent's dismissal was justified, there can be no other conclusion, but that the same

[9] *Supra* note 3.

was illegal. Thus, it ordered CRV Corporation and the petitioner to pay respondent full backwages from December 2014, separation pay equivalent to one month salary for every year of service, wage differentials, holiday pay, 13th month pay and service incentive leave pay from May 2012. His claims for overtime pay, night shift differentials and premium pay for holidays and rest day were denied for lack of evidence that the same had been incurred and unpaid. Anent the complaint for illegal deduction, the NLRC agreed with the Labor Arbiter that the sum of ₱15,000.00 cannot be deducted from respondent's salary absent any showing that he was responsible for the damage caused during the said vehicular accident.

Petitioner filed a Partial Motion for Reconsideration, but it was denied in a Resolution[10] dated June 21, 2016.

Alleging grave abuse of discretion, petitioner elevated the case before the CA by way of petition for *certiorari*. In a Decision[11] dated April 21, 2017, the CA, like the NLRC, ruled that respondent failed to prove by substantial evidence that he was a company driver of CRV Corporation. However, in order to level the playing field in which the employer was pitted against the employee, the CA deemed it necessary to reexamine the evidence presented by the petitioner in support of her claim that she was the real employer of the respondent. The CA was not convinced that petitioner hired respondent in her personal capacity for the former's failure to present respondent's employment contract duly signed by the petitioner and showing the date the respondent was hired, his work description, salary and manner of its payment. The CA added that as a top official of CRV Corporation, petitioner could have easily negated respondent's allegation that he was employed by the company by presenting the payrolls, complete list of personnel, salary vouchers and SSS registration of the company, but she did not do so. Petitioner also failed to explain why respondent was

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[10] *Supra* note 4.

[11] *Supra* note 1.

customarily reporting to and receiving his salary through Reyes if he truly was her personal driver. Petitioner also did not refute that respondent's salaries were paid through Automated Teller Machines (ATM) just like the rest of the employees of the company. That respondent was an employee of CRV Corporation was further showed by the fact that the company wields the power of dismissal. If respondent was indeed the employee of the petitioner, there would be no reason for him to go to CRV Corporation's office to confirm whether he was terminated or not after he was verbally dismissed by the petitioner and ask for the release of his salary from the company.

The CA also held that petitioner failed to adduce evidence showing that the respondent was not terminated for just or authorized cause and after the observance of due process. On the contrary, the appellate court found the failure of the respondent to report for work on December 24, 2014 in order for him to be able to claim his driver's license as his TOP had already expired to be reasonable; thus, not enough reason for his dismissal. The CA was likewise not convinced that the respondent abandoned his job as no evidence was presented indicating respondent's clear intention to sever his employment with the company. Thus, the appellate court affirmed the Decision of the NLRC with modification in that it imposed a 6% interest per annum on all the monetary awards granted to the respondent from the finality of judgment until fully paid.

Petitioner moved for reconsideration, but the CA denied it in a Resolution[12] dated August 9, 2017.

Undaunted, petitioner is now before this Court *via* the present Petition for Review on *Certiorari* contending that the appellate court erred in holding that the respondent was not her personal driver, but a company driver under the employ of CRV Corporation; and that respondent was entitled to full backwages, separation pay, wage differentials, holiday pay, 13th month pay and service incentive leave pay for having been illegally dismissed.

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[12] *Supra* note 2.

Arguments of the Parties

Petitioner claimed that the CA erred in ruling that respondent was employed as CRV Corporation's company driver and not her personal driver despite respondent's failure to prove by substantial evidence the existence of an employer-employee relationship between him and the company. She asseverated that following the pronouncement of the High Court in *Lopez v. Bodega City*,[13] it is the employee in illegal dismissal cases, the respondent in this case, who bears the burden of proving the existence of an employer-employee relationship by substantial evidence, not her. Be that as it may, petitioner insisted that the following circumstances show that respondent was hired by her in her personal capacity, *viz*.: (a) respondent was not able to present any employment contract or document showing that he was indeed a company driver of CRV Corporation; (b) respondent received his salaries from the petitioner. The Bank of the Philippine Islands Statements of Cash Deposits and Withdrawals that respondent presented did not at all prove that CRV Corporation was the one paying his salaries; and (c) respondent failed to present any evidence to show how CRV Corporation exercised control over the means and methods by which he performed his work. On the other hand, petitioner had shown that she exercised the power of control over the petitioner as she had the sole authority to give instructions to respondent as to where and when he would drive for her and her family.

Furthermore, petitioner averred that it was error for the CA to have ruled that respondent had been unlawfully terminated from work considering that the fact of his dismissal had not even been established by the respondent by substantial evidence. In this case, petitioner pointed out that respondent never disputed that after he left his work on December 23, 2014, he did not make any attempt to return to work. His refusal to return to work without any justifiable reason amounted to abandonment

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[13] 558 Phil. 666, 674 (2007).

of work. That respondent intended to put an end to his employment was clearly demonstrated when he informed Reyes that he will no longer report for work. Since it was respondent who decided to end his employment without her prior knowledge, she should not be faulted and be held liable for illegal dismissal.

Petitioner also asseverated that respondent was not entitled to full backwages and separation pay. Since he worked as a family driver who left his work without justifiable reason, pursuant to Article 149 of the Labor Code, he was deemed to have forfeited the unpaid salary due him. He was also not entitled to separation pay because one who abandons and resigns from his work is not qualified to receive the same. Furthermore, petitioner contended that the CA erred in granting respondent's claim for wage differentials, holiday pay, 13th month pay and service incentive leave pay because the Labor Code is clear that family drivers are not entitled to the same.[14]

For his part, respondent insisted that he was one of the company drivers and regular employees of CRV Corporation since May 2012. As one of the company drivers, his work was absolutely necessary and desirable to the usual business of the company. He argued that the petitioner only claimed that he was her personal driver so that she could circumvent the requirement of having to pay company drivers the mandated minimum wage. He added that like the other regular employees of the company, he received his salaries through the ATM.

Furthermore, respondent claimed that he did not resign nor abandon his job, but was illegally dismissed therefrom. His vigorous pursuit of the present illegal dismissal case is a manifestation that he had no intention of relinquishing his employment. At any rate, he asseverated that it is the employer who had the burden of proving that the dismissal was justified. If the petitioner insisted that he resigned from his work, it is incumbent upon her to prove that he did so willingly. Unfortunately, petitioner failed to discharge her burden of proof. Since respondent was

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[14] *Rollo*, pp. 3-24.

not afforded due process as he was not given any notice to explain or a notice of termination, there can be no other conclusion but that he was indeed illegally terminated from work. Having been illegally dismissed from work, the CA rightfully granted him his money claims. On top of full backwages, separation pay, wage differentials, holiday pay, 13th month pay and service incentive leave pay, he must also be awarded damages and attorney's fees even if the same were not included in his complaint as the same had been seasonably raised in his position paper.[15]

The Court's Ruling

Respondent is the personal/family driver of the petitioner

Settled is the tenet that allegations in the complaint must be duly proven by competent evidence and the burden of proof is on the party making the allegation.[16] In an illegal dismissal case, the *onus probandi* rests on the employer to prove that its dismissal of an employee was for a valid cause. However, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established. Thus, in filing a complaint before the Labor Arbiter for illegal dismissal, based on the premise that he was an employee of CRV Corporation, it is incumbent upon the respondent to prove the employer-employee relationship by substantial evidence.[17] Stated otherwise, the burden of proof rests upon the party who asserts the affirmative of an issue. Since it is the respondent who is claiming to be an employee of CRV Corporation, it is, thus, incumbent upon him to proffer evidence to prove the existence of employer-employee relationship between them. He needs to show by substantial evidence that he was indeed an employee of the company against

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[15] *Id*. at 266-272.

[16] *Marsman & Company, Inc. v. Sta. Rita*, G.R. No. 194765, April 23, 2018.

[17] *Reyes v. Glaucoma Research Foundation, Inc*., 760 Phil. 779, 789 (2015); *Lopez v. Bodega City*, *supra* note 13.

which he claims illegal dismissal. Corollary, the burden to prove the elements of an employer-employee relationship, *viz.*: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control, lies upon the respondent.[18]

It must be pointed out that the issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact. As a rule, this Court is not a trier of facts and this applies with greater force in labor cases. Only errors of law are generally reviewed by this Court. However, this rule is not absolute and admits of exceptions like in labor cases where the Court may look into factual issues when the factual findings of the Labor Arbiter, the NLRC, and the CA are conflicting.[19] In this case, the findings of the Labor Arbiter differed from those of the NLRC and the CA necessitating this Court to review and to reevaluate the factual issues and to look into the records of the case and reexamine the questioned findings.[20]

To ascertain the existence of an employer-employee relationship, jurisprudence has invariably adhered to the four-fold test, to wit: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test."[21] Although no particular form of evidence is required to prove the existence of an employer-employee relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence, or such

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[18] *Valencia v. Classique Vinyl Products Corporation*, G.R. No. 206390, January 30, 2017, 816 SCRA 144, 156.

[19] *South East International Rattan, Inc. v. Coming*, 729 Phil. 298, 305 (2014).

[20] *Javier v. Fly Ace Corp.*, 682 Phil. 359, 371 (2012).

[21] *Alba v. Espinosa*, G.R. No. 227734, August 9, 2017, 837 SCRA 52, 61.

amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[22] In this case, a scrutiny of the records will bear out that the respondent failed to substantiate his claim that he was a company driver of CRV Corporation.

Apart from his staunch insistence that he was a company driver of CRV Corporation, respondent did not proffer any competent evidence, documentary or otherwise, as would prove his claimed employment with the company. In the case at bench, the respondent did not present his employment contract, company identification card, company pay slip or such other document showing his inclusion in the company payroll that would show that his services had been engaged by CRV Corporation. His contention that he received his salaries through the ATM like the other employees of the company, even if true, does not sufficiently show that his salaries were paid by the company as its employee. Respondent also failed to present any proof showing how the company wielded the power of dismissal and control over him. Evidence is wanting that the company monitored the respondent in his work. It had not been shown that respondent was required by the company to clock in to enable it to check his work hours and keep track of his absences. On the other hand, the records showed that petitioner had a say on how he performed his work. It is the petitioner who decides when she needed the services of the respondent. As a matter of fact, the respondent had to secure permission from the petitioner before he can take a leave of absence from work. That petitioner also enjoyed the power of dismissal is beyond question given that respondent himself believed that the petitioner verbally terminated him.[23] Because the respondent failed to establish his employment with CRV Corporation, the Court must necessarily agree with the Labor Arbiter that respondent was the personal/family driver of the petitioner.

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[22] *South Cotabato Communications Corp. v. Sto. Tomas*, 787 Phil. 494, 505 (2016).

[23] *Supra* note 6.

Both the NLRC and the CA made it the petitioner's obligation to prove that respondent was under her employ and not a company driver of CRV Corporation. The Court does not agree. It must be emphasized that the rule of thumb remains: the *onus probandi* falls on the respondent to establish or substantiate his claim by the requisite quantum of evidence given that it is axiomatic that whoever claims entitlement to the benefits provided by law should establish his or her right thereto.[24] Unfortunately, respondent failed to hurdle the required burden of proof as would give ground for this Court to agree with him.

Respondent was not dismissed from employment

It is axiomatic that in illegal dismissal cases, the employer bears the burden of proving that the termination was for a valid or authorized cause. However, there are cases wherein the facts and the evidence do not establish *prima facie* that the employee was dismissed from employment. Before the employer is obliged to prove that the dismissal was legal, the employee must first establish by substantial evidence the fact of his dismissal from service. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[25]

Here, respondent alleged that when he failed to report for work on December 24, 2014, he was verbally terminated by the petitioner. Respondent claimed that Reyes confirmed his termination. On the other hand, petitioner contended that the respondent just stopped reporting for work after he left his work on December 23, 2014.

Respondent's bare claim of having been dismissed from employment by the petitioner, unsubstantiated by impartial and independent evidence, is insufficient to establish such fact of dismissal. Bare and unsubstantiated allegations do not constitute

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[24] *Javier v. Fly Ace Corp.*, *supra* note 20, at 372.

[25] *Claudia's Kitchen, Inc. v. Tanguin*, G.R. No. 221096, June 28, 2017, 828 SCRA 397, 407; *Doctor v. NII Enterprises*, G.R. No. 194001, November 22, 2017, 846 SCRA 53, 66-67.

substantial evidence and have no probative value.[26] It must be emphasized that aside from the allegation that he was verbally terminated from his work, respondent failed to present any competent evidence showing that he was prevented from returning to his work. Reyes did not issue any statement to corroborate the claimed termination of the respondent. That he was refused to be given his salary covering the period from December 15, 2014 to December 22, 2014 did not at all prove the fact of his termination. It must be taken into account that salaries of employees may not be released for myriad of reasons. Termination may only be one of them. The Court reiterates the basic rule of evidence that each party must prove his affirmative allegation, that mere allegation is not evidence. The Court must also stress that the evidence presented to show the employee's termination from employment must be clear, positive, and convincing. Absent any showing of an overt or positive act proving that petitioner had dismissed the respondent, the latter's claim of illegal dismissal cannot be sustained — as the same would be self-serving, conjectural, and of no probative value.[27]

Respondent did not abandon his work

Abandonment is a matter of intention and cannot lightly be inferred or legally presumed from certain equivocal acts.[28] In *Protective Maximum Security Agency, Inc. v. Fuentes*,[29] this Court held:

> Abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It is a form of neglect of duty, hence, a just cause for termination of employment by the employer.

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[26] *LNS International Manpower Services v. Padua, Jr.,* 628 Phil. 223, 224 (2010).

[27] *Doctor v. NII Enterprises*, *supra* note 25, at 67-68.

[28] *Tegimenta Chemical Phils. v. Oco*, 705 Phil. 57, 67 (2013).

[29] *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 507 (2015).

For a valid finding of abandonment, these two factors should be present: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever employer-employee relationship, with the second as the more determinative factor which is manifested by overt acts from which it may be deduced that the [employee] has no more intention to work. The intent to discontinue the employment must be shown by clear proof that it was deliberate and unjustified.

The burden of proving abandonment is upon the employer who, whether pleading the same as a ground for dismissing an employee or as a mere defense, additionally has the legal duty to observe due process.[30]

The Court finds that there is no abandonment in this case. Aside from his absence from work, petitioner failed to present any proof of respondent's overt conduct which clearly manifested his desire to end his employment. Settled is the rule that mere absence or failure to report for work is not tantamount to abandonment of work.[31] This is especially so in light of his having filed a case for illegal dismissal which is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work. The filing of such complaint is proof enough of his desire to return to work, thus, negating any suggestion of abandonment.[32]

The Civil Code shall govern the rights of family drivers

Article 141, Chapter III, Book III on Employment of Househelpers of the Labor Code provides that family drivers are covered in the term domestic or household service. It states:

ART. 141. *Coverage*. – This Chapter shall apply to all persons rendering services in household for compensation.

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[30] *Functional, Inc. v. Granfil*, 676 Phil. 279, 288-289 (2011).

[31] *L.C. Ordoñez Construction v. Nicdao*, 528 Phil. 1124, 1135 (2006) and *Shie Jie Corp. v. National Federation of Labor*, 502 Phil. 143, 151 (2005), citing *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 516 (2003).

[32] *Intec Cebu, Inc. v. Court of Appeals*, 788 Phil. 31, 41 (2016).

"Domestic or household service" shall mean service in the employer's home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer's household, including services of **family drivers**. (Emphasis and underscoring supplied)

Thus, under the Labor Code, the rules for indemnity in case a family driver is terminated from the service shall be governed by Article 149 thereof which provides:

ART. 149. *Indemnity for unjust termination of services*. – If the period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for fifteen (15) days by way of indemnity.

If the househelper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding fifteen (15) days.

However, Section 44 of Republic Act No. 10361, otherwise known as the "Domestic Workers Act" or "*Batas Kasambahay*" (*Kasambahay* Law), expressly repealed Chapter III (Employment of Househelpers) of the Labor Code, which includes Articles 141 and 149 mentioned above.

The *Kasambahay* Law, on the other hand, made no mention of family drivers in the enumeration of those workers who are covered by the law. This is unlike Article 141 of the Labor Code. Section 4(d) of the *Kasambahay* Law states:

x x x x x x x x x

SEC. 4. *Definition of Terms* – As used in this Act, the term:

(d) *Domestic worker* or "*Kasambahay*" refers to any person engaged in domestic work within an employment relationship such as, but not limited to, the following: general househelp, nursemaid or "*yaya*", cook, gardener, or laundry person, but shall exclude any person who performs domestic work only occasionally or sporadically and not on an occupational basis.

The term shall not include children who are under foster family arrangement, and are provided access to education and given an allowance incidental to education, *i.e.*[,] "*baon*", transportation, school projects and school activities.

Thus, Section 4(d) of the *Kasambahay* Law pertaining to who are included in the enumeration of domestic or household help cannot also be interpreted to include family drivers because the latter category of worker is clearly not included. It is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others — this is expressed in the familiar maxim, *expressio unius est exclusio alterius*[33] Moreover, Section 2 of the Implementing Rules and Regulations of the *Kasambahay* Law provides:

SEC. 2. *Coverage*. – This x x x [IRR] shall apply to all parties to an employment contract for the services of the following *Kasambahay*, whether on a live-in or live-out arrangement, such as but not limited to:

(a) General househelp;
(b) *Yaya;*
(c) Cook;
(d) Gardener;
(e) Laundry person; or
(f) Any person who regularly performs domestic work in one household on an occupational basis.

The following are ***not* covered**:

(a) Service providers;
(b) **Family drivers**;
(c) Children under foster family arrangement; and
(d) Any other person who performs work occasionally or sporadically and not on an occupational basis. (Emphasis supplied)

The aforecited administrative rule clarified the status of family drivers as among those <u>not</u> covered by the definition of domestic or household help as contemplated in Section 4(d) of the

[33] *De La Salle-Araneta University v. Bernardo*, G.R. No. 190809, February 13, 2017, 817 SCRA 317, 340.

Kasambahay Law. Such provision should be respected by the courts, as the interpretation of an administrative government agency, which is tasked to implement the statute, is accorded great respect and ordinarily controls the construction of the courts.[34] Moreover, the statutory validity of the same administrative rule was never challenged. This Court has ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.[35] And while it is true that constitutional provisions on social justice demand that doubts be resolved in favor of labor, it is only applicable when there is *doubt*. Social justice principles cannot be used to expand the coverage of the law to subjects not intended by the Congress to be included.

Due to the express repeal of the Labor Code provisions pertaining to househelpers, which includes family drivers, by the *Kasambahay* Law; and the non-applicability of the *Kasambahay* Law to family drivers, there is a need to revert back to the Civil Code provisions, particularly Articles 1689, 1697 and 1699, Section 1, Chapter 3, Title VIII, Book IV thereof. The Articles provide:

SEC. 1 – *Household Service*.

ART. 1689. Household service shall always be reasonably compensated. Any stipulation that household service is without compensation shall be void. Such compensation shall be in addition to the [household helper's] lodging, food, and medical attendance.

x x x x x x x x x

ART. 1697. If the period for household service is fixed neither the head of the family nor the [household helper] may terminate the contract

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[34] *Commissioner of Internal Revenue v. Bicolandia Drug Corporation*, 528 Phil. 609, 617 (2006).

[35] *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, 583 Phil. 706, 735 (2008).

before the expiration of the term, except for a just cause. If the [househelper] is unjustly dismissed, he shall be paid the compensation already earned plus that for fifteen days by way of indemnity. If the [househelper] leaves without justifiable reason, he shall forfeit any salary due him and unpaid, for not exceeding fifteen days.

x x x x x x x x x

ART. 1699. Upon the extinguishment of the service relation, the [househelper] may demand from the head of the family a written statement on the nature and duration of the service and the efficiency and conduct of the [househelper].

The reason for reverting back to the Civil Code provisions on household service is because, as discussed earlier, Section 44 of the *Kasambahay* Law expressly repealed Articles 141 to 152 of the Labor Code which deals with the rights of family drivers. Obviously, an expressly repealed statute is not anymore binding for it has no more force and effect.

On the other hand, Article 302 of the Labor Code, its repealing clause, which provides:

ART. 302. *Repealing clause*. – All labor laws not adopted as part of this Code either directly or by reference are hereby repealed. All provisions of existing laws, orders, decrees, rules and regulations inconsistent herewith are likewise repealed.

did not repeal the said Civil Code provisions since they are not inconsistent with the Labor Code. Besides, repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject, the congruent application of which the courts must generally presume.[36]

Since what were expressly repealed by the *Kasambahay* Law were only Articles 141 to 152, Chapter III of the Labor Code on Employment of Househelpers; and the Labor Code did not repeal the Civil Code provisions concerning household

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[36] *Philippine International Trading Corporation v. Commission on Audit*, 635 Phil. 447, 459 (2010).

service which impliedly includes family drivers as they minister to the needs of a household, the said Civil Code provisions stand. To rule otherwise would leave family drivers without even a modicum of protection. Certainly, that could not have been the intent of the lawmakers.

Pursuant to Article 1697 of the Civil Code, respondent shall be paid the compensation he had already earned plus that for 15 days by way of indemnity if he was unjustly dismissed. However, if respondent left his employment without justifiable reason, he shall forfeit any salary due him and unpaid for not exceeding 15 days. Given that there is neither dismissal nor abandonment in this case, none of the party is entitled to claim any indemnity from the other. Verily, in a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss.[37] Otherwise stated, the respondent's act of not reporting to work after a verbal miscommunication cannot justify the payment of any form of remuneration.

Petitioner is not liable for wage differentials, holiday pay, 13th month pay and service incentive leave pay

As found by the Labor Arbiter, the ₱9,000.00 salary respondent receives a month is reasonable and in accordance with Article 1689 of the Civil Code. Hence, petitioner may not be made to pay the respondent wage differentials.

Petitioner is not also liable to the respondent for the payment of holiday pay, 13th month pay and service incentive leave pay because persons in the personal service of another, such as family drivers, are exempted from the coverage of such benefits pursuant to Articles 82,[38] 94[39] and 95[40] of the Labor Code, and Section 3(d)[41] of the implementing rules of Presidential Decree No. 851.

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[37] *MZR Industries v. Colambot*, 716 Phil. 617, 628 (2013); *Borja v. Miñoza*, G.R. No. 218384, July 3, 2017, 828 SCRA 647, 662.

The reversal of the judgment rendered by the appellate court will not inure to the benefit of CRV Corporation

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[38] Art. 82. *Coverage*. –The provisions of this Title shall apply to employees in all establishments and undertakings whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, persons in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

As used herein, "managerial employees" refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.

"Field personnel" shall refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

[39] Art. 94. *Right to holiday pay*. – (a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;

(b) The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate; and

(c) As used in this Article, "holiday" includes: New Year's Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth and thirtieth of December and the day designated by law for holding a general election.

[40] Art. 95. *Right to service incentive leave*. – (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

(b) This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor and Employment after considering the viability or financial condition of such establishment.

(c) The grant of benefit in excess of that provided herein shall not be made a subject of arbitration or any court or administrative action.

[41] Sec. 3. *Employers covered*. — The Decree shall apply to all employers except to:

x x x x x x x x x

It is not lost on this Court that only the petitioner appealed the CA Decision which found the respondent to have been illegally dismissed and ordered both the CRV Corporation and the petitioner liable to the respondent for the payment of backwages, separation pay, wage differentials, holiday pay, 13th month pay and service incentive leave pay. Considering that CRV Corporation did not appeal the decision of the appellate court, the same stands insofar as the corporation is concerned.

At this juncture, this Court takes this opportune time to emphasize that a reversal of a judgment on appeal is binding on the parties to the suit, but shall not benefit the parties against whom the judgment was rendered in the court *a quo*, but who did not join in the appeal, unless their rights and liabilities and those of the parties appealing are so interwoven and dependent as to be inseparable, in which case a reversal as to one operates as a reversal as to all.[42]

It is basic that under the general doctrine of separate juridical personality, stockholders of a corporation enjoy the principle of limited liability: the corporate debt is not the debt of the stockholder.[43] This is because a corporation has a separate and distinct personality from those who represent it.[44]

Here, it was not disputed that CRV Corporation had been impleaded, duly notified of the suit, and properly served with legal processes, but it never participated in the case by sending an authorized representative or filing a single pleading. The Securities and Exchange Commission i-Report[45] dated May 14, 2015 which showed that the company status of CRV Corporation

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(d) Employers of household helpers and persons in the personal service of another in relation to such workers[.] (Underscoring supplied)

[42] *Municipality of Orion v. Concha*, 50 Phil. 679, 684 (1927) and *Government of the Republic of the Philippines v. Tizon*, 127 Phil. 607, 611-612 (1967).

[43] *Bustos v. Millians Shoe, Inc.,* 809 Phil. 226, 234 (2017).

[44] *Pioneer Insurance & Surety Corporation v. Morning Star Travel & Tours, Inc.,* 763 Phil. 428, 437 (2015).

[45] *Rollo*, p. 153.

as revoked can hardly mean that the NLRC did not acquire jurisdiction over it inasmuch as the i-Report did not indicate when the CRV Corporation ceased to exist. Besides, the complaint had already been filed on April 7, 2015. Moreover, under Section 122 of *Batas Pambansa Bilang* 68 or "The Corporation Code of the Philippines," a corporation whose registration had been revoked has three years from dissolution to continue to be a body corporate for purposes of winding up its affairs which includes prosecuting and defending suits by or against it.

Although a reversal of the judgment as to one would operate as a reversal as to all where the rights and liabilities of those who did not appeal and those of the party appealing are so interwoven and dependent on each other as to be inseparable,[46] CRV Corporation and petitioner have no commonality of interest because each bears the injury of an adverse judgment. CRV Corporation will not be harmed had petitioner been held liable to pay the respondent his unpaid wages. Conversely, petitioner did not suffer any monetary injury when CRV Corporation was made liable to pay the respondent his unpaid wages.

Even if petitioner is allegedly one of CRV Corporation's top officials, such hypothetical fact does not translate, or even imply that she will be financially injured by an adverse money-claim judgment against the latter. Much like stockholders, corporate officers and employees only have an inchoate right (only to the extent of their valid collectibles in the form of salaries and benefits) to the assets of the corporation which, in turn, is the real owner of the assets by virtue of its separate juridical personality.[47]

Moreover, no evidence was offered by both parties that petitioner was equipped with a board resolution (even if belatedly submitted)[48] or, at least, authorized by corporate by-laws[49] to

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[46] *Citytrust Banking Corporation v. Court of Appeals*, 253 Phil. 743, 748 (1989).

[47] See *Marcos-Araneta v. Court of Appeals*, 585 Phil. 38, 59 (2008).

[48] See *Novelty Philippines, Inc. v. Court of Appeals*, 458 Phil. 36 (2003).

[49] See *Cebu Mactan Members Center, Inc. v. Tsukahara*, 610 Phil. 586, 592 (2009).

represent CRV Corporation in the instant suit. Therefore, petitioner's appeal cannot benefit CRV Corporation.

WHEREFORE, premises considered, the petition is **GRANTED.** The April 21, 2017 Decision and the August 9, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 147356 are **REVERSED** and **SET ASIDE** and the October 29, 2015 Decision of the Labor Arbiter in NLRC NCR Case No. 04-04089-15 is **AFFIRMED** only insofar as petitioner Celia R. Atienza is concerned.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 239011. June 17, 2019]

CIVIL SERVICE COMMISSION, *petitioner, vs.* **PACOL DISUMIMBA RASUMAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; THE ESSENTIAL REQUIREMENT FOR ALLOWING SUBSTANTIAL CORRECTION OF ENTRIES IN THE CIVIL REGISTRY IS THAT THE TRUE FACTS BE ESTABLISHED IN AN APPROPRIATE ADVERSARIAL PROCEEDINGS; PURPOSE OF THE TWO SETS OF NOTICES TO TWO DIFFERENT POTENTIAL OPPOSITORS, EXPLAINED.— Petition for cancellation or correction of entries in the civil registry is governed by Rule 108 of the Rules of Court x x x

The essential requirement for allowing substantial correction of entries in the civil registry is that the true facts be established in an appropriate adversarial proceeding. Section 3 requires that all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding. Sections 4 and 5 of Rule 108 provide for two sets of notices to two different potential oppositors, *i.e.*, (1) notice to the persons named in the petition; and (2) notice to other persons who are not named in the petition, but, nonetheless, may be considered interested or affected parties. The two sets of notices are mandated under the above-quoted Section 4 and are validated by Section 5, also above-quoted, which provides for two periods (for the two types of "potential oppositors") within which to file an opposition (15 days from notice or from the last date of publication). Summons must, therefore, be served not for the purpose of vesting the courts with jurisdiction, but to comply with the requirements of fair play and due process to afford the person concerned the opportunity to protect his interest if he so chooses.

2. ID.; ID.; ID.; IT IS NECESSARY TO IMPLEAD THE CIVIL SERVICE COMMISSION IN PETITIONS FOR CORRECTION OF ENTRIES THAT WOULD AFFECT A GOVERNMENT EMPLOYEE'S SERVICE RECORDS; CASE AT BAR.— In *Police Senior Superintendent Macawadib v. The Philippine National Police Directorate for Personnel and Records Management*, we already held that there is a necessity to implead the CSC in petitions for correction of entries that would affect a government employee's service records. x x x In this case, respondent sought from the RTC the correction of his birthdate from February 12, 1952 to February 12, 1956. He impleaded in his petition for correction the BOC, the agency where he was working at so as to update his service records, but did not implead the CSC. It bears stressing that one of the CSC's mandated functions under Executive Order No. 292 is to keep and maintain personnel records of all officials and employees in the civil service. Therefore, the CSC has an interest in the petition for correction of respondent's birth certificate since the correction entails a substantial change in its public record, *i.e.*, he would have an additional four years before reaching his compulsory retirement age. To reiterate, Section 3 of Rule 108 mandatorily requires that the civil registrar and

the interested parties who would be affected by the grant of a petition for correction should be made parties. Considering that the CSC is an indispensable party, it should have been impleaded in respondent's petition, and sent a personal notice to comply with the requirements of fair play and due process, before it could be affected by the decision granting the correction of his date of birth. The CSC should have been afforded due process before its interest be affected, no matter how the proceeding was classified.

3. ID.; ID.; ID.; ID.; FAILURE TO IMPLEAD AND NOTIFY THE AFFECTED OR INTERESTED PARTIES MAY BE CURED BY THE PUBLICATION OF THE NOTICE OF HEARING, SUCH AS, WHEN EARNEST EFFORTS WERE MADE BY PETITIONERS IN BRINGING TO COURT ALL POSSIBLE INTERESTED PARTIES, THE INTERESTED PARTIES THEMSELVES INITIATED THE CORRECTION PROCEEDINGS, THERE IS NO ACTUAL OR PRESUMPTIVE AWARENESS OF THE EXISTENCE OF THE INTERESTED PARTIES, OR WHEN THE PARTY IS INADVERTENTLY LEFT OUT; NOT PRESENT IN CASE AT BAR.— The CA's reliance on our decision in *Civil Service Commission v. Magoyag* — that since the petition for correction of entry filed in the RTC was a proceeding *in rem*, the decision therein binds not only the parties thereto but the whole world and that an *in rem* proceeding is validated essentially through publication — is misplaced. x x x Notably, the CSC, in the *Magoyag* case, had been particularly directed by the RTC to immediately effect a correction of the entry of respondent's birth certificate in their records. In effect, the CSC had knowledge of the RTC decision, and could have raised its opposition thereto. In this case, the CSC was not impleaded at all in respondent's petition for correction of his date of birth filed with the RTC, and it was never specifically ordered to make the correction in respondent's records, as his amended petition only prayed for the BOC to effect correction on his employment records to reflect his true and correct date of birth. The CSC was not at all apprised of the proceedings in the RTC and not bound by such decision. x x x While there may be cases where the Court held that the failure to implead and notify the affected or interested parties may be cured by the publication of the notice of hearing, such as earnest efforts were made by petitioners in bringing to court all possible

interested parties, the interested parties themselves initiated the correction proceedings, there is no actual or presumptive awareness of the existence of the interested parties, or when a party is inadvertently left out, none of them applies in respondent's case.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Chang & Padilla Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari*[1] which seeks to annul and set aside the Decision[2] dated October 25, 2017 and the Resolution[3] dated April 26, 2018 of the Court of Appeals (*CA*) in CA-G.R. SP No. 151017.

The facts are as follows:

On April 16, 2014, respondent Pacol Disumimba Rasuman, a Senior Executive Assistant in the Bureau of Customs (*BOC*), filed before the Regional Trial Court (*RTC*) of Lanao del Sur, Branch 9, Marawi City, a verified petition[4] for correction of his date of birth from February 12, 1952 to February 12, 1956, docketed as SPL. PROC. No. 2191-14, impleading as respondent the Local Civil Registrar of Marantao, Lanao del Sur. The RTC issued an Order[5] setting the case for hearing and directing the

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[1] *Rollo*, pp. 26-41.

[2] *Id.* at 45-55; penned by Associate Justice Pedro B. Corales, and concurred in by Associate Justices Japar B. Dimaampao and Amy C. Lazaro-Javier (now a member of this Court).

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

[4] *Id.* at 67-70.

[5] *Id.* at 71.

publication of the Order in a newspaper of general circulation in Marawi City and Iligan City for three consecutive weeks at the expense of respondent, and that the Order and the petition, as well as its annexes, be furnished the Local Civil Registrar of Marantao, Lanao del Sur, the Office of the Solicitor General, and the Civil Registrar General which respondent complied with. Respondent later filed an Amended Petition[6] to implead the BOC.

In a Decision[7] dated July 23, 2015, the RTC granted the petition for correction. The dispositive portion of which reads:

> WHEREFORE, premises considered, Judgment is hereby rendered GRANTING the petition, and therefore, it is hereby judicially declared that the True and Correct date of birth of petitioner, Pacol Disumimba Rasuman, is February 12, 1956.
>
> Consequently, the Local Civil Registrar of Marantao, Lanao del Sur is hereby directed to make marginal annotation of the x x x Decision to the Certificate of Live Birth of petitioner on file in his office, relative to the latter's correct date of birth, which is February 12, 1956 and, thereafter to forward the corrected copy of the Certificate of Live Birth of the petitioner to the Administrator and Civil [Registrar] General of the National Statistics Office, Sta. Mesa, Manila. Further, the Bureau of Customs is also directed to effect the correction of the date of birth of the petitioner in the latter's official records in the Agency.
>
> SO ORDERED.[8]

The decision became final and executory on October 8, 2015.

On January 21, 2016, respondent filed with the Civil Service Commission-National Capital Region (*CSC-NCR*) a request[9] for correction of his date of birth in his service records. In a

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[6] *Id.* at 72-76.

[7] *Id.* at 82-87; penned by Acting Presiding Judge Wenida B.M. Papandayan.

[8] *Id.* at 87.

[9] *Id.* at 90.

letter[10] dated March 3, 2016, the CSC-NCR required respondent to submit certain documents. Respondent submitted the following documents: the original copy of his Certificate of Live Birth issued by the Philippine Statistics Authority with remarks that his date of birth was corrected from February 12, 1952 to February 12, 1956 pursuant to the July 23, 2015 RTC Decision; his affidavits explaining the discrepancy in his date of birth and the fact that he was not baptized as it is not a Muslim practice; affidavits of two witnesses attesting to the truthfulness of his claim that his date of birth was February 12, 1956; and the certified true copies of his service records card and the Personal Data Sheet issued by the CSC Field Office, Department of Public Works and Highways, indicating his birthdate as February 12, 1952.

On June 27, 2016, the CSC-NCR issued Resolution No. 1601236[11] denying respondent's request for correction. The decretal portion of which reads:

> WHEREFORE, the instant request is hereby DENIED. Accordingly, the records of the Commission shall still reflect February 12, 1952 as the correct date of birth of petitioner.
>
> Let copies of this Resolution be furnished [to] Pacol Disumimba Rasuman and [the] Civil Service Commission - National Capital Region, Department of Public Works and Highways Field Office at their known addresses.[12]

It held that while respondent's Certificate of Live Birth (belatedly registered) supported his claim that his date of birth was February 12, 1956, however, his employment and school records showed otherwise; that his personal data sheet on file with the CSC Field Office showed that he attended elementary school from 1957 to 1962; thus, if his birthday was February 12, 1956, he was only one year old at the time he first attended elementary school.

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[10] *Id.* at 91.

[11] *Id.* at 96-97; penned by Director IV Judith A. Dongallo-Chicano.

[12] *Id.* at 97.

Respondent filed a petition for review with the CSC Proper.

On January 13, 2017, the CSC issued Decision No. 170058 dismissing the petition for review. It held that it is not bound by the July 23, 2015 RTC decision in the correction of respondent's birthdate because it was not impleaded therein, although it was an indispensable party; that the RTC decision would have no effect insofar as the CSC is concerned, citing our decision in *Police Senior Superintendent Macawadib v. The Philippine National Police Directorate for Personnel and Records Management*.[13] The dispositive portion of the decision reads:

> WHEREFORE, the Petition for Review of Pacol Disumimba Rasuman, Senior Executive Assistant, Bureau of Customs (BoC), Manila is DISMISSED. Accordingly, Resolution No. 1601236 dated June 27, 2016 of the Civil Service Commission National Capital Region (CSC NCR), Quezon City, denying Rasuman's request for correction of personal information is AFFIRMED. The date of birth of Rasuman appearing in the records of the Commission shall remain as February 12, 1952.
>
> Copies of the Decision shall be furnished [to] the Bureau of Customs (BoC) and the CSC NCR for their reference and appropriate action.[14]

Respondent's motion for reconsideration was denied by the CSC in its Resolution No. 1700847[15] dated May 8, 2017.

Respondent filed a petition for review with the CA. The parties filed their respective pleadings, and the case was submitted for decision.

On October 25, 2017, the CA issued its assailed decision, the dispositive portion of which reads:

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[13] 715 Phil. 484 (2013).

[14] *Rollo*, pp. 48 and 104.

[15] *Id.* at 104-108.

WHEREFORE, the instant petition for review is GRANTED. Accordingly, the January 13, 2017 Decision No. 170058 and May 8, 2017 Resolution No. 1700847 of the Civil Service Commission in NDC-2016-07025 are hereby REVERSED and SET ASIDE. The Civil Service Commission is DIRECTED to comply with the July 23, 2015 Decision of the Regional Trial Court of Lanao del Sur, Branch 9, Marawi City in SPL. PROC. No. 2191-14.

SO ORDERED.[16]

Petitioner filed a motion for reconsideration which the CA denied in a Resolution dated April 26, 2018.

Petitioner filed the instant petition for review on the ground that:

THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT PETITIONER ERRED WHEN IT DENIED RESPONDENT'S REQUEST FOR THE CORRECTION OF HIS SERVICE RECORD.[17]

The CA found that a petition directed against the thing itself or the res, which concerns the status of a person, like correction of entries in the birth certificate, is an action *in rem* and which jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided the latter has jurisdiction over the res. The service of summons or notice to the defendant is not for the purpose of vesting the court with jurisdiction, but merely for satisfying the due process requirements. Being a proceeding *in rem*, the decision in the correction of entry case binds not only the parties, but the whole world; and that an *in rem* proceeding is validated essentially through publication.

The CSC, however, contends that it is an indispensable party to the petition for correction of respondent's date of birth filed in the RTC; and for not having been impleaded, it is not bound by the RTC decision granting the petition, so it properly denied respondent's request for correction of his date of birth in his service records.

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

[17] *Id.* at 33.

We find merit in the petition.

Petition for cancellation or correction of entries in the civil registry is governed by Rule 108 of the Rules of Court which provides, among others:

> SEC. 3. Parties. – When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.
>
> SEC. 4. Notice and Publication. – Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.
>
> SEC. 5. Opposition. – The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

The essential requirement for allowing substantial correction of entries in the civil registry is that the true facts be established in an appropriate adversarial proceeding.[18] Section 3 requires that all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding. Sections 4 and 5 of Rule 108 provide for two sets of notices to two different potential oppositors, *i.e.*, (1) notice to the persons named in the petition; and (2) notice to other persons who are not named in the petition, but, nonetheless, may be considered interested or affected parties.[19] The two sets of notices are mandated under the above-quoted Section 4 and are validated by Section 5, also above-quoted, which provides for two periods

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[18] *Barco v. Court of Appeals*, 465 Phil. 39 (2004).

[19] *Rep. of the Philippines v. Dr. Uy*, 716 Phil. 254, 265 (2013), citing *Republic of the Phils. v. Coseteng-Magpayo*, 656 Phil. 550 (2011).

(for the two types of "potential oppositors") within which to file an opposition (15 days from notice or from the last date of publication).[20] Summons must, therefore, be served not for the purpose of vesting the courts with jurisdiction, but to comply with the requirements of fair play and due process to afford the person concerned the opportunity to protect his interest if he so chooses.[21]

In *De Pedro v. Romasan Development Corporation*,[22] we held:

> Jurisdiction over the parties is required regardless of the type of action — whether the action is *in personam*, *in rem*, or *quasi in rem*.
>
> In actions *in personam*, the judgment is for or against a person directly. Jurisdiction over the parties is required in actions *in personam* because they seek to impose personal responsibility or liability upon a person.
>
> Courts need not acquire jurisdiction over parties on this basis in *in rem* and *quasi in rem* actions. Actions *in rem* or *quasi in rem* are not directed against the person based on his or her personal liability.
>
> Actions *in rem* are actions against the thing itself. They are binding upon the whole world. *Quasi in rem* actions are actions involving the status of a property over which a patty has interest. *Quasi in rem* actions are not binding upon the whole world. They affect only the interests of the particular parties.
>
> However, to satisfy the requirements of due process, jurisdiction over the parties in *in rem* and *quasi in rem* actions is required.
>
> The phrase, "against the thing," to describe *in rem* actions is a metaphor. It is not the "thing" that is the party to an *in rem* action; only legal or natural persons may be parties even in *in rem* actions. "Against the thing" means that resolution of the case affects interests

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[20] *Republic of the Phils. v. Coseteng-Magpayo*, *id.* at 560.

[21] *Rep. of the Philippines v. Dr. Uy*, *supra* note 19 at 265, citing *Ceruila v. Delantar*, 513 Phil. 237 (2005).

[22] 748 Phil. 706 (2014).

of others whether direct or indirect. It also assumes that the interests — in the form of rights or duties — attach to the thing which is the subject matter of litigation. In actions *in rem*, our procedure assumes an active vinculum over those with interests to the thing subject of litigation.

Due process requires that those with interest to the thing in litigation be notified and given an opportunity to defend those interests. Courts, as guardians of constitutional rights, cannot be expected to deny persons their due process rights while at the same time be considered as acting within their jurisdiction.[23] (Citations omitted.)

In *Police Senior Superintendent Macawadib v. The Philippine National Police Directorate for Personnel and Records Management*,[24] we already held that there is a necessity to implead the CSC in petitions for correction of entries that would affect a government employee's service records. In that case, petitioner therein, Police Senior Superintendent Dimapinto Macawadib, filed with the RTC of Marawi City a Petition for Correction of Entry in his birth certificate which the RTC granted; and the Philippine National Police (*PNP*), the National Police Commission, and the CSC were ordered to make the necessary correction in their records of Macawadib's date of birth. The RTC decision had become final and executory. The PNP filed a petition for annulment of judgment with the CA on the ground that the RTC failed to acquire jurisdiction over it, an unimpleaded indispensable party. The CA nullified and set aside the RTC decision and barred Macawadib from continuing and prolonging his tenure with the PNP beyond the mandatory retirement age of fifty-six (56) years. We affirmed the CA decision and held:

[I]t is the integrity and correctness of the public records in the custody of the PNP, National Police Commission (NAPOLCOM) and Civil Service Commission (CSC) which are involved and which would be affected by any decision rendered in the petition for correction filed by herein petitioner. The aforementioned government agencies are,

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[23] *Id.* at 725-726.

[24] *Supra* note 13.

thus, required to be made parties to the proceeding. They are indispensable parties, without whom no final determination of the case can be had. An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest. In the fairly recent case of *Go v. Distinction Properties Development and Construction, Inc.*, the Court had the occasion to reiterate the principle that:

> Under Section 7, Rule 3 of the Rules of Court, "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness. It is "precisely 'when an indispensable party is not before the court (that) an action should be dismissed.' The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present." The purpose of the rules on joinder of indispensable parties is a complete determination of all issues not only between the parties themselves, but also as regards other persons who may be affected by the judgment. A decision valid on its face cannot attain real finality where there is want of indispensable parties.
>
> x x x x x x x x x

In the instant case, there is a necessity to implead the PNP, NAPOLCOM and CSC because they stand to be adversely affected by petitioner's petition which involves substantial and controversial alterations in petitioner's service records.[25] (Citations omitted.)

In this case, respondent sought from the RTC the correction of his birthdate from February 12, 1952 to February 12, 1956. He impleaded in his petition for correction the BOC, the agency where he was working at so as to update his service records, but did not implead the CSC. It bears stressing that one of the CSC's mandated functions under Executive Order No. 292 is to keep and maintain personnel records of all officials and employees in the civil service. Therefore, the CSC has an interest

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[25] *Id.* at 492-493.

in the petition for correction of respondent's birth certificate since the correction entails a substantial change in its public record, *i.e.*, he would have an additional four years before reaching his compulsory retirement age. To reiterate, Section 3 of Rule 108 mandatorily requires that the civil registrar and the interested parties who would be affected by the grant of a petition for correction should be made parties. Considering that the CSC is an indispensable party, it should have been impleaded in respondent's petition, and sent a personal notice to comply with the requirements of fair play and due process, before it could be affected by the decision granting the correction of his date of birth. The CSC should have been afforded due process before its interest be affected, no matter how the proceeding was classified. Thus, the CSC correctly denied respondent's request for correction of his date of birth on the basis of the RTC decision granting the correction.

The CA's reliance on our decision in *Civil Service Commission v. Magoyag*[26] — that since the petition for correction of entry filed in the RTC was a proceeding *in rem*, the decision therein binds not only the parties thereto but the whole world and that an *in rem* proceeding is validated essentially through publication — is misplaced.

In *Magoyag*, the respondent therein, Madlawi Magoyag, then Deputy Collector of the BOC in Cagayan de Oro City, filed with the RTC of Lanao del Sur, Marawi City, a petition for correction of his birthdate from July 22, 1947 to July 22, 1954 which was granted. The RTC then ordered the Government Service Insurance System, and the BOC to effect a correction in his date of birth. The RTC subsequently issued an amended decision by further directing the Local Civil Registrar and the CSC to immediately effect a correction of the entry of Magoyag's date of birth. Magoyag requested the CSC to correct his date of birth appearing in his employment records. The CSC denied Magoyag's request since based on the official transcript of

[26] 775 Phil. 182 (2015).

records issued by Liceo de Cagayan University, he graduated from college in November 1967, which was highly improbable if he was born on July 22, 1954 as it would mean that he graduated from college at the age of thirteen (13), from high school at the age of nine (9), and from elementary at the age of five (5). Respondent then filed a petition for review with the CA which granted the petition and ordered the CSC to comply with the RTC decision. The CSC filed a petition for review with us which we denied. We found, among others, that the CSC's concern should have been brought up in the RTC proceedings.

Notably, the CSC, in the *Magoyag* case, had been particularly directed by the RTC to immediately effect a correction of the entry of respondent's birth certificate in their records. In effect, the CSC had knowledge of the RTC decision, and could have raised its opposition thereto. In this case, the CSC was not impleaded at all in respondent's petition for correction of his date of birth filed with the RTC, and it was never specifically ordered to make the correction in respondent's records, as his amended petition only prayed for the BOC to effect correction on his employment records to reflect his true and correct date of birth. The CSC was not at all apprised of the proceedings in the RTC and not bound by such decision.

The CA found that the CSC was only inadvertently left out since respondent even amended his petition for correction of entries by impleading the BOC which indicated his earnest efforts to comply with the requirement of the rules, thus the failure to implead the CSC was cured by the publication of the notice of hearing, and it is legally bound to give effect to the RTC decision granting the correction of his date of birth.

While there may be cases where the Court held that the failure to implead and notify the affected or interested parties may be cured by the publication of the notice of hearing, such as earnest efforts were made by petitioners in bringing to court all possible interested parties, the interested parties themselves initiated the correction proceedings, there is no actual or presumptive awareness of the existence of the interested parties,

or when a party is inadvertently left out,[27] none of them applies in respondent's case.

In this case, while respondent impleaded the BOC when he amended his petition for correction of entry, he did not implead the CSC. To stress, the CSC is the central personnel agency of the government and, as such, keeps and maintains the personal records of all officials and employees in the civil service. Notwithstanding that respondent knew that the correction of his date of birth would have an effect on the condition of his employment, he still did not exert earnest efforts in bringing to court the CSC, and there is no showing that the CSC was only inadvertently left out. We, therefore, find no basis for the CA's ruling that respondent's case falls under the exceptional circumstances where the failure to implead indispensable parties was excused.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated October 25, 2017 and the Resolution dated April 26, 2018 of the Court of Appeals in CA-G.R. SP No. 151017 are hereby **REVERSED** and **SET ASIDE**. The January 13, 2017 Decision No. 170058 and May 8, 2017 Resolution No. 1700847 of the Civil Service Commission in NDC-2016-07025 are hereby **REINSTATED.**

SO ORDERED.

Leonen, Reyes, A. Jr., and *Inting, JJ.*, concur.

Hernando, J., on official business.

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[27] *Rep. of the Philippines v. Dr. Uy, supra* note 19, at 265-266.

SECOND DIVISION

[G.R. No. 239032. June 17, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GILBERT FLORESTA *y* SELENCIO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; 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.—** At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "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. **CRIMINAL LAW; MURDER; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.—** To successfully prosecute the crime of Murder, the following elements must be established: (*a*) that a person was killed; (*b*) the accused killed him or her; (*c*) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (*d*) the killing is not parricide or infanticide. x x x the Court finds that the prosecution failed to establish with proof beyond reasonable doubt the identity of Jay Lourd's killer. It is elementary that in every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt. Accordingly, there being no evidence sufficient to

support a conviction, the Court hereby acquits Gilbert of the crime charged.

3. REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; EXCEPTIONS TO THE HEARSAY RULE; PART OF *RES GESTAE*; REQUISITES.— Under the Revised Rules on Evidence, a declaration is deemed part of the *res gestae* and admissible in evidence as an exception to the hearsay rule when the following requisites concur: (*a*) the principal act, the *res gestae*, is a startling occurrence; (*b*) the statements were made before the declarant had time to contrive or devise; and (*c*) the statements must concern the occurrence in question and its immediately attending circumstances.

4. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; ADMISSIBILITY OF EVIDENCE SHOULD NOT BE EQUATED WITH WEIGHT OF EVIDENCE; DISTINGUISHED; APPLICATION IN CASE AT BAR.— At this point, however, it is well to clarify that admissibility of evidence should not be equated with weight of evidence. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence. Here, while the Court agrees that Jay Lourd's utterance – "*Panggay, you see if Gilbert is still there?*" – should be admitted in evidence as part of the *res gestae*, the courts *a quo* erred in considering the same as direct evidence of the killing and that Gilbert was the perpetrator thereof. Plainly, Jay Lourd's utterance did not contain any positive and categorical identification of Gilbert as his assailant. While it may be argued that, from the utterance, Gilbert had something to do with his mortal wounds, such utterance is ultimately inconclusive evidence to prove that Gilbert was identified by Jay Lourd as his assailant.

5. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; IN CERTAIN INSTANCES THE PROSECUTION MAY STILL SUSTAIN A CONVICTION DESPITE THE ABSENCE OF DIRECT EVIDENCE, PROVIDED THERE ARE CIRCUMSTANTIAL EVIDENCE THAT WOULD ESTABLISH AN ACCUSED'S GUILT BEYOND REASONABLE DOUBT; REQUISITES.—

> [T]he Court is aware that in certain instances, the prosecution may still sustain a conviction despite the absence of direct evidence, provided that it is able to present circumstantial evidence that would establish an accused's guilt beyond reasonable doubt. Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. It is sufficient for conviction if: (*a*) there is more than one circumstance; (*b*) the facts from which the inferences are derived are proven; and (*c*) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. Stated differently, the test to determine whether or not the circumstantial evidence on record is sufficient to convict the accused is that the series of circumstances duly proven must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
John Martin H. Sese for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Gilbert Floresta *y* Selencio (Gilbert) assailing the Decision[2] dated April 21, 2017 of the Court of Appeals (CA)

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[1] See Notice of Appeal dated December 1, 2017; *rollo*, pp. 16-18.

[2] *Id*. at 2-15. Penned by Associate Justice Florito S. Macalino with Associate Justices Mariflor P. Punzalan Castillo and Maria Elisa Sempio Diy, concurring.

in CA-G.R. CR H.C. No. 08103, which affirmed with modifications the Decision[3] dated November 23, 2015 of the Regional Trial Court of Masbate City, Branch 44 (RTC) in Criminal Case No. 15733 finding Gilbert guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code (RPC).

The Facts

This case stemmed from an Information[4] filed before the RTC, charging Gilbert of the crime of Murder, the accusatory portion of which reads:

> That on or about the 28th day of December, 2012, in the evening thereof, at Sitio Calumpang, *Brgy*. Malinta, Masbate City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot one JAY LOURD BONES *y* ZURBITO, with the use of a firearm of an unknown caliber, hitting him on the left upper chest, thereby inflicting upon him mortal wounds which were the direct cause of his death.
>
> CONTRARY TO LAW.[5]

The prosecution alleged that at around 8:00 in the evening of December 28, 2012, Jay Lourd Bones *y* Zurbito (Jay Lourd) was having a drinking session with his friend Allan Andaya (Allan) and a certain Benjie at the kitchen of his house. After drinking two (2) shots of gin, Jay Lourd suddenly stood up and said to Allan, "*Pare, I was hit, may tama ako*." As Allan was about to hug Jay Lourd, he heard a cracking sound behind him, causing him to run away. Meanwhile, Jay Lourd's wife, Jennifer Bones (Jennifer), was breastfeeding their youngest child when she heard the gunshot coming from the kitchen. She

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[3] CA *rollo*, pp. 15-25. Penned by Judge Designate Arturo Clemente B. Revil.

[4] Dated December 29, 2012; records, pp. 1-2.

[5] *Id*. at 1.

hurriedly went to the kitchen and saw Jay Lourd bloodied on the floor, prompting her to cover his wound with a piece of cloth. At that moment, he told her, "*Panggay, you see if Gilbert is still there?*" Subsequently, she hid in a room with her elder child until her uncle and sister-in-law arrived to bring Jay Lourd to the hospital. She then decided to stay behind and wait for the police officers to arrive. However, when they informed her that they would continue the investigation the following day, she proceeded to the hospital where she was informed that Jay Lourd was already dead. Thereafter, she went to the Masbate City Police Station to tell the authorities that it was Gilbert who shot Jay Lourd. Consequently, Gilbert was apprehended by the police.[6]

For his part, Gilbert interposed the defense of alibi, alleging that from 12:30 until 3:00 in the afternoon of December 28, 2012, he was watching a cockfight in *Purok* Casili, *Barangay* Igang, Masbate City. Afterwards, he proceeded to play *cara y cruz* with Rico Adovas (Rico), Rely[7] Dinglasan (Rely), Soy Tugbo, and Linkoy Lorenzo until 9:00 in the evening. Subsequently, he went back to Barangay Malinta and saw a crowd near the house of Jay Lourd. Upon asking the people what happened, he learned that Jay Lourd was shot to death. Thereafter, he went home and had dinner. After having dinner, the police officers arrived at his house, and then, he was investigated, examined, and detained. During trial, Gilbert's averments were corroborated by the testimonies of Rico and Rely.[8]

The RTC Ruling

In a Decision[9] dated November 23, 2015, the RTC found Gilbert guilty beyond reasonable doubt of the crime of Murder,

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[6] See *rollo*, pp. 4-6.

[7] "Rellie" or "Rilly" in some parts of the records.

[8] See *rollo*, p. 6.

[9] CA *rollo*, pp. 15-25.

and accordingly, sentenced him to suffer the penalty of *reclusion perpetua* and to pay the heirs of Jay Lourd the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.[10] It rejected Gilbert's claim that the declaration made by Jay Lourd to Jennifer was a mere afterthought, as the same was considered part of the *res gestae*. It explained that when Jay Lourd asked Jennifer about the presence of Gilbert right after he was shot, he simply relayed to her what he saw and observed. Likewise, his statement was reliable as part of the *res gestae* for being spontaneously uttered in reaction to a startling occurrence, *i.e.*, the shooting of Jay Lourd.[11] Moreover, the RTC found the killing to have been attended by treachery, as the prosecution was able to establish that: (*a*) at the time of the incident, Jay Lourd was drinking with his friends and had no inkling that anyone would shoot him; and (*b*) the shooting took place in which he could not properly defend himself.[12] On the other hand, it discredited Gilbert's defense of alibi, since he failed to show that it was physically impossible for him to be at the vicinity of the crime.[13]

Aggrieved, Gilbert appealed[14] to the CA.

The CA Ruling

In a Decision[15] dated April 21, 2017, the CA affirmed Gilbert's conviction with modifications, increasing the awards of civil indemnity and moral damages to ₱75,000.00 each; awarding ₱75,000.00 as exemplary damages and ₱50,000.00 as temperate damages; and imposing on all monetary awards interest at the rate of six percent (6%) per annum from the date of finality

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[10] *Id*. at 24.

[11] See *id*. at 20-21.

[12] See *id*. at 24.

[13] See *id*. at 19-20.

[14] See Notice of Appeal dated December 9, 2015; *id*. at 26-29.

[15] *Rollo*, pp. 2-15.

of its decision until fully paid.[16] Ultimately, it ruled that the prosecution was able to prove all the elements of the crime of Murder in light of the *res gestae* declaration of Jay Lourd who positively identified Gilbert as his assailant.[17]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Gilbert's conviction should be upheld.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[18] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[19]

To successfully prosecute the crime of Murder, the following elements must be established: (*a*) that a person was killed; (*b*) the accused killed him or her; (*c*) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (*d*) the killing is not parricide or infanticide.[20]

Proceeding from the foregoing considerations, the Court rules that the prosecution failed to establish with proof beyond reasonable doubt that Gilbert is the perpetrator who shot and killed Jay Lourd.

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[16] *Id.* at 14-15.

[17] See *id.* at 7-13.

[18] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[19] *People v. Comboy*, 782 Phil. 187, 196 (2016).

[20] *Ramos v. People*, 803 Phil. 775, 783 (2017).

To recount, the prosecution built its case primarily on Jay Lourd's *res gestae* declaration that it was Gilbert who shot and killed him, *i.e.*, shortly after he was shot, he uttered to Jennifer, "*Panggay, you see if Gilbert is still there?*" Consequently, the RTC and the CA afforded the same with full evidentiary weight and treated it as direct evidence in convicting Gilbert of the crime charged. Under the Revised Rules on Evidence, a declaration is deemed part of the *res gestae* and admissible in evidence as an exception to the hearsay rule when the following requisites concur: (*a*) the principal act, the *res gestae*, is a startling occurrence; (*b*) the statements were made before the declarant had time to contrive or devise; and (*c*) the statements must concern the occurrence in question and its immediately attending circumstances.[21]

Tested against these considerations, the Court agrees with the findings of the RTC and the CA that Jay Lourd's utterance is admissible in evidence as it formed part of the *res gestae*, given that: (*a*) there was a startling occurrence, that is, he was mortally shot; (*b*) the declaration was spontaneously done without an opportunity to concoct or contrive a story, since it was done shortly after such shooting; and (*c*) it concerned the shooting in question and its immediately attending circumstances.

At this point, however, it is well to clarify that admissibility of evidence should not be equated with weight of evidence.[22] Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[23]

Here, while the Court agrees that Jay Lourd's utterance – "*Panggay, you see if Gilbert is still there?*" – should be

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[21] *People v. Sace*, 631 Phil. 335, 348 (2010).

[22] *Republic v. Galeno*, 803 Phil. 742, 750 (2017), citing *People v. Parungao*, 332 Phil. 917, 924 (1996).

[23] *Heirs of Sabanpan v. Comorposa*, 456 Phil. 161, 172 (2003).

admitted in evidence as part of the *res gestae*, the courts *a quo* erred in considering the same as direct evidence of the killing and that Gilbert was the perpetrator thereof. Plainly, Jay Lourd's utterance did not contain any positive and categorical identification of Gilbert as his assailant. While it may be argued that, from the utterance, Gilbert had something to do with his mortal wounds, such utterance is ultimately inconclusive evidence to prove that Gilbert was identified by Jay Lourd as his assailant. Faced with conflicting interpretations as to the nature of Jay Lourd's statement, the Court must be guided by the equipoise rule, which instructs that where inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[24] Applying this rule to the present case would properly lead the Court to conclude that Jay Lourd's utterance cannot be treated as direct evidence to positively and categorically implicate Gilbert of the crime charged.

Be that as it may, the Court is aware that in certain instances, the prosecution may still sustain a conviction despite the absence of direct evidence, provided that it is able to present circumstantial evidence that would establish an accused's guilt beyond reasonable doubt. Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. It is sufficient for conviction if: (*a*) there is more than one circumstance; (*b*) the facts from which the inferences are derived are proven; and (*c*) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. Stated differently, the test to determine whether or not the circumstantial evidence on

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[24] *People v. Librias*, 795 Phil. 334, 344 (2016).

record is sufficient to convict the accused is that the series of circumstances duly proven must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence.[25]

Applying these principles to the evidence that appear on record, the Court finds that the prosecution had likewise failed to present sufficient circumstantial evidence to establish Gilbert's guilt beyond reasonable doubt. Records show that aside from Jay Lourd's utterance, there is only one (1) other circumstance that could possibly point to Gilbert as the assailant, and that is their previous quarrel with one another.[26] However, the totality of these circumstances is insufficient to produce a moral certainty that it was indeed Gilbert who shot and killed Jay Lourd.

Finally, the Court also notes that the testimony of Allan who was with Jay Lourd when the latter was killed, further cast doubt on the real identity of the perpetrator. On cross-examination, Allan admitted that it was improbable to see who the shooter was and where the gunshot came from "because it was very dark." Moreover, he opined that he was not sure if Jay Lourd was able to see the shooter, as he already ran away. Pertinent portions of his testimony read:

> [Atty. John Martin Sese]: But of course, before that Mr. Witness you will agree with me that you heard a gun shot?
> [Allan]: Yes, sir.
>
> Q: And you will also agree with me Mr. Witness, that when you heard that gun shot, you look (sic) at the direction where that gunshot came from?
> A: **Yes sir, I looked back but I did not see anybody because it was very dark. "madulom-dulom"**
>
> x x x x x x x x x
>
> Q: Mr. Witness, you said that when you look (sic) back you cannot (sic) see anybody because it was very dark, correct?

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[25] *Atienza v. People*, 726 Phil. 570, 582-583 (2014).

[26] See TSN, February 14, 2014, p. 4; TSN, July 4, 2014, pp. 6-8; and TSN, June 26, 2015, pp. 7-10.

A: Yes, sir.

Q: Since it was very dark, Jay Lourd could not have (sic) also possibly seen the person who fired the gun, is that correct?
A: **I do not know if Jay Lourd was able to see <u>because I already ran away</u>.**

Q: But immediately after the firing of the gun Mr. Witness, you looked at the direction from where it came from, is that correct?
A: Yes, sir.

Q: **And personally, you did not see that any person was there because it was very dark?**
A: **<u>Yes, sir</u>.**[27] (emphases and underscoring supplied)

In conclusion, the Court finds that the prosecution failed to establish with proof beyond reasonable doubt the identity of Jay Lourd's killer. It is elementary that in every criminal prosecution, the identity of the offender, like the crime itself, must be established by proof beyond reasonable doubt. Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the criminal, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the criminal beyond reasonable doubt.[28] Accordingly, there being no evidence sufficient to support a conviction, the Court hereby acquits Gilbert of the crime charged.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 21, 2017 of the Court of Appeals in CA-G.R. CR H.C. No. 08103 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Gilbert Floresta *y* Selencio is **ACQUITTED** of the crime of Murder. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa, Reyes, J. Jr.,* and *Lazaro-Javier, JJ.,* concur.

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[27] TSN, August 8, 2014, pp. 7-8.

[28] See *People v. Caliso*, 675 Phil. 742, 752 (2011).

SECOND DIVISION

[G.R. No. 239584. June 17, 2019]

MATRON M. OHOMA (MATIORICO M. OHOMNA), *petitioner, vs.* **OFFICE OF THE MUNICIPAL LOCAL CIVIL REGISTRAR OF AGUINALDO, IFUGAO and REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE CIVIL REGISTRAR; GENERAL ADMINISTRATIVE ORDER NO. 1, SERIES OF 1983, AS AMENDED; UNDER THE ADMINISTRATIVE ORDER, THE BIRTH OF A CHILD IS REQUIRED TO BE REGISTERED WITHIN THIRTY (30) DAYS FROM THE TIME OF BIRTH IN THE OFFICE OF THE LOCAL CIVIL REGISTRAR OF THE CITY/ MUNICIPALITY WHERE IT OCCURRED, CONSEQUENTLY NO LATE REGISTRATION CAN BE MADE WHEN THE CHILD'S BIRTH HAS ALREADY BEEN LAWFULLY REGISTERED WITHIN THE REQUIRED THIRTY (30) DAY PERIOD; CASE AT BAR.—** Under Office of the Civil Registrar-General Administrative Order No. 1, Series of 1983, as amended, the birth of a child shall be registered within 30 days from the time of birth in the Office of the Local Civil Registrar of the city/municipality where it occurred. In this case, petitioner's birth had already been reported by his mother, Antonia Maingit (Antonia), and duly recorded in the civil register of the LCR-Aguinaldo on June 13, 1986. Thus, as correctly pointed out by the CA, there can be no valid late registration of petitioner's birth as the same had already been lawfully registered within 30 days from his birth under the *first* birth certificate. Consequently, it is the *second* birth certificate that should be declared void and correspondingly cancelled even if the entries therein are claimed to be the correct ones.

2. **REMEDIAL LAW; SPECIAL PROCEEDINGS; CORRECTION OF ENTRY IN THE CIVIL REGISTRY; AN ACTION FILED WHICH SEEKS TO CORRECT A SUPPOSEDLY**

MISSPELLED NAME PROPERLY FALLS UNDER THE RULE ON CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; CASE AT BAR.— Rule 108 implements judicial proceedings for the correction or cancellation of entries in the civil registry pursuant to Article 412 of the Civil Code. The role of the Court under Rule 108 is to ascertain the truth about the facts recorded therein. The action filed by petitioner before the RTC seeks to correct a supposedly misspelled name, and thus, properly falls under Rule 108. To correct simply means "to make or set aright; to remove the faults or error from." Considering that petitioner complied with the procedural requirements under Rule 108, the RTC had the jurisdiction to resolve the petition which included a prayer for "[o]ther reliefs just and equitable x x x." A general prayer for "other reliefs just and equitable" appearing on a petition enables the court to award reliefs supported by the complaint or other pleadings, by the facts admitted at the trial, and by the evidence adduced by the parties, even if these reliefs are not specifically prayed for in the complaint. Consequently, the CA erred in holding that petitioner has to refile another petition before the trial court could resolve his claim. Nonetheless, the Court finds that petitioner failed to sufficiently establish that his father's last name was Ohomna and not Ohoma through competent evidence, *i.e.*, the latter's birth certificate, the certificate of his marriage to petitioner's mother, Antonia, on January 30, 1986, or a government-issued identification card or record. On this score alone, the correction of petitioner's first and last names should be denied.

APPEARANCES OF COUNSEL

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

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 February 1, 2018 and the Resolution[3] dated May 16, 2018 of the Court of Appeals (CA) in CA-G.R. CV No. 105591, which annulled and set aside the Resolution[4] dated June 9, 2015 of the Regional Trial Court of Alfonso Lista, Ifugao, Branch 15 (RTC) in Special Proceedings Case No. 142-14.

The Facts

This case stemmed from a petition[5] filed by petitioner Matron M. Ohoma (Matiorico M. Ohomna; petitioner) before the RTC on March 26, 2014, seeking the cancellation of his Certificate of Live Birth with Registry Number 45-86[6] (*first* birth certificate). He averred that: (*a*) he was born on May 13, 1986 in Aguinaldo, Ifugao; (*b*) his birth was belatedly recorded with the Local Civil Registrar of Aguinaldo, Ifugao (LCR-Aguinaldo) on February 8, 2000 under Certificate of Live Birth with Registry Number 2000-24[7] (*second* birth certificate); (*c*) unknown to him, his birth had been previously registered with the LCR-Aguinaldo on June 13, 1986 under the *first* birth certificate; (*d*) the *first* birth certificate contained erroneous entries, *i.e.*, (*i*) his first name was erroneously recorded as Matron instead of Matiorico and (*ii*) his last name was erroneously recorded

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[1] *Rollo*, pp. 13-26.

[2] *Id*. at 32-39. Penned by Associate Justice Sesinando E. Villon with Associate Justices Danton Q. Bueser and Henri Jean Paul B. Inting (now a member of this Court), concurring.

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

[4] *Id*. at 60-63. Penned by Presiding Judge Rufus G. Malecdan.

[5] *Id*. at 43-44.

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

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

as Ohoma instead of Ohomna; (*e*) he has been using the first name Matiorico and the last name Ohomna, and has been known by such first and last names both in his public and private transactions; and (*f*) the *second* birth certificate reflects the true and correct data of petitioner; hence, must be the one retained.[8] The petition, which was docketed as Special Proceedings Case No. 142-14, likewise included a prayer for "[o]ther reliefs just and equitable x x x."[9]

On May 14, 2014, the RTC issued an Order[10] finding the petition to be sufficient in form and substance, and consequently, gave due course thereon by setting the case for hearing. It further directed that the concerned government offices be furnished a copy of the said Order and the same be published in a newspaper of general circulation for three (3) consecutive weeks at the expense of petitioner.[11]

During the scheduled hearing, petitioner established the jurisdictional requirement of publication, which was admitted by the Office of the Provincial Prosecutor of Ifugao, the office duly deputized to assist the Office of the Solicitor General (OSG) in the proceedings.[12] An order of general default was issued and petitioner was then allowed to present his evidence *ex-parte* before the Clerk of Court of the RTC. In support of his petition, petitioner presented his two (2) birth certificates, his Elementary School Permanent Record,[13] a copy of his Passport Application Form,[14] and his Professional Driver's License.[15]

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[8] *Id*. at 43-44.

[9] *Id*. at 44.

[10] *Id*. at 53-54. Issued by Presiding Judge Rufus G. Malecdan, Jr.

[11] See *id*.

[12] See *id*. at 34.

[13] *Id*. at 49.

[14] *Id*. at 50.

[15] *Id*. at 52.

The RTC Ruling

In a Resolution[16] dated June 9, 2015, the RTC granted the petition and ordered the LCR-Aguinaldo and the National Statistics Office (NSO; now Philippine Statistics Authority) to cancel petitioner's *first* birth certificate, finding that the same contains errors that caused confusion as to the identity of petitioner.[17]

Dissatisfied, the Republic of the Philippines appealed[18] to the CA, challenging the validity of petitioner's *second* birth certificate on the ground that his birth could no longer be the subject of a second or another registration as the same had already been validly registered. Assuming that his original or first registration contains several errors, such do not constitute valid grounds for the cancellation thereof, and the proper remedy is to file a petition for correction of entries in the first registration under Rule 108 of the Rules of Court (Rule 108).[19]

The CA Ruling

In a Decision[20] dated February 1, 2018, the CA annulled and set aside the RTC ruling.[21] It ruled that there can be no valid late registration of petitioner's birth considering that the same had already been lawfully registered with the LCR-Aguinaldo within thirty (30) days from the time of his birth,[22] as required under Office of the Civil Registrar-General Administrative Order No. 1, Series of 1983.[23] Thus, it held that

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[16] *Id.* at 60-63.

[17] See *id.* at 62-63.

[18] See Notice of Appeal dated July 2, 2015; *id.* at 66-68.

[19] See *id.* at 77.

[20] *Id.* at 32-39.

[21] *Id.* at 39.

[22] See *id.* at 37.

[23] As amended by Office of the Civil Registrar-General Administrative Order No. 1, Series of 1993 entitled "IMPLEMENTING RULES AND

the RTC should have upheld the validity of petitioner's *first* birth certificate instead of his *second* birth certificate, which should have been the.one nullified and cancelled. It declared that the proper remedy was to file a petition for correction of entries in petitioner's *first* birth certificate pursuant to Rule 108.[24]

Petitioner moved for reconsideration[25] which was denied in a Resolution[26] dated May 16, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA committed reversible error when it annulled and set aside the RTC ruling ordering the cancellation of petitioner's *first* birth certificate.

The Court's Ruling

Under Office of the Civil Registrar-General Administrative Order No. 1, Series of 1983, as amended, the birth of a child shall be registered within 30 days from the time of birth in the Office of the Local Civil Registrar of the city/municipality where it occurred. In this case, petitioner's birth had already been reported by his mother, Antonia Maingit (Antonia), and duly recorded in the civil register of the LCR-Aguinaldo on June 13, 1986. Thus, as correctly pointed out by the CA, there can be no valid late registration of petitioner's birth as the same had already been lawfully registered within 30 days from his birth under the *first* birth certificate.[27] Consequently, it is the *second* birth certificate that should be declared void and

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REGULATIONS OF ACT NO. 3753 AND OTHER LAWS ON CIVIL REGISTRATION," approved on December 18, 1992.

[24] See *rollo*, pp. 36-37.

[25] Dated February 26, 2018. *Id*. at 96-103.

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

[27] See *id*. at 37.

correspondingly cancelled even if the entries therein are claimed to be the correct ones.

However, while the petition specifically prayed for the cancellation of petitioner's *first* birth certificate and the retention of his *second* birth certificate, the ultimate objective was to correct the erroneous entries pertaining to petitioner's first and last names, *i.e.*, from Matron Ohoma to Matiorico Ohomna, as he claimed that people in the community know him by the latter name rather than the former.[28] Rule 108 implements judicial proceedings for the correction or cancellation of entries in the civil registry pursuant to Article 412[29] of the Civil Code. The role of the Court under Rule 108 is to ascertain the truth about the facts recorded therein.[30]

The action filed by petitioner before the RTC seeks to correct a supposedly misspelled name, and thus, properly falls under Rule 108. To correct simply means "to make or set aright; to remove the faults or error from."[31] Considering that petitioner complied with the procedural requirements[32] under Rule 108, the RTC had the jurisdiction to resolve the petition which included

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[28] See *id*. at 43.

[29] Article 412 provides:

Article 412. No entry in a civil register shall be changed or corrected, without a judicial order.

[30] See *Republic v. Mercadera*, 652 Phil. 195, 211 (2010).

[31] *Id*.

[32] Notably, the May 14, 2014 Order (*rollo*, pp. 53-54) setting the case for hearing was published for three (3) consecutive weeks in a newspaper of general circulation in the provinces of Region 2 (see *id*. at 55). Additionally, the LCR-Aguinaldo, the OSG, and the NSO were notified of the petition (see records, pp. 8-10 and 18-19, including dorsal portions). The OSG entered its appearance (see Notice of Appearance dated June 13, 2014; *id*. at 11-12) and deputized the Office of the Provincial Prosecutor of Lagawe, Ifugao for purposes of the proceedings before the RTC (see *id*. at 13). Despite publication and notice to the concerned offices, there was no opposition filed against the petition before the RTC (see *id*. at 19).

a prayer for "[o]ther reliefs just and equitable x x x."[33] A general prayer for "other reliefs just and equitable" appearing on a petition enables the court to award reliefs supported by the complaint or other pleadings, by the facts admitted at the trial, and by the evidence adduced by the parties, even if these reliefs are not specifically prayed for in the complaint.[34] Consequently, the CA erred in holding that petitioner has to refile another petition before the trial court could resolve his claim.

Nonetheless, the Court finds that petitioner failed to sufficiently establish that his father's last name was Ohomna and not Ohoma through competent evidence, *i.e.*, the latter's birth certificate, the certificate of his marriage to petitioner's mother, Antonia, on January 30, 1986, or a government-issued identification card or record. On this score alone, the correction of petitioner's first and last names should be denied. While the first name may be freely selected by the parents for the child, the last name to which the child is entitled is fixed by law.[35] Although petitioner's Elementary School Permanent Record[36] and Professional Driver's License[37] identify him as Matiorico Ohomna, the same are insufficient to grant the petition. It bears stressing that the real name of a person is that given him in the Civil Register, not the name by which he was baptized in his Church or by which he was known in the community, or which he has adopted.[38]

In addition, the Court notes that Antonia was the informant in both instances and the one who signed both birth certificates. However, a perusal of Antonia's signatures on petitioner's two

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[33] See *rollo*, p. 44.

[34] See *Ilusorio v. Ilusorio*, G.R. No. 210475, April 11, 2018.

[35] See *Republic v. CA*, G.R. No. 97906, May 21, 1992, 209 SCRA 189, 194.

[36] *Rollo*, p. 49.

[37] *Id.* at 52.

[38] See *Chomi v. Local Civil Registrar of Manila*, 99 Phil. 1004, 1007-1008 (1956).

(2) birth certificates shows that the same are materially different from each other. Further, petitioner failed to show any plausible explanation why she signed as Antonia Ohoma[39] on the first birth certificate and as Antonia Ohomna[40] on the second birth certificate.

WHEREFORE, the petition is **DENIED**. The Decision dated February 1, 2018 and the Resolution dated May 16, 2018 of the Court of Appeals in CA-G.R. CV No. 105591 are hereby **SET ASIDE**. A new judgment is entered **ORDERING** the Local Civil Registrar of Aguinaldo, Ifugao and the Philippine Statistics Authority to cancel petitioner Matron M. Ohoma's Certificate of Live Birth with Registry Number 2000-24.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa, Reyes, J. Jr.,* and *Lazaro-Javier, JJ.,* concur.

SECOND DIVISION

[G.R. No. 241857. June 17, 2019]

CAREER PHILS. SHIPMANAGEMENT, INC., CMA SHIPS UK LIMITED, and SAMPAGUITA D. MARAVE, *petitioners, vs.* **JOHN FREDERICK T. TIQUIO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION (NLRC);

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[39] See *rollo*, pp. 47-48.

[40] See *id.* at 45-46.

IN LABOR CASES, GRAVE ABUSE OF DISCRETION MAY BE ASCRIBED TO THE NLRC WHEN ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, WHICH REFERS TO THE AMOUNT OF RELEVANT EVIDENCE THAT A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION.— Grave abuse of discretion, amounting to lack or excess of jurisdiction, has been defined as the capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare, and accordingly, dismiss the petition.

2. ID.; LABOR STANDARDS; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; A SEAFARER MAY HAVE BASIS TO PURSUE AN ACTION FOR TOTAL AND PERMANENT DISABILITY IF ANY OF THE ENUMERATED CONDITIONS ARE PRESENT.— It is basic that the entitlement of overseas seafarers to disability benefits is a matter governed, not only by medical findings, but also by law and contract. By law, the pertinent statutory provisions are Articles 197 to 199 (formerly Articles 191 to 193) of the Labor Code, as amended, in relation to Section 2 (a), Rule X of the Amended Rules on Employees Compensation. By contract, material are: (*a*) the POEA-SEC, which is a standard set of provisions that is deemed incorporated in every seafarer's contract of employment; (*b*) the Collective Bargaining Agreement (CBA), if any; and (*c*) the employment agreement between the seafarer and his employer. x x x In *C.F. Sharp Crew Management, Inc. v. Taok*, cited in *Veritas Maritime Corporation v. Gepanaga, Jr.* (*Veritas*), the Court has held that a seafarer may

have basis to pursue an action for total and permanent disability benefits, if any of the following conditions are present: (a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification issued by the company designated physician; (c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B (3) of the POEA-SEC are of a contrary opinion; (d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; **(f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA- SEC but his doctor-of-choice and the third doctor selected under Section 20-B (3) of the POEA-SEC found otherwise and declared him unfit to work;** (g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.

3. ID.; ID.; ID.; ID.; THE SEAFARER'S NON-COMPLIANCE WITH THE MANDATED CONFLICT-RESOLUTION PROCEDURE UNDER THE POEA-SEC MILITATES AGAINST HIS CLAIMS, AND RESULTS IN THE AFFIRMANCE OF THE FINDINGS AND ASSESSMENT OF THE COMPANY DESIGNATED PHYSICIAN; CASE AT BAR.— In the recent case of *Gargallo v. Dohle Seafront Crewing (Manila), Inc.*, citing *Veritas*, the Court reiterated the well-settled rule that the seafarer's non-compliance with the mandated conflict-resolution procedure under the POEA-SEC militates against his claims, and results in the affirmance of the findings and

assessment of the company-designated physician, x x x Also, in *Ayungo v. Beamko Shipmanagement Corporation,* the Court considered as prematurely filed the complaint for disability benefits sans prior referral of the conflicting findings of the CDP and the seafarer's physician to a third doctor for final assessment, x x x Evidently, Tiquio's failure to observe the conflict-resolution procedure under the POEA-SEC provided sufficient basis for the denial of his claim for total and permanent disability benefits. In fact, the Court observes that when he filed the complaint on September 1, 2014, Tiquio had yet to even present the contrary opinion from a doctor of his choice. It was only on December 16, 2014, when he filed his Rejoinder (to [Respondents'] Reply), that Tiquio presented the conflicting medical certificate which, interestingly, was obtained only on December 3, 2014. Notably, it bears pointing out that nowhere in said medical certificate was it shown that he consulted the independent doctor prior to the filing of the complaint, as claimed by him. Neither was it shown that he informed petitioners of his consultation with his personal doctor regarding his illness and of the latter's contradictory assessment at any time prior to instituting the disability benefits claim, which events could have triggered the conflict-resolution mechanism of the POEA-SEC. To reiterate, jurisprudence states that the seafarer's non-compliance with the mandated conflict-resolution procedure under the POEA-SEC militates against his claims, thus resulting in the affirmance of the findings and assessment of the company-designated physician, and effectively renders the complaint premature.

4. ID.; ID.; ID.; THE LEGAL PRESUMPTION OF WORK RELATEDNESS OF A NON-LISTED ILLNESS CAN BE OVERTURNED ONLY BY CONTRARY SUBSTANTIAL EVIDENCE, NONETHELESS, IN ALL INSTANCES, THE SEAFARER MUST PROVE COMPLIANCE WITH THE CONDITIONS FOR COMPENSABILITY, WHETHER OR NOT THE WORK-RELATEDNESS OF HIS ILLNESS IS DISPUTED BY THE EMPLOYER.— For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1. The seafarer's work must involve the risks described herein: 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under

> such other factors necessary to contract it; and 4. There was no notorious negligence on the part of the seafarer. As the Court held in *Romana v. Magsaysay Maritime Corporation* (*Romana*) in contrast with the matter of work-relatedness which is indeed presumed, "no legal presumption of compensability is accorded in favor of the seafarer x x x [and thus], x x x he bears the burden of proving that these conditions are met." x x x To be sure, jurisprudence settles that the legal presumption of work-relatedness of a non-listed illness can be overturned only by contrary substantial evidence as defined above. Nonetheless, it must be stressed that in all instances, the seafarer must prove compliance with the conditions for compensability, whether or not the work-relatedness of his illness is disputed by the employer.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Linsangan Linsangan & Linsangan Law Offices 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 February 7, 2018 and the Resolution[3] dated August 30, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 145518, which reversed and set aside the Decision[4] dated

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[1] *Rollo*, pp. 31-58.

[2] *Id.* at 65-77. Penned by Associate Justice Marie Christine Azcarraga-Jacob with Associate Justices Mariflor P. Punzalan Castillo and Samuel H. Gaerlan, concurring.

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

[4] CA *rollo*, pp. 30-42. Penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Gina F. Cenit-Escoto and Romeo L. Go, concurring.

November 26, 2015 and the Resolution[5] dated February 29, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC OFW (M)-06-000494-15 and accordingly, reinstated the Decision[6] dated April 30, 2015 of the Labor Arbiter (LA) in NLRC-NCR-Case No. 09-10777-14 granting respondent John Frederick T. Tiquio's (Tiquio) claim for total and permanent disability benefits under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC),[7] as well as attorney's fees.

The Facts

On November 14, 2012, petitioners Career Phils.[8] Shipmanagement, Inc., acting on behalf of CMA Ships UK Limited (petitioners), hired Tiquio as ordinary seaman under a nine (9)-month employment contract.[9] He embarked on the vessel "CMA CGM HYDRA" on November 16, 2012. On June 17, 2013, while on board the vessel *en route* to France, Tiquio suffered high fever, nausea, and vomiting. Despite medications, his condition worsened.[10] Thus, he was sent to an offshore clinic in France on June 28, 2013, where he was diagnosed with hyperthyroidism,[11] and was recommended for repatriation for proper medical treatrnent.[12] As a result, Tiquio was medically repatriated on June 29, 2013 and was immediately referred to

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[5] *Id*. at 63-64.

[6] *Id.* at 43-52. Penned by Labor Arbiter Rosalina Maria O. Apita-Battung.

[7] POEA Memorandum Circular No. 10, Series of 2010, entitled "AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS" dated October 26, 2010.

[8] Spelled as "Philippines" in some parts of the records.

[9] See Contract of Employment; CA *rollo*, p. 149. Prior thereto, Tiquio underwent a Pre-Employment Medical Examination wherein he was declared "fit for sea duty" (see Seafarer's Medical Examination Certificate dated September 3, 2012; *id*. at 87). See also *rollo*, p. 66.

[10] To note, Tiquio was given paracetamol (see *rollo*, p. 66).

[11] See various medical records; CA *rollo*, pp. 150-155.

[12] See *rollo*, p. 66.

the Associated Marine Officers' and Seamen's Union of the Philippines Seamen's Hospital, where he was diagnosed by Dr. Jay S. Fonte (Dr. Fonte), the company-designated physician (CDP), with hyperthyroidism secondary to Graves' Disease.[13] Tiquio thereafter underwent medical treatment for a year.[14] On June 23, 2014,[15] Dr. Fonte issued a Medical Certification[16] stating that Tiquio's status post radioactive iodine therapy showed persistence of symptoms, and thus, referred the latter for repeat radioactive iodine therapy. Additionally, Dr. Fonte reiterated that Tiquio is unfit for work and that his illness is "NOT Work Oriented."[17]

Subsequently, Tiquio filed a complaint[18] on **September 1, 2014** for disability benefits, reimbursement of medical and hospital expenses, moral and exemplary damages, as well as attorney's fees. He averred that since the onset of his illness, which occurred during the term of his contract, he was not able to perform any gainful occupation or earn wages in the same kind of work that he was trained or accustomed to perform.[19] He added that he was entitled to reimbursement of the medical and transportation expenses he incurred from June 26, 2013 amounting to One Hundred Twenty Thousand Pesos (₱120,000.00) as petitioners stopped giving him medical assistance,[20] as well as

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[13] "Grave's Disease" in some parts of the records. See various Medical Certifications; CA *rollo*, pp. 156-163. See also *rollo*, p. 67.

[14] See CA *rollo*, pp. 91-108 and 156-163.

[15] Stated as "26 June 2014" in the CA Decision (see *rollo*, p. 67). Note that the June 26, 2014 Medical Certification was signed by a certain "Dr. Eddie A. Lim," and not by Dr. Fonte (see CA *rollo*, pp. 107-108); Dr. Fonte's Medical Certification was dated June 23, 2014 (see CA *rollo*, pp. 105-106).

[16] CA *rollo*, pp.105-106.

[17] See various Medical Certifications; *id*. at 91-106.

[18] *Id*. at 65-66. See also Tiquio's Position Paper dated October 20, 2014; *id*. at 71-84.

[19] See *rollo*, p. 16 and CA *rollo*, pp. 32 and 77.

[20] See *rollo*, p. 16 and CA *rollo*, pp. 32 and 81.

moral and exemplary damages since petitioners acted in bad faith when they refused to honor their contractual obligations to pay him his benefits.[21] Lastly, he claimed that he consulted an independent doctor who declared him unfit for sea duty and that his illness is work-related,[22] but without presenting any medical certificate supporting these claims.[23]

In their defense,[24] petitioners argued that Tiquio's Graves' Disease is an autoimmune disease affecting the thyroid which is, therefore, not work-oriented as certified to by Dr. Fonte.[25] They added that contrary to his claim, Tiquio was given radioactive iodine treatment and medications for his illness and was paid his sickness allowance.[26] Finally, they argued that the immediate filing of the complaint was a breach of his contractual obligation to have the alleged conflicting assessments of the CDP and his own physician – whose opinion was not supported by evidence – be assessed by a third doctor for a final determination.[27]

Thereafter, or on **December 16, 2014**, Tiquio submitted a Rejoinder[28] attaching thereto the medical certificate[29] dated December 3, 2014, issued by Dr. Amado M. San Luis (Dr. San Luis), a neurosurgeon at the University of the East Ramon Magsaysay Memorial Hospital, which stated that Tiquio is suffering from Graves' Disease and declared that he is

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[21] See *rollo*, p. 16 and CA *rollo*, pp. 32 and 82.

[22] See *rollo*, pp. 15-16 and CA *rollo*, p. 74.

[23] See CA *rollo*, pp. 74 and 142.

[24] See petitioners' Position Paper dated October 27, 2014; CA *rollo*, pp. 124-145. See also *rollo*, p. 17 and CA *rollo*, pp. 32-33.

[25] See *rollo*, p. 17. See also petitioners' Position Paper dated October 27, 2014, and Dr. Fonte's Affidavit dated October 16, 2014; CA *rollo*, pp. 129-131 and 170-171, respectively.

[26] See *rollo*, p. 17 and CA *rollo*, p. 32. See also the Final Wages Account and Cash Vouchers; CA *rollo*, pp. 164-169.

[27] CA *rollo*, pp. 33 and 139-142. See also *rollo*, p. 17.

[28] See Rejoinder (to [Petitioners'] Reply) dated December 8, 2014; CA *rollo*, pp. 117-121.

[29] CA *rollo*, pp. 122-123. Dr. San Luis diagnosed Tiquio with Graves' Disease "[i]nduced by physical stress and mental stress related to labor at

permanently incapacitated to work as an ordinary seaman and his illness is work-related.

The LA Ruling

In a Decision[30] dated April 30, 2015, the LA granted Tiquio's complaint, and accordingly, ordered petitioners to pay Tiquio the amount equivalent to US$60,000.00, representing permanent disability benefits plus ten percent (10%) attorney's fees, while the rest of his claims were denied for lack of basis.[31] The LA found Tiquio's Graves' Disease/hyperthyroidism to be work-related, and thus, compensable pursuant to the Court's declaration in *Magsaysay Maritime Services v. Laurel* (*Magsaysay*).[32] Additionally, the LA ruled that the nature of Tiquio's work as ordinary seaman, which exposed him to constant physical and psychological stress, precipitated his hyperthyroidism, and that the maximum 240-day medical treatment period expired with no declaration from the CDP that he was already fit for sea duty.[33] Finally, the LA held that the procedure for the appointment of a third doctor is merely directory, not mandatory, the absence of which will not preclude Tiquio's claim.[34]

Unsatisfied with the LA ruling, petitioners filed an appeal[35] before the NLRC.

The NLRC Ruling

In a Decision[36] dated November 26, 2015, the NLRC set aside the LA's Decision, and instead dismissed the complaint.

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work" and "[p]ossibly caused by paint organic solvents and other chemicals he was exposed to [at] work." (See also *rollo*, pp. 67-68).

[30] CA *rollo*, pp. 43-52.

[31] See *id*. at 52.

[32] 707 Phil. 210 (2013). See CA *rollo*, pp. 46-47.

[33] See *CA rollo*, pp. 47-49.

[34] See *id.* at 50-51.

[35] See Notice of Appeal with Memorandum of Appeal dated May 26, 2015; *id*. at 183-201.

[36] *Id*. at 30-42.

It did not give credence to the medical certificate issued by Dr. San Luis not only because it merely summarized the history of Tiquio's illness and his brief physical and neurological examination, but also because it was presented by Tiquio only three (3) months after he filed the complaint.[37] As such, it held that at the time of the complaint's filing, Tiquio had no evidence contradicting the CDP's assessment and findings.[38] In this relation, the NLRC further observed that Tiquio failed to comply with the conflict-resolution procedure under Section 20 (A) (3)[39]

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[37] See *id.* at 38-39.

[38] *Id*. at 39.

[39] 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:

x x x x x x x x x

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,

of the POEA-SEC.[40] Thus, it ruled that Tiquio's complaint was prematurely filed.[41]

Aggrieved, Tiquio moved for reconsideration,[42] which the NLRC denied in a Resolution[43] dated February 29, 2016. Thus, he filed a petition for *certiorari*[44] before the CA.

The CA Ruling

In a Decision[45] dated February 7, 2018, the CA granted Tiquio's *certiorari* petition, and accordingly, reinstated the LA's Decision. The CA agreed with the LA that Tiquio suffered a work-related illness on board the vessel, and that the latter had complied with the four (4) requisites provided under Section 32-A[46] of the POEA-SEC, thus, rendering petitioners liable for disability compensation.[47]

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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.

[40] See CA *rollo*, p. 39.

[41] See *id.*

[42] See Tiquio's motion for reconsideration dated December 15, 2015; *id*. at 53-62.

[43] *Id*. at 63.

[44] Dated May 2, 2016. *Id*. at 3-26.

[45] *Rollo*, pp. 65-77.

[46] SECTION 32-A OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;

Undaunted, petitioners sought reconsideration[48] which the CA denied in a Resolution[49] dated August 30, 2018; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly declared Tiquio to be entitled to total and permanent disability benefits.

The Court's Ruling

The petition is meritorious.

At the outset, the Court stresses that the review in this Rule 45 petition of the CA's ruling in a labor case via Rule 65 petition filed by Tiquio with that court carries a distinct approach. In a Rule 45 review, the Court examines the correctness of the CA's decision, which is limited to questions of law,[50] in contrast with the review of jurisdictional errors under Rule 65.[51] In ruling for legal correctness, the Court views the CA's decision in the same context that the petition for *certiorari* was presented to the CA,[52] that is, from the prism of whether the CA correctly

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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.

x x x x x x x x x

[47] See *rollo*, pp. 73-76.

[48] See petitioners' motion for reconsideration dated March 8, 2018; *id.* at 80-94.

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

[50] See *Sutherland Global Services (Philippines), Inc. v. Labrador*, 730 Phil. 295, 304 (2014); and *Aluag v. BIR Multi-Purpose Cooperative*, G.R. No. 228449, December 6, 2017.

[51] See *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 706-707 (2009); *Sutherland Global Services (Philippines), Inc. v. Labrador*, *id.*; and *Aluag v. BIR Multi-Purpose Cooperative*, *id.*

[52] *Sutherland Global Services (Philippines), Inc. v. Labrador*, *id.*; and *Aluag v. BIR Multi-Purpose Cooperative*, *id.*

determined the presence or absence of grave abuse of discretion in the NLRC's decision.[53]

Grave abuse of discretion, amounting to lack or excess of jurisdiction, has been defined as the capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[54] In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion.[55] Thus, if the NLRC ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare, and accordingly, dismiss the petition.[56] With these standards in mind, the Court finds that the CA erroneously ascribed grave abuse of discretion on the part of the NLRC in dismissing Tiquio's claim for disability benefits.

It is basic that the entitlement of overseas seafarers to disability benefits is a matter governed, not only by medical findings, but also by law and contract.[57] By law, the pertinent statutory

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[53] See *Montoya v. Transmed Manila Corporation*, *supra* note 51, at 707; *Sutherland Global Services (Philippines), Inc. v. Labrador*, *id*.; and *Aluag v. BIR Multi-Purpose Cooperative*, *id*.

[54] *Bani Rural Bank, Inc. v. De Guzman*, 721 Phil. 84, 99 (2013). See also *Philippine Pizza, Inc. v. Cayetano*, G.R. No. 230030, August 29, 2018.

[55] See *Philippine Pizza, Inc. v. Cayetano*, *id*., citing *Quebral v. Angbus Construction, Inc.,* G.R. No. 221897, November 7, 2016, 807 SCRA 176, 184. See also *Aluag v. BIR Multi-Purpose Cooperative*, *supra* note 50, citing *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, G.R. No. 184262, April 24, 2017, 824 SCRA 52, 61.

[56] *Philippine Pizza, Inc. v. Cayetano*, *id*., citations omitted; and *Aluag v. BIR Multi-Purpose Cooperative*, *id.*, citations omitted.

[57] See *Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 385 (2014).

provisions are Articles 197 to 199[58] (formerly Articles 191 to 193) of the Labor Code, as amended,[59] in relation to Section 2 (a), Rule X[60] of the Amended Rules on Employees

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[58] ART. 197. [191] Temporary Total Disability – (a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: the daily income benefit shall not be less than Ten Pesos nor more than Ninety Pesos, nor paid for a continuous period longer than one hundred twenty days, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness.

x x x x x x x x x

ART. 198. [192] Permanent Total Disability – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: *Provided*, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

x x x x x x x x x

(c) the following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

x x x x x x x x x

ART. 199. [193] Permanent Partial Disability – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall, for each month not exceeding the period designated herein, be paid by the System during such a disability an income benefit for permanent total disability.

x x x x x x (Emphases and underscoring supplied)

[59] Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[60] Rule X

Temporary Total Disability

Compensation.[61] By contract, material are: (*a*) the POEA-SEC, which is a standard set of provisions that is deemed incorporated in every seafarer's contract of employment; (*b*) the Collective Bargaining Agreement (CBA), if any; and (*c*) the employment agreement between the seafarer and his employer.[62] Section 20 (A) of the 2010 POEA-SEC, which is the rule applicable to this case since Tiquio was employed in 2012, governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board sea-going vessels during the term of his employment contract, to wit:

> SEC. 20. COMPENSATION AND BENEFITS
>
> A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:
>
> x x x x x x x x x
>
> 2. x x x [I]f 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.

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x x x x x x x x x

Section 2. *Period of entitlement* – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

x x x x x x x x x

[61] (June 1, 1987).

[62] See *Gargallo v. Dohle Seafront Crewing (Manila), Inc.*, 769 Phil. 915, 926-927 (2015).

> 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. x x x
>
> x x x x x x x x x
>
> 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.**
>
> x x x (Emphasis supplied)

In *C.F. Sharp Crew Management, Inc. v. Taok*,[63] cited in V*eritas Maritime Corporation v. Gepanaga, Jr.* (*Veritas*),[64] the Court has held that a seafarer may have basis to pursue an action for total and permanent disability benefits, if any of the following conditions are present:

> (a) The company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no

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[63] 691 Phil. 521 (2012).

[64] 753 Phil. 308 (2015).

indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification issued by the company designated physician;

(c) The company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B (3) of the POEA-SEC are of a contrary opinion;

(d) The company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

(e) The company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

(f) The company-designated physician determined that his medical condition is not compensable or work-related under the POEA- SEC but his doctor-of-choice and the third doctor selected under Section 20-B (3) of the POEA-SEC found otherwise and declared him unfit to work;

(g) The company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

(h) The company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of said periods.[65] (Emphasis and underscoring supplied)

In this case, it is undisputed that Tiquio filed the complaint without the assessment of a third doctor reconciling the apparent conflicting assessments of his personal doctor and of the CDP. Clearly, he failed to comply with the prescribed procedure under

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[65] *C.F. Sharp Crew Management, Inc. v. Taok*, *supra* note 63, at 538-539, as cited in *Veritas*, *id*. at 320-321.

the above-cited Section 20 (A) (3) of the 2010 POEA-SEC on the joint appointment by the parties of a third doctor, in case the seafarer's personal doctor disagrees with the CDP's assessment. In the recent case of *Gargallo v. Dohle Seafront Crewing (Manila), Inc.*,[66] citing *Veritas*, the Court reiterated the well-settled rule that the seafarer's non-compliance with the mandated conflict-resolution procedure under the POEA-SEC militates against his claims, and results in the affirmance of the findings and assessment of the company-designated physician, thus:

> The [POEA-SEC] and the CBA clearly provide that when a seafarer sustains a work-related illness or injury while on board the vessel, his fitness or unfitness for work shall be determined by the company-designated physician. If the physician appointed by the seafarer disagrees with the company-designated physician's assessment, the opinion of a third doctor may be agreed jointly between the employer and the seafarer to be the decision final and binding on them.
>
> Thus, while petitioner had the right to seek a second and even a third opinion, the final determination of whose decision must prevail must be done in accordance with an agreed procedure. Unfortunately, the petitioner did not avail of this procedure; hence, we have no option but to declare that the company-designated doctor's certification is the final determination that must prevail.[67]

Also, in *Ayungo v. Beamko Shipmanagement Corporation*[68] the Court considered as prematurely filed the complaint for disability benefits sans prior referral of the conflicting findings of the CDP and the seafarer's physician to a third doctor for final assessment, thus:

> In this case, the findings of Beamko and Eagle Maritime's physicians that Ayungo's illnesses were not work-related were, in turn, controverted by Ayungo's personal doctor stating otherwise. **In light**

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[66] *Supra* note 62.

[67] *Id*. at 931, citing *Veritas*, *supra* note 64, at 320, further citing *Vergara v. Hammonia Maritime Services, Inc.,* 588 Phil. 895, 914 (2008).

[68] 728 Phil. 244 (2014).

of these contrasting diagnoses, Ayungo prematurely filed his complaint before the NLRC without any regard to the conflict-resolution procedure under Section 20(B)(3) of the 2000 POEA-SEC. Thus, consistent with *Philippine Hammonia*, the Court is inclined to uphold the opinion of Beamko and Eagle Maritime's physicians that Ayungo's illnesses were pre-existing and not work-related, hence, non-compensable.[69] (Emphasis supplied)

Evidently, Tiquio's failure to observe the conflict-resolution procedure under the POEA-SEC provided sufficient basis for the denial of his claim for total and permanent disability benefits. In fact, the Court observes that when he filed the complaint on September 1, 2014, Tiquio had yet to even present the contrary opinion from a doctor of his choice. It was only on December 16, 2014,[70] when he filed his Rejoinder (to [Respondents'] Reply), that Tiquio presented the conflicting medical certificate[71] which, interestingly, was obtained only on December 3, 2014. Notably, it bears pointing out that nowhere in said medical certificate was it shown that he consulted the independent doctor prior to the filing of the complaint, as claimed by him. Neither was it shown that he informed petitioners of his consultation with his personal doctor regarding his illness and of the latter's contradictory assessment at any time prior to instituting the disability benefits claim, which events could have triggered the conflict-resolution mechanism of the POEA-SEC.

Moreover, it deserves pointing out that, contrary to Tiquio's claim that petitioners have already waived their right to assert compliance with the conflict-resolution procedure,[72] records do not disclose otherwise. On the contrary, records show that petitioners manifested their willingness to refer the matter to

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[69] *Id.* at 256.

[70] See Tiquio's Rejoinder (to [Petitioners'] Reply) dated December 8, 2014, stamped "received" by the Office of the LA on December 16, 2014 (see CA *rollo*, p. 117), attaching therewith the December 3, 2014 medical certificate of Dr. San Luis (*id.* at 122-123).

[71] See *id.* at 122-123.

[72] See comment dated January 3, 2019, *rollo*, p. 105.

a third doctor during the mandatory conferences before the LA.[73] Considering, however, that Tiquio has yet to present a second doctor's opinion, there was consequently no valid contest to the CDP's opinion that could have been referred to the third doctor for final assessment. To reiterate, jurisprudence states that the seafarer's non-compliance with the mandated conflict-resolution procedure under the POEA-SEC militates against his claims, thus resulting in the affirmance of the findings and assessment of the company-designated physician,[74] and effectively renders the complaint premature.[75]

Notably, the Court is aware of the rule that precludes application of said conflict-resolution mechanism in the absence of a final and definitive assessment issued by the CDP within the prescribed periods, which would, in such situation, render the seafarer's disability grading, by operation of law, total and permanent. Nonetheless, said exception to the third doctor rule does not apply in this case, considering that as of July 1, 2013,[76] the CDP had already diagnosed Tiquio to be suffering from Graves' Disease, which the CDP declared as "NOT Work Oriented," and on October 30, 2013, or well within the 120-day period, had finally assessed Tiquio as unfit for sea duty whose illness was "NOT Work Oriented" and would require "lifetime treatment with hormone replacement," for which no "[d]isability [grading is] x x x applicable."[77] The CDP's assessment remained consistent throughout Tiquio's treatment, which petitioners generously continued to provide him with notwithstanding the not work-related and non-compensable findings of the CDP.[78]

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[73] See CA *rollo*, p. 142.

[74] See *Gargallo v. Dohle Seafront Crewing (Manila), Inc.*, *supra* note 62, at 930 citing *Veritas*, *supra* note 64, at 317-318.

[75] See *Ayungo v. Beamko Shipmanagement Corporation*, *supra* note 68.

[76] See medical certification; CA *rollo*, pp. 156-157.

[77] See medical certification; *id*. at 160-161.

[78] Petitioners argued that they simply continued respondent John Frederick T. Tiquio's treatment out of liberality, notwithstanding the "not work-

In any event, the Court finds no reason to disturb said findings, considering that Tiquio failed to prove satisfaction of the four (4) conditions for compensability under Section 32-A of the 2010 POEA-SEC, *viz.*:

> SECTION 32-A. OCCUPATIONAL DISEASES
>
> For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:
>
> 1. The seafarer's work must involve the risks described herein:
> 2. The disease was contracted as a result of the seafarer's exposure to the described risks;
> 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
> 4. There was no notorious negligence on the part of the seafarer.

As the Court held in *Romana v. Magsaysay Maritime Corporation* (*Romana*)[79] in contrast with the matter of work-relatedness which is indeed presumed, "no legal presumption of compensability is accorded in favor of the seafarer x x x [and thus], x x x he bears the burden of proving that these conditions are met."[80] Citing *Licayan v. Seacrest Maritime Management, Inc.*,[81] *Romana* more elaborately stated:

> [T]he disputable presumption does not signify an automatic grant of compensation and/or benefits claim, and that while the law disputably presumes an illness not found in Section 32-A to be also

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related" and "disability not applicable" assessment of the CDP in the following instances: (1) Position Paper (for the [Petitioners]) dated October 27, 2014 filed before the LA (see *id*. at 143); (2) Notice of Appeal with Memorandum of Appeal dated May 26, 2015 filed before the NLRC (see *id*. at 189 and 199); (3) Comment to the Motion for Reconsideration of the NLRC's November 26, 2015 Decision dated January 5, 2016 (see *id*. at 276 and 279); and (4) Comment to the Petition for *Certiorari* with Manifestation of Refusal to Mediate before the CA dated July 5, 2016 (see *id*. at 299 and 302).

[79] G.R. No. 192442, August 9, 2017, 836 SCRA 151.

[80] *Id*. at 162.

[81] 773 Phil. 648, 658 (2015).

work-related, the seafarer/claimant nonetheless is burdened to present substantial evidence that his *work conditions caused or at least increased the risk of contracting the disease* and only a reasonable proof of work-connection, not direct causal relation is required **to establish its compensability.**"[82] (Emphasis and underscoring in the original)

To be sure, jurisprudence settles that the legal presumption of work-relatedness of a non-listed illness can be overturned only by contrary substantial evidence as defined above.[83] Nonetheless, it must be stressed that in all instances, the seafarer must prove compliance with the conditions for compensability, whether or not the work-relatedness of his illness is disputed by the employer.[84] As explained in *Romana*:

On the one hand, when an employer attempts to discharge the burden of disputing the presumption of work-relatedness (*i.e.*, by either claiming that the illness is preexisting or, even if preexisting, that the risk of contracting or aggravating the same has nothing do with his work), the burden of evidence now shifts to the seafarer to prove otherwise (*i.e.*, that the illness was not preexisting, or even if preexisting, that his work affected the risk of contracting or aggravating the illness). In so doing, the seafarer *effectively* discharges his own burden of proving compliance with the first three (3) conditions of compensability under Section 32-A of the 2000 POEA-SEC, *i.e.*, that (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; and (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it. Thus, when the presumption of work-relatedness is contested by the employer, the factors which the seafarer needs to prove to rebut the employer's contestation would **necessarily overlap** with some

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[82] *Romana*, *supra* note 79, at 163.

[83] Substantial Evidence is traditionally defined as "such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion." See *id*. at 161, citing *Racelis v. United Philippine Lines, Inc.*, 746 Phil. 758, 769 (2014) and *David v. OSG Shipmanagement Manila, Inc.*, 695 Phil. 906, 921 (2012).

[84] See *Romana*, *supra* note 79, at 168.

of the conditions which the seafarer needs to prove to establish the compensability of his illness and the resulting disability. **In this regard, the seafarer, therefore, addresses the refutation of the employer against the work-relatedness of his illness and, at the same time, discharges his burden of proving compliance with certain conditions of compensability.**

On the other hand, when an employer does not attempt to discharge the burden of disputing the presumption of work-relatedness, the seafarer must still discharge his own burden of proving compliance with the conditions of compensability, which does not only include the three (3) conditions above-mentioned, but also, the distinct fourth condition, *i.e.*, that there was no notorious negligence on the part of the seafarer. Thereafter, the burden of evidence shifts to the employer to now disprove the veracity of the information presented by the seafarer. The employer may also raise any other affirmative defense which may preclude compensation, such as concealment under Section 20 (E) of the 2000 POEA-SEC or failure to comply with the third-doctor referral provision under Section 20 (B) (3) of the same Contract.

Subsequently, if the work-relatedness of the seafarer's illness is not successfully disputed by the employer, and the seafarer is then able to establish compliance with the conditions of compensability, the matter now shifts to a determination of the nature and, in turn, the amount of disability benefits to be paid to the seafarer.[85] (Emphasis, italics, and underscoring in the original)

In this case, Tiquio's illness, hyperthyroidism secondary to Graves' Disease, is an autoimmune disorder which causes over activity of the thyroid gland leading to the production and release of excess amounts of thyroid hormone into the blood.[86] Medical

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[85] *Id*. at 168-170.

[86] Douglas S. Ross, *et al.*, 2016 American Thyroid Association Guidelines for Diagnosis and Management of Hyperthyroidism and Other Causes of Thyrotoxicosis, p. 1347 < https://www.liebertpub.com/doi/pdfplus/10.1089/thy.2016.0229> (visited May 27, 2019); and Rebecca S. Bahn, MD, *et al.*, Hyperthyroidism and Other Causes of Thyrotoxicosis: Management Guidelines of the American Thyroid Association and American Association of Clinical Endocrinologists, p. 459 <https://www.aace.com/files/hyperguidelinesapril2013.pdf> (visited May 27, 2019). See also < https:/

literature defines "autoimmune disorder" as a condition that occurs when the immune system mistakenly attacks healthy tissue.[87] The exact cause of Graves' Disease is not certain, however, certain risk factors are known to increase the chances of developing it, *i.e.*, genetics, weight, certain medications, and smoking,[88] as well as ethnicity and gender,[89] including age,

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/www.niddk.nih.gov/health-information/endocrine-diseases/graves-disease > (visited May 27, 2019); <https://www.webmd.com/a-to-z-guides/autoimmune-diseases> (visited May 27, 2019); <https://medlineplus.gov/ency/article/000358.htm> (visited May 27, 2019); and <https://www.healthline.com/health/graves-disease> (visited May 27, 2019). Graves' disease is caused by a malfunction in the body's disease-fighting immune system, although the exact reason why this happens is still unknown.

One normal immune system response is the production of antibodies designed to target a specific virus, bacterium or other foreign substance. In Graves' disease — for reasons that aren't well understood — the body produces an antibody to one part of the cells in the thyroid gland, a hormone-producing gland in the neck.

Normally, thyroid function is regulated by a hormone released by a tiny gland at the base of the brain (pituitary gland). The antibody associated with Graves' disease — thyrotropin receptor antibody (TRAb) — acts like the regulatory pituitary hormone. That means that TRAb overrides the normal regulation of the thyroid, causing an overproduction of thyroid hormones (hyperthyroidism). <https://www.mayoclinic.org/diseases-conditions/graves-disease/symptoms-causes/syc-20356240> (visited May 27, 2019).

See further <https://www.medicinenet.com/graves_disease/article.htm#graves#39_39_disease_facts> (visited May 27, 2019); and <https://www.medicalnewstoday.com/articles/170005.php> (visited May 27,2019).

[87]Normally, "[t]he immune system destroys foreign invaders with substances called antibodies produced by blood cells known as lymphocytes. Sometimes the immune system can be tricked into making antibodies that cross-react with proteins on our own cells. In many cases these antibodies can cause destruction of those cells. In Graves' disease these antibodies (called the thyrotropin receptor antibodies (TRAb) or thyroid stimulating immunoglobulins (TSI) do the opposite – they cause the cells to work overtime. The antibodies in Graves' disease bind to receptors on the surface of thyroid cells and stimulate those cells to overproduce and release thyroid hormones. This results in an overactive thyroid (hyperthyroidism)." < https://www.thyroid.org/graves-disease/ > (visited May 27, 2019).

[88] See <https://www.hopkinsmedicine.org/health/wellness-and-prevention/what-are-common-symptoms-of-autoimmune-disease>(visited

emotional or physical stress, and other autoimmune disorders.[90] Graves' Disease is a known common cause of hyperthyroidism.[91]

As records show, the CDP, after due assessment of Tiquio's condition, found that his hyperthyroidism was primarily caused by the autoimmune disorder, Graves' Disease, and therefore

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May 27, 2019); < https://www.mayoclinic.org/diseases- conditions/graves-disease/symptoms-causes/syc-20356240 > (visited May 27, 2019); and < http://www.btf-thyroid.org/information/leaflets/41-hyperthyroidism-guide > (visited May 27, 2019).

[89] See <https://www.healthline.com/health/autoimmune-disorders#causes > (visited May 27, 2019); and <https://www.mayoclinic.org/diseases-conditions/graves-disease/symptoms-causes/syc-20356240> (visited May 27, 2019).

[90] See <https://www.mayoclinic.org/diseases-conditions/graves-disease/symptoms-causes/syc-20356240> (visited May 27, 2019). These include "vitiligo, rheumatoid arthritis, Addison's disease, type 1 diabetes, pernicious anemia[,] and lupus" (<https: www.medicinenet.com/ graves_disease/article.htm [last visited May 27, 2019]), as well as celiac disease (https://www.niddk.nih.gov/health-information/endocrine-diseases/graves-disease [last visited May 27, 2019]).

[91] Douglas S. Ross, *et al.*, 2016 American Thyroid Association Guidelines for Diagnosis and Management of Hyperthyroidism and Other Causes of Thyrotoxicosis, p. 1347 <https://www.liebertpub.com/doi/pdfplus/10.1089/thy.2016.0229> (visited May 27, 2019); Rebecca S. Bahn, MD, *et al.*, Hyperthyroidism and Other Causes of Thyrotoxicosis: Management Guidelines of the American Thyroid Association and American Association of Clinical Endocrinologists, p. 461 < http://www.aace.com/files/hyperguidelinesapril2013.pdf > (visited May 27 2019); <http://www.btf-thyroid.org/information/leaflets/41-hyperthyroidism-guide> (visited May 27 2019); and < https://www.hormone.org/diseases-and-conditions/thyroid/hyperthyroidism > (last accessed May 27, 2019). "In about three in every four cases, [hyperthyroidism] is caused by a condition called Graves' disease" (see < https://www.nhs.uk/conditions/overactive-thyroid-hyperthyroidism/causes/ > [visited May 27, 2019]).

Other causes of hyperthyroidism are: toxic multinodular goitre, solitary toxic thyroid adenoma, thyroiditis, as well as when too much replacement thyroxine (levothyroxine) is taken as a treatment for an underactive thyroid (hypothyroidism) (see <http://www.btf-thyroid.org/information/leaflets/41-hyperthyroidism-guide> [visited May 27, 2019]), including also thyroid cancer, pituitary adenoma, and high levels of a substance called human chorionic gonadotrophin (see http://www.nhs.uk/conditions/overactive-thyroid-hyperthyroidism/caues/> [last accessed May 27, 2019]).

not work-related. The CDP, an endocrinologist[92] and thus an expert on Tiquio's condition, explained, in his Affidavit[93] dated October 16, 2014, the nature of this disease as backed by the medical literature on the same. To refute the assessment, Tiquio simply relied on the medical certificate[94] issued by his doctor, Dr. San Luis, which concluded that his illness "could have been triggered by the physical and mental stress related to his job" and "by exposure to paint solvents and other chemicals."[95] The Court, however, observes that Dr. San Luis is indisputably not an endocrinologist nor an expert on the particular disease – as he is a neurologist[96] – and whose assessment on Tiquio's condition was limited to a single encounter.

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[92] A doctor specializing in thyroid and other endocrine disorders (see <http://www.btf- thyroid.org/information/leaflets/41-hyperthyroidism-guide>; and <http://www.healthdirect.gov.au/endocrinogist> [visited May 27, 2019]). Endocrinologists are specially trained physicians who diagnose diseases related to the glands. They treat people who suffer from hormonal imbalances, typically from glands in the **endocrine system**, *i.e.*, thyroid disorders which include hyperthyroidism caused by Graves' disease (see <https://www.hormone.org/you-and-your-endocrinologist> and <https://www.hormone.org/diseases-and-conditions/thyroid> [visited May 27, 2019]).

[93] See CA *rollo*, pp. 170-171.

[94] See *id.* at 122-123.

[95] *Id.* at 123.

[96] "A neurologist is a medical doctor who specializes in treating diseases of the nervous system. The nervous system is made of two parts: the central and peripheral nervous system. It includes the brain and spinal cord. Illnesses, disorders, and injuries that involve the nervous system often require a neurologist's management and treatment." (underscoring supplied) <https://www.healthline.com/health/neurologist> (visited May 27, 2019).

Neurology is the branch of medicine concerned with the study and treatment of disorders of the nervous system. The nervous system is a complex, sophisticated system that regulates and coordinates body activities. It has two major divisions:

- Central nervous system: the brain and spinal cord
- Peripheral nervous system: all other neural elements, such as eyes, ears, skin, and other "sensory receptors"

A doctor who specializes in neurology is called a neurologist. The neurologist treats disorders that affect the brain, spinal cord, and nerves, such as:

Moreover, the Court recognizes that, as discussed above, there are in fact several known risk factors that increase the chance of developing the disease, *i.e.*, genetics, age, weight, medications, ethnicity, and other autoimmune disease, none of which has been shown in this case to have any causal connection with Tiquio's duties as an ordinary seaman. While indeed stress is a known risk factor, there is nothing, however, in the records which demonstrates the nature and extent of the stress to which Tiquio was allegedly exposed that could have triggered or aggravated his condition.

Further, as regards Tiquio's alleged exposure to paint solvents and other chemicals, the Court finds nothing in the records which showed that the nature of his duties involved the same, and that such exposure contributed to the development of his illness. Notably, exposure to chemicals and paint solvents is not a known risk factor for developing Graves' Disease, and thus medical literature does not support Tiquio's assertions on the same. Accordingly, the Court cannot make a proper determination thereof, considering that, as the NLRC noted, Tiquio "did not even attempt to establish a causal connection between his functions as an ordinary [seaman] with the risks of contracting hyperthyroidism."[97]

- Cerebrovascular disease, such as stroke .
- Demyelinating diseases of the central nervous system, such as multiple sclerosis
- Headache disorders
- Infections of the brain and peripheral nervous system
- Movement disorders, such as Parkinson's disease
- Neurodegenerative disorders, such as Alzheimer's disease, Parkinson's disease, and Amyotrophic Lateral Sclerosis (Lou Gehrig's disease)
- Seizure disorders, such as epilepsy
- Spinal cord disorders
- Speech and language disorders

(< https: www.urmc.rochester.edu/highland/departments-centers/neurology/what-is-a-neurologist.asp x > [visited May 27, 2019]).

[97] See CA *rollo*, p. 39.

To be sure, the Court is aware of the ruling in *Magsaysay*,[98] relied upon by the CA, which granted the disability benefits claim of therein seafarer-claimant who was found to be suffering from hyperthyroidism by his chosen physician. It is well to point out, however, that the present case should be differentiated from *Magsaysay* for not only did therein petitioners Magsaysay Maritime Services and Princess Cruise Lines, Ltd. fail to explain or present evidence supporting the not work-related assessment of the CDP, who was not shown to be an expert on the disease, therein respondent seafarer Erlwin Meinrad Antero F. Laurel also sufficiently showed how his duties as a second pastryman and the conditions on board the vessel caused or aggravated his hyperthyroidism.[99] Here, and as discussed, petitioners were able to successfully debunk the presumption of work-relatedness and concomitantly, Tiquio failed to prove by substantial evidence his compliance with the conditions for compensabihty set forth under Section 32-A of the 2010 POEA-SEC. Thus, Tiquio's claim for disability benefits should be denied.

All told, no grave abuse of discretion can be attributed to the NLRC in dismissing Tiquio's complaint. Accordingly, a reversal of the CA Decision is warranted.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 7, 2018 and the Resolution dated August 30, 2018 of the Court of Appeals in CA-G.R. SP No. 145518 are hereby **REVERSED** and **SET ASIDE**. The Decision dated November 26, 2015 and the Resolution dated February 29, 2016 of the National Labor Relations Commission in NLRC LAC OFW (M)-06-000494-15 are **REINSTATED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Caguioa, Reyes, J. Jr.,* and *Lazaro-Javier, JJ.,* concur.

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[98] *Supra* note 32.

[99] See *id*. at 224-225.

EN BANC

[A.M. No. 11-6-60-MTCC. June 18, 2019]

RE: NON-SUBMISSION OF MONTHLY FINANCIAL REPORTS OF MS. ERLINDA P. PATIAG, CLERK OF COURT, MUNICIPAL TRIAL COURT IN CITIES, GAPAN CITY, NUEVA ECIJA,

[A.M. No. P-13-3122. June 18, 2019]
[Formerly A.M. No. 12-9-71-MTCC (Report on the Financial Audit Conducted at the Municipal Trial Court in Cities, Gapan City, Nueva Ecija)]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **CLERK OF COURT IV ERLINDA P. PATIAG, MUNICIPAL TRIAL COURT IN CITIES, GAPAN CITY, NUEVA ECIJA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERKS OF COURT ARE MANDATED TO TIMELY DEPOSIT JUDICIARY COLLECTIONS TO THE AUTHORIZED GOVERNMENT DEPOSITORIES, AS WELL AS TO SUBMIT MONTHLY FINANCIAL REPORTS ON THE SAME; SUSTAINED.— Time and again, the Court emphasized that Clerks of Courts perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they have the duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody. Such functions are highlighted by OCA Circular Nos. 50-95 and 113-2004 and Administrative Circular No. 35-2004 which mandate Clerks of Court to timely deposit judiciary collections as well as to submit monthly financial reports on the same. In the same vein, Administrative Circular No. 3-2000, commands that all fiduciary collections shall be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. Supreme Court Circular No. 13-92 directs that all fiduciary

collections be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank while SC Circular No. 5-93 provides that the Land Bank of the Philippines is designated as the authorized government depository.

2. ID.; ID.; ID.; ID.; FAILURE OF RESPONDENT TO COMPLY WITH THE MANDATE IMPOSED UPON HER CONSTITUTE SERIOUS DISHONESTY, GRAVE MISCONDUCT AND SERIOUS NEGLECT OF DUTY WHICH UNDERMINE THE PUBLIC'S FAITH IN COURTS AND IN THE ADMINISTRATION OF JUSTICE AS A WHOLE, AND RENDER HER UNFIT FOR THE POSITION OF CLERK OF COURT; IMPOSABLE PENALTY.— [I]t is evident that the respondent showed carelessness or indifference in the performance of her duties. The record showed that aside from her lame excuses, she offered no veritable explanation nor satisfactory reason to support the shortages that she incurred. Her failure to comply with the aforementioned Court Circulars and other relevant rules designed to promote full accountability for public funds, as well as her failure to manage and properly document the cash collections allocated for the various court funds, constitute serious dishonesty, grave misconduct and serious neglect of duty which undermine the public's faith in courts and in the administration of justice as a whole, and render her unfit for the position of clerk of court. Respondent's willingness to pay her shortages will not absolve her from the consequences of her wrongdoing. Meanwhile, the fact that Patiag reached the compulsory retirement age on May 13, 2014, did not render these cases moot, let alone release her from whatever liability she had incurred while in active service. Since the penalty of dismissal from the service is no longer imposable, a fine can be imposed instead, and its amount is subject to the sound discretion of the Court. Section 51(d) of Rule X of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that fine as a penalty shall be in an amount not exceeding the salary for six months of the respondent. Thus, a fine equivalent to Patiag's salary for her last six months in the service to be deducted from whatever accrued leave benefits remained for her is deemed in order, but with accessory penalties of dismissal from service, *i.e.*, forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.

D E C I S I O N

***PER CURIAM*:**

Before this Court are two consolidated administrative cases against respondent Erlinda P. Patiag (Patiag), Clerk of Court IV of the Municipal Trial Court in Cities (MTCC), Gapan City, Nueva Ecija. A.M. No. 11-6-60- MTCC pertains to respondent's failure to submit the monthly financial reports of collections for the judiciary funds, while A.M. No. P-13-3122 is the result of the financial audit conducted by the Office of the Court Administrator (OCA) on the books of account of the respondent.

The Case and the Facts

A.M. No. 11-6-60-MTCC

In a Letter[1] dated April 14, 2008, the OCA directed Patiag to show cause why her salary should not be withheld for her failure to submit the monthly financial reports for the following: (1) Judiciary Development Fund (JDF) for the months of May to December 2007 and January 2008 up to the present; (2) the Special Allowance for the Judiciary Fund (SAJF) for the months of May 2007 up to the present; (3) the Fiduciary Fund (FF) for the months of November to December 2006, January 2007, and March 2007 up to the present; and (4) the Sheriff's Trust Fund (STF) for the months of October 2006 up to the present.

Patiag failed to comply despite several warnings and follow-up communications sent by the OCA. Her non-compliance even resulted in the withholding of her salaries, allowances, and other monetary benefits.[2]

A.M. No. P-13-3122

Patiag's failure to submit the required monthly reports despite several directives prompted the Court to direct the OCA to constitute an audit team to investigate her books of account.

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[1] *Rollo* (A.M. No. 11-6-60-MTCC), p. 7.

[2] *Id.* at 6.

In its report[3] dated September 12, 2012, the audit team found that Patiag had been remiss in her performance of her duties and that there were massive shortages in the court's funds. According to the audit team:

1. Patiag was not depositing her collections on time. The examination of the records revealed a huge discrepancy of the amount that should be in Patiag's possession;[4]

2. A total of 940 booklets of original receipts were issued by the Court since 1985 but eight (8) booklets[5] that were recorded and reported in the monthly reports used for JDF and SAJF collections were missing. The audit team also discovered material discrepancies on the accounts between entries in

[3] *Rollo* (A.M. No. P-13-3122), pp. 11-28.

[4]

FUND	COLLECTION PER PERIOD	O.R. USED	TOTAL COLLECTION
JDF	Feb. 13 to Mar. 5, 2012	1269200-250; 1269877-900; 1349001-050;	2,868.00
SAJF	Feb. 13 to Mar. 5, 2012	1269061-100; 12691151-200; 1348001-050; 1349101-107	10,219.20
MF	Feb. 21 to Feb. 29, 2012	369177-180	2,000.00
FF	Jan.11 to Feb. 24, 2012	1269517-526	41,000.00
STF	Feb. 14, 2012	4304648-649	2,000.00
TOTAL COLLECTION PER OFFICIAL RECEIPT			58,087.20

Recapitulation:

Total Collection from the last deposit date (per fund) to March 5, 2012	₱ 58,087.20
Cash on Hand as of March 5, 2012	3,680.00
Initial Cash Shortage	₱ 54,407.20

[5]

O.R. Series	Fund Used	Period Used
8312901-8312950	SAJF	06/06/11 to 06/09/11

the cashbooks and the actual collections appearing in the copies of the triplicate original receipts;

3. There were questionable withdrawals amounting to ₱1,020,000.00 which were lacking supporting documents authorizing the refund, with blank vouchers bearing only the signatures of the claimants;

4. The audit team discovered the practice of the court of not remitting the collections on time. There was an instance wherein JDF collections for the month of February 1991 was remitted only on June 6, 1995, or four (4) years and four (4) months of delay. Records showed that delayed remittance of collections has been the practice until the financial audit team discovered it during the audit engagement.[6]

Based on the available documents, the audit yielded the following schedule of shortages incurred for each fund according to the audit period covered:

8312951-8313000	SAJF	06/09/11 to 06/14/11
8313101-8313150	SAJF	06/28/11 to 06/30/11
8314051-8314100	JDF	05/18/11 to 05/23/11
8314101-8314150	JDF	05/23/11 to 05/30/11
8314101-8314150	JDF	06/13/11 to 06/17/11
8314451-8314500	JDF	07/04/11 to 07/08/11
8314801-8314850	JDF	07/21/11 to 07/27/11

[6]

Schedule	Fund	Total Delayed Deposit	Total Unearned Interest at 6%per annum
3	JDF	572,153.56	30,193.21
4	SAJF	216,059.20	12,406.48
5	GF-OLD	163,037.10	5,942.76
6	MF	68,625.00	3,439.67
7	LRF	15,493.56	686.93
8	VCF	5,920.00	295.42
TOTAL		1,041,288.42	52,964.47

Particulars	JFD	SAJF	Gen. Fund	Mediation	LRF	VCF
Period Covered	03/1985 to 02/29/2012	11/11/03 to 02/29/12	10/03/97 to 02/29/12	11/05/04 to 02/29/12	09/19[97] to 02/29/12	11/03/97 to 02/29/12
Total Collection	1,416,493.30	1,314,361.70	199,572.60	163,555.00	29,226.642	10,100.00
Less: Total Remittance	823,439.86	105,223.52	445,037.60	153,555.00	17,172.96	7,655.00
UNDER (OVER) DEPOSIT	**593,053.44**	**1,209,138.18**	**(245,465.00)**	**10,000.00**	**12,053.68**	**2,445.00**
Less: Erroneous Remittance of SAJF collection to GF account				-	-	-
>Nov. 10, 2003 to July 8, 2004	-	(9,405.00)	9,405.00	-	-	-
>Aug. 2004 to June 2006	-	(231,060.00)	231,060.00	-	-	-
Balance of Accountability	**593,053.44**	**968,673.18**	**(5,000.00)**	**10,000.00**	**12,053.68**	**2,445.00**
FINAL ACCOUNTABILITY AS OF FEBRUARY 29, 2012						**1,581,225.30**

The team gave Patiag the opportunity to explain her side but the latter opted not to explain. During the audit team's exit conference with Presiding Judge John Voltaire C. Venturina, Patiag offered no explanation but promised to restitute the cash shortages she incurred.

Meanwhile, on March 30, 2012, Patiag made partial restitution for the FF and STF in the amounts of ₱518,000.00 and ₱9,000.00,

respectively.[7] On April 3, 2012, Patiag restituted the shortages incurred in the MF, Legal Research Fund and Victim's Compensation Fund amounting to ₱10,000.00, ₱12,053.68 and ₱2,445.00, respectively.[8] As of this date, no restitution was made for the shortages incurred in the JDF and SAJF amounting to ₱593,053.44 and ₱968,673.18, respectively.

The Court, in a Resolution[9] dated June 13, 2013, adopted the recommendations submitted by the OCA, as follows:

x x x x x x x x x

(3) to DIRECT Clerk of Court IV Erlinda T. Patiag, within ten (10) days from notice:

(3.a) to RESTITUTE the remaining shortages incurred totaling ₱1,561,726.62, broken down as follows:

FUND	PERIOD COVERED	AMOUNT
Judiciary Development Fund	03/01/85 to 02/29/12	593,053.44
Special Allowance for the Judiciary	11/11/03 to 02/29/12	968,673.18
Balance of Accountability		1,561,726.62

(3.b) to PAY and DEPOSIT to the Judiciary Development Fund (JDF) the total amount of Fifty-Two Thousand Nine Hundred Sixty-Four Pesos and Forty-Seven Centavos (₱52,964.47), representing the interest earned, computed using the legal rate of six (6%) percent per annum for not remitting the collections of the following funds on time, to wit:

x x x x x x x x x

(3.c) to EXPLAIN the following discrepancies noted in the reporting of collections under JDF and SAJF accounts, to wit:

x x x x x x x x x

(3.d) to EXPLAIN the following DELAYED Remittances stated in the schedules attached as summarized below, to wit:

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[7] *Id*. at 14-15; 62-63.

[8] *Id*. at 16-17; 64-65.

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

x x x x x x x x x

(3.e) to SUBMIT the missing EIGHT (8) booklets of triplicate official receipts with series numbers:

x x x x x x x x x

(4) to PLACE Ms. Erlinda T. Patiag under preventive SUSPENSION EFFECTIVE IMMEDIATELY, until the resolution of this administrative matter, and is FINED in the amount of Five Thousand Pesos (₱5,000.00) for failure to deposit her collections on time thereby depriving the government of supposed interests earned from the said collections;

(5) to DIRECT Mr. Ernesto M. Aisporna, Junior Process Server, Municipal Trial Court in Cities, Gapan City, Nueva Ecija to LIQUIDATE the cash advances he made totaling ₱183,400.00, which comprises of:

x x x x x x x x x

(6) to DIRECT Mr. Ernesto Mendoza, Sheriff IV, Regional Trial Court, Gapan City, Nueva Ecija to LIQUIDATE the cash advances he made totaling Ten Thousand Pesos (₱10,000.00), to wit:

x x x x x x x x x

(7) to DESIGNATE Ms. Helen J. Pineda, Court Stenographer I, as Accountable Officer of the Municipal Trial Court in Cities, Gapan City, Nueva Ecija, and is DIRECTED to STRICTLY ADHERE with the guidelines and Circulars issued by this Court with regard to the proper handling of judiciary funds; and

(8) to DIRECT Hon. John Voltaire C. Venturina, Presiding Judge of the Municipal Trial Court in Cities, Gapan City, Nueva Ecija, to STRICTLY MONITOR the financial transactions of the court to AVOID the repetition of the same infractions committed by employees under his supervision.

Eventually, Patiag submitted a Motion for Reconsideration[10] dated November 18, 2013. In her motion, Patiag enumerated the reasons for the huge shortages she incurred as follows: (a) there was no inventory conducted during the turnover of financial

[10] *Id.* at 83-89.

records from the former clerk of court to her, hence, all shortages of her predecessor was passed on to her; and (b) the subsequent relocation and transfer of the court to different buildings in 2006 and 2009 caused the loss of boxes of receipts and ledgers of financial records which contributed to the shortages in the judiciary collections. Patiag is also asking for a re-audit of her financial shortages. She also requested that her financial accountabilities be deducted from her withheld salaries and allowances and to allow her to use whatever portion will be left.

Meanwhile, in a Letter[11] dated January 21, 2014, Patiag submitted the financial reports for the judiciary funds and the missing eight (8) booklets of Official Receipts.

In a Resolution[12] dated March 12, 2014, the Court resolved to consolidate these administrative cases.

Meanwhile, upon examination of the missing eight (8) booklets, a shortage of ₱621.20 was disclosed. Subsequent examinations on the books of accounts of Patiag also revealed an additional cash shortage of ₱2,000.00 in the MF. Thus, the OCA re-evaluated the case and re-assessed Patiag's liability to include the said shortages.

The Report and Recommendation of the OCA

In its Memorandum[13] dated September 13, 2017, the OCA summarized Patiag's cash accountability to One Million Six Hundred Seventeen Thousand Three Hundred Twelve Pesos and 29/100 (₱1,617,312.29) as follows:

FUND	Period Covered	Balance of Accountability
Judiciary Development Fund **(JDF)**	March, 1985 to 29 February 2012	PHP 593,053.44

[11] *Id.* at 128-129.

[12] *Id*. at 96.

[13] *Rollo* (A.M. No. 11-6-60-MTCC), pp. 73-80.

Special Allowance for the Judiciary Fund**(SAJF)**	11 November 2003 to 29 February 2012	968,673.18
Mediation Fund **(MF)**	1 to 18 March 2012	2,000.00
UNEARNED Interest due to delayed remittances		52,964.47
After submission of the missing eight (8) O.R. booklets	Additional JDF Shortage	621.20
TOTAL ACCOUNTABILITY		**PHP 1,617,312.29**

The OCA held that the documents and records which respondent alleged as lost and missing during their transfer of office in the years 2006 and 2009 were found by the audit team, except for the said eight (8) booklets that were later on found in her possession. Likewise, respondent's assertion that she inherited the shortages from her predecessor is unacceptable since the subject of the audit was solely on her accountability period from March 1985 to February 29, 2012 until the period of March 1 to 18, 2012 based on her submitted documents.

In the Court's Resolution[14] dated November 20, 2017, the Court adopted the recommendation of the OCA and resolved, among others, to: (a) clear Sheriff IV Ernesto Mendoza from his cash accountabilities; (b) drop his name as respondent in A.M. P-13-3122; and (c) consider the same closed and terminated as to him by reason of his full compliance with the directive in the Resolution dated June 13, 2013 which directed him to liquidate the cash advances he made totaling Ten Thousand Pesos (₱10,000.00).

The Issue

The only issue in this case is whether or not respondent Patiag should be held administratively liable.

The Ruling of the Court

The Court agrees and adopts the findings and recommendation of the OCA.

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[14] *Rollo* (P-13-3122), pp. 187-188.

Time and again, the Court emphasized that Clerks of Courts perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they have the duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody. Such functions are highlighted by OCA Circular Nos. 50-95[15] and 113-2004[16] and Administrative Circular No. 35-2004 which mandate Clerks of Court to timely deposit judiciary collections as well as to submit monthly financial reports on the same.[17]

In the same vein, Administrative Circular No. 3-2000,[18] commands that all fiduciary collections shall be deposited

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[15] (4) All collections from bail bonds, rental deposits, and other fiduciary funds shall be deposited within twenty-four (24) hours by the Clerk of Court concerned, upon receipt thereof with the Land Bank of the Philippines.

[16] The circular prescribes that all monthly reports of collections, deposits and withdrawals shall be submitted not later than the 10th day of each succeeding month to the Chief Accountant of the Supreme Court.

[17] *Office of the Court Administrator v. Viesca*, 758 Phil. 16, 24-25 (2015).

[18] II. Procedural Guidelines

A. Judiciary Development Fund

x x x

3. Systems and Procedure

x x x

c. In the RTC, MeTC, MTCC, MTC, MCTC, SDC and SCC. — The daily collections for the Fund in these courts shall be deposited everyday with the nearest LBP branch for the account of the Judiciary Development Fund, Supreme Court, Manila - SAVINGS ACCOUNT NO. 0591-0116-34 or if depositing daily is not possible, deposits for the Fund shall be at the end of every month, provided, however, that whenever collections for the Fund reach P500.00, the same shall be deposited immediately even before the period above-indicated.

x x x

Collections shall not be used for encashment of personal checks, salary checks, etc. x x x

x x x

B. General Fund (GF)

(1.) Duty of the Clerks of Court, Officers-in-Charge or Accountable Officers. – The Clerks of Court, Officers-in-Charge of the Office of

immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized government depository bank. Supreme Court Circular No. 13-92 directs that all fiduciary collections be deposited immediately by the Clerk of Court concerned, upon receipt thereof, with an authorized depository bank while SC Circular No. 5-93 provides that the Land Bank of the Philippines is designated as the authorized government depository.[19]

From the foregoing, it is evident that the respondent showed carelessness or indifference in the performance of her duties. The record showed that aside from her lame excuses, she offered no veritable explanation nor satisfactory reason to support the shortages that she incurred. Her failure to comply with the aforementioned Court Circulars and other relevant rules designed to promote full accountability for public funds, as well as her failure to manage and properly document the cash collections allocated for the various court funds, constitute serious dishonesty, grave misconduct and serious neglect of duty which undermine the public's faith in courts and in the administration of justice as a whole, and render her unfit for the position of clerk of court.[20] Respondent's willingness to pay her shortages will not absolve her from the consequences of her wrongdoing.

Meanwhile, the fact that Patiag reached the compulsory retirement age on May 13, 2014,[21] did not render these cases

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the Clerk of Court, or their accountable duly-authorized representatives designated by them in writing, who must be accountable officers, shall receive the General Fund collections, issue the proper receipt therefor, maintain a separate cash book properly marked CASH BOOK FOR CLERK OF COURT'S GENERAL FUND AND SHERIFF'S GENERAL FUND, deposit such collections in the manner herein prescribed, and render the proper Monthly Report of Collections and Deposits for said Fund.

[19] *Office of the Court Administrator v. Atty. Paduganan-Penaranda, et al.*, 630 Phil. 169, 178 (2010).

[20] *Office of the Court Administrator v. Panganiban*, 798 Phil. 216, 224 (2016).

[21] *Rollo* (A.M. No. P-13-3122), p. 111.

moot, let alone release her from whatever liability she had incurred while in active service. Since the penalty of dismissal from the service is no longer imposable, a fine can be imposed instead, and its amount is subject to the sound discretion of the Court.[22] Section 51(d)[23] of Rule X of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that fine as a penalty shall be in an amount not exceeding the salary for six months of the respondent. Thus, a fine equivalent to Patiag's salary for her last six months in the service to be deducted from whatever accrued leave benefits remained for her is deemed in order, but with accessory penalties of dismissal from service, *i.e.*, forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.

As to Mendoza, since he had already complied with the Court's Resolution[24] dated November 20, 2017 to liquidate his cash advances of Ten Thousand Pesos (₱10,000.00), the case against him should be considered closed and terminated; and his withheld salaries and allowances should be released.

Indeed, the safeguarding of funds and collections, the submission to this Court of a monthly report of collections for all funds, and the proper issuance of official receipts for collections are essential to an orderly administration of justice.[25] We emphasize that all court employees, such as respondent, must adhere to high ethical standards to preserve the court's good

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[22] *Office of the Court Administrator v. Guan*, 764 Phil. 1, 12 (2015).

[23] Section 51. Duration and effect of administrative penalties. – The following rules shall govern in the imposition of administrative penalties:

x x x x x x x x x

d. The penalty of fine shall be in an amount not exceeding six (6) months salary of respondent. The computation thereof shall be based on the salary rate of the respondent when the decision becomes final and executory.

[24] *Rollo* (A.M. No. 11-6-60-MTCC), pp. 83-84.

[25] *Re: Financial Report on the Audit Conducted in the Municipal Circuit Trial Court, Apalit-San Simon, Pampanga*, 574 Phil. 218, 238 (2008).

name and standing.[26] They should be examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law.[27] They must bear in mind that the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work there.[28]

WHEREFORE, the Court finds respondent ERLINDA T. PATIAG, former Clerk of Court IV, Municipal Trial Court in Cities, Gapan, Nueva Ecija, **GUILTY** of serious dishonesty, grave misconduct and gross neglect of duty with **FORFEITURE** of all retirement benefits, excluding accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations.

This Court further resolves to:

1. **ORDER** respondent TO PAY A FINE equivalent to her salary for six months computed at the salary rate of her former position to be deducted from the monetary value of her earned leave credits and/or other retirement benefits;

2. **DIRECT** the Employees' Leave Division, Office of Administrative Services-OCA, to compute the respondent's earned leave credits;

3. **DIRECT** the Finance Division, Financial Management Office- OCA, to compute the withheld salaries of respondent and **PROCESS** the monetary value of her earned leave credits and withheld salaries, dispensing

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[26] *Joven v. Caoili,* A.M. No. P-17-3754 (Formerly OCA IPI No. 14-4285-P), September 26, 2017, 840 SCRA 552, 559.

[27] *Dennis Patrick Z. Perez, Presiding Judge, Branch 67, Regional Trial Court, Binangonan, Rizal v. Almira L. Roxas, Clerk III, Branch 67, Regional Trial Court, Binangonan, Rizal*, A.M. No. P-16-3595 (Formerly OCA I.P.I. No. 15-4446-P), June 26, 2018.

[28] *Office of the Court Administrator v. Savadera, et al*., 717 Phil. 469, 488 (2013).

with the usual documentary requirements, and whatever remains therefrom after deducting the fine imposed upon her, **APPLY** the same to the following shortages and **RELEASE** the remaining balance, if any:

Name of Fund	Period Covered	Amount
Judiciary Development Fund (JDF)	March 1985 to 29 February 2012	₱593,053.44
Special Allowance for the Judiciary Fund (SAJF)	November 11, 2003 to February, 29 2012	968,673.18
Mediation Fund (MF)	March 1 to 18, 2012	2,000.00
UNEARNED Interest due to delayed remittances		52,964.47
After submission of the missing eight (8) O.R. booklets	Additional JDF Shortage	621.20
TOTAL ACCOUNTABILITY		**₱1,617,312.29**

4. **ORDER** respondent to pay any remainder of the fine and/or restitute any remaining shortages in case the monetary value of her earned leave credits and/or other benefits would not be sufficient to cover the same;

5. **INSTITUTE** the proper criminal or civil action against Patiag if no full restitution can be done from her back salaries and monetary value of her accrued leave credits; and

6. **FURTHER DIRECT** the Finance Division, Financial Management Office-OCA, to **RELEASE** the retirement benefits and the monetary value of the accrued leave credits of SHERIFF IV ERNESTO MENDOZA, which he is entitled to, since he had fully complied with the directive of the Court contained in the Resolution dated June 3, 2013.

SO ORDERED. The complete documentary requirements must be submitted to and received by the OCA not earlier than

two (2) months before the intended departure date but not later than ten (10) working days before said date. Otherwise, the request shall not be entertained.

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

Peralta and *Hernando, JJ.,* on official business.

EN BANC

[A.M. No. RTJ-19-2549. June 18, 2019]
(Formerly OCA IPI No. 19-4920-RTJ)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **PRESIDING JUDGE TINGARAAN U. GUILING; CLEOTILDE P. PAULO, OFFICER-IN-CHARGE; GAUDENCIO P. SIOSON, PROCESS SERVER; and REYNER DE JESUS, SHERIFF, ALL OF BRANCH 109, REGIONAL TRIAL COURT, PASAY CITY,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; DISCIPLINE OF JUDGES; UNDUE DELAY IN RENDERING DECISIONS OR ORDERS; RULES PRESCRIBING THE TIME WITHIN WHICH CERTAIN ACTS MUST BE DONE ARE INDISPENSABLE TO PREVENT NEEDLESS DELAYS IN THE ORDERLY AND SPEEDY DISPOSITION OF CASES, THUS, THE 90-DAY PERIOD TO DECIDE A CASE IS MANDATORY; VIOLATION IN CASE AT BAR.— Article VIII, Section 15 (1) of the 1987 Constitution mandates lower court judges to decide a case within the reglementary period of ninety (90) days. The New Code of

Judicial Conduct under Section 5 of Canon 6 likewise directs judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the 90-day period is mandatory. The speedy disposition of cases in our courts is a primary aim of the Judiciary, so that the ends of justice may not be compromised and the Judiciary will be true to its commitment to provide litigants their constitutional right to speedy trial and speedy disposition of their cases. Judge Guiling incurred delay in rendering judgment in twenty-three (23) criminal cases and forty (40) civil cases, and in resolving motions or incidents in seventeen (17) criminal cases and sixty-three (63) civil cases. Worse, when given the chance to explain his side, respondent judge did not offer any explanation as to why there was delay in the rendition of judgment and resolution of pending motions or incidents. As to the charges of violation of Supreme Court rules, directives and circulars, undue delay in the submission of monthly reports, and failure to maintain the confidentiality of court records and proceedings, the findings of the OCA are substantiated.

2. ID.; ID.; CLASSIFIED AS LESS SERIOUS CHARGES ARE UNDUE DELAY IN RENDERING DECISIONS OR ORDERS, AND VIOLATION OF SUPREME COURT RULES, DIRECTIVES AND CIRCULARS; IMPOSABLE PENALTY.— Classified as less serious charges under Section 9, 14 Rule 140 of the Rules of Court are undue delay in rendering decisions or orders, and violation of Supreme Court rules, directives and circulars, penalized with either suspension without pay for a period of not less than one (1) month, but not more than three (3) months, or a fine of more than ₱10,000.00, but not more than ₱20,000.00. With respect to Judge Guiling's offense of undue delay in rendering decisions or orders, the Court imposes upon him a penalty of fine in the amount of Twenty Thousand Pesos (₱20,000.00). For his violation of Supreme Court rules, directives and circulars, and violation of the rules on annulment of marriage, Judge Guiling is ordered to pay a fine of Twenty Thousand Pesos (₱20,000.00).

3. ID.; ID.; UNDUE DELAY IN THE SUBMISSION OF MONTHLY REPORTS IS CONSIDERED A LIGHT OFFENSE;

IMPOSABLE PENALTY.— Meanwhile, under Section 10 of the same Rule 140, undue delay in the submission of monthly reports is considered a light offense. Section 11(C) of Rule 140 provides that if the respondent is guilty of a light offense, any of the following may be imposed: (i) a Fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; and/or (ii) Censure, (iii) Reprimand, (iv) Admonition with warning. Thus, a fine in the amount of Ten Thousand Pesos (₱10,000.00) is imposed against Judge Guiling for undue delay in the submission of monthly reports.

4. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE RULES OF COURT PROVIDES THAT NO RECORD SHALL BE TAKEN FROM THE CLERK'S OFFICE WITHOUT AN ORDER FROM THE COURT EXCEPT AS OTHERWISE PROVIDED BY THE RULES; VIOLATION IN CASE AT BAR.— As officer-in-charge, Ms. Paulo is charged with safekeeping of all records, papers, files, exhibits and public property committed to her charge, including the library of the court, and the seals and furniture belonging to her office. The Rules of Court provides that no record shall be taken from the clerk's office without an order from the court except as otherwise provided by the rules. Clearly, Ms. Paulo was remiss in the discharge of her function in allowing Sheriff de Jesus to bring some records out of the court premises which were found inside the trunk of his car, and Mr. Adolf Mantala to have an access to court records and proceedings.

D E C I S I O N

CARANDANG, *J.*:

This is an administrative complaint based on the Judicial Audit and Inventory of Cases conducted in the Regional Trial Court (RTC), Branch 109 of Pasay City, presided by Judge Tingaraan Guiling, on April 14-30, 2015, pursuant to Travel Order No. 42 dated April 13, 2015.

In a Memorandum[1] dated December 17, 2015, the judicial audit team reported that as of audit date, Branch 109 had a

[1] *Rollo*, Volume II, pp. 1086-1171.

total case load of 1,456 active cases consisting of 409 criminal cases and 1,047 civil cases, based on the records actually presented to and examined by the team which are classified hereunder according to the status-stage of proceedings:

STATUS/STAGE OF PROCEEDINGS	CRIMINAL	CIVIL	TOTAL
Warrants/Summons	1	59	60
Arraignment	9	0	9
Preliminary Conference/ Pre-Trial/JDR	62	73	135
Trial/Hearing	177	265	442
For Compliance	5	127	132
No Action Taken	17	22	39
No Further Action/Setting	78	131	209
With Pending Motions/Incidents	22	92	114
Submitted for Decision	24	130	154
Decided/Withdrawn/ Terminated	2	48	50
Dismissed	5	52	57
Archived	4	45	49
Suspended Proceedings	3	0	3
Newly Filed	0	3	3
TOTAL	**409**	**1047**	**1456**

On May 28, 2015, June 22, 2015, July 10, 2015, and August 6, 2015, Branch 109 forwarded to the Court copies of Orders and Decisions in relation to the list of cases that were needed to be acted upon by RTC, Branch 109, Pasay City. Thereafter, the team found that there were 17 criminal cases with no action taken, 78 criminal cases with no further action/setting, 22 criminal cases with motions/pending incidents, and 24 criminal cases submitted for decision. Meanwhile, there were 22 civil cases with no action taken, 134 civil cases with no further action/ setting, 92 civil cases with motions/pending incidents, and 132 civil cases submitted for decision.

The following are the audit team's general adverse findings: 1) many of the records were not paginated nor chronologically arranged; 2) there were Pleadings/Documents[2] received by the court without date and time stamped thereon; 3) there were no returns of summons on the writ of replevin in Civil Case No. 14-16623; 4) not all criminal case folders had Certificates of Arraignment; 5) the court was delayed in the submission of its Semestral Docket Inventory and Monthly Report of Cases with the Statistical Reports Division of the Court Management Office (as of April 2015, the court has yet to submit the 2011 Second Semester of the Semestral Docket Inventory to Second Semester of 2014, and its Monthly Report of Cases for June 2014 to February 2015, both the old and new forms); 6) the court's general docket books were not updated; and 7) the Pre-trial Orders were only signed by the Presiding Judge.

Regarding cases involving annulment of marriages and Recognition of Divorce Decree, the team noted these findings:

1. The Office of the Solicitor General filed manifestations and motions that it be furnished copy of the petitions and other relevant documents. Despite the absence of compliance, trial proceeded.[3]

2. Process Server Gaudencio Sioson immediately availed of service of summons by substituted service in many

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[2] SPA dated 9-8-11 in Civil Case No. 11-06088; undated SPA in Civil Case No. 14-16337; SPA dated 4-14-14 in Civil Case No. 14-16390; SPA dated 7-4-14 in Civil Case No. 14-16503; SPA dated 12-16-14 in Civil Case No. 14-16593; SPA dated 9-22-14 in Civil Case No. 14-17741; Notice of Appearance of the OSG in Civil Case No. 13-15121; Notice of Appearance of the OSG in Civil Case No. 14-15711; Notice of Appearance of the OSG in Civil Case No. 14-16933; Notice of Appearance of the OSG in Civil Case No. 14-17753; Pre-Trial Brief in Civil Case No. 14-15536.

[3] Some of these cases are: 1) Civil Case No. 12-12177, *Lagata vs. Lagata*, Annulment of Marriage; 2) Civil Case No. 13-14791, *Marzan vs. Marzan*, Annulment of Marriage; 3) Civil Case No. 14-14641, *Cejoco vs. Ambobayog*, Annulment of Marriage; 4) Civil Case No. 14-15185, *Colangoy vs. Colangoy*, Annulment of Marriage; 5) Civil Case No. 14-16467, *Virut vs. Virut*, Annulment of Marriage; and 6) Civi Case No. 14-17037, *Shimizu vs. Shimizu*, Recognition of Foreign Divorce.

cases on the ground that respondent was either out of the house, in the office, or out for work.[4]

3. On the other hand, Sheriff Reyner De Jesus availed of substituted service of summons indicating in his Returns of Summons that he made "several attempts" before resorting to substituted service of summons.[5] There were cases where summons were served by Sheriff de Jesus

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[4] Some of these cases are: 1) Civil Case No. 07-1703, *Fababaer vs. Fababaer*; 2) Civil Case No. 10-04276, *Charito Pasayan vs. Adelino Pasayan*; 3) Civil Case No. 11-06948, *Michelle Torralba vs. Eric Torralba*; 4) Civil Case No. 11-06968, *Frederick Padre vs. Margie Padre*; 5) Civil Case No. 11-08178, *Jenny Yutico vs. Eric Yutico*; 6) Civil Case No. 12-10346, *Nolito Tarnate vs. Efrenia Balucos*; 7) Civil Case No. 12-10178, *Ma. Soledad Lumague vs. Robert Lumague; 8) Civil Case No. 12-11618, Patrick Mulato vs. Shierill Mulato; 9) Civil Case No. 12-11800, Evelyn Tugadi-Reyes vs. Raymond Reyes*; 10) Civil Case No. 13-14322, *Dulay vs. Man*; 11) Civil Case No. 13-14944, *C. Bautista vs. C. Bautista*; 12) Civil Case No. 13-15028, *M.I. Catacutan vs. E. Mateo*; 13) Civil Case No. 13-15074, *Rodriguez vs. Rodriguez*; 14) Civil Case No. 13-15078, *Rico vs. Rico*; 15) Civil Case No. 14-15518, *Abolencia vs. Abolencia*; 16) Civil Case No. 14-15660, *Oliveros vs. Oliveros*; 17) Civil Case No. 14-15688, *Candelario vs. Celeridad*; 18) Civil Case No. 14-16110, *Boles-Lagula vs. Lagula*; 19) Civil Case No. 14-16549, *Noel Chavez vs. Anna Marie Chavez*; 20) Civil Case No. 14-16522, *Tan vs. Tan*; 21) Civil Case No. 14-17669, *Gonzales vs. Manset-Gonzales*; 22) Civil Case No. 14-17784, *Legaspi vs. San Pedro*; 23) Civil Case No. 14-17788, *Imee Rose Molina vs. Roberto Molina*; 24) Civil Case No. 14-17990, *N. Cortez vs. J. Cortez*; 25) Civil Case No. 14-18216, *Rase vs. Rase*; 26) Civil Case No. 14-18266, *Leonardo vs. Torres*; 27) Civil Case No. 14-18308, *Samarita vs. Samarita*; 28) Civil Case No. 14-18438, *Rogelio Mangubat, Jr. vs. Joan Cabadu-Mangubat*; 29) Civil Case No. 15-18648, *Canete vs. Canete*; 30) Civil Case No. 15-18750, *Ronquillo vs. Solanoy-Ronquillo*; 31) Civil Case No. 15-18784, *Hilario-Ytable vs. Ytable II*; 32) Civil Case No. 15-18820, *Almazon vs. Sangalang-Amazon*; 33) Civil Case No. 15-18836, *Rocha-Hibaya vs. Hibaya*; 34) Civil Case No. 15-18897, *Jimmy Ipaniz, Jr. vs. Jackylou Montanez*; 35) Civil Case No. 15-18904, *Bernardino vs. Rivero-Bernardino*; 36) Civil Case No. 15-18928, *Majait vs. Majait*; and 37) Civil Case No. 15-19069, *Aura vs. Serwelas-Aura*.

[5] Some of these cases are: 1) Civil Case No. 06-0320, *Tan vs. Tan*; 2) Civil Case No. 11-08101, *Bobby G. Miguel vs. Joybelle R. Miguel*; 3) Civil Case No. 12-10749, *Nulod vs. Francisco-Nulod*; 4) Civil Case No. 12-12195,

and the return stated that the same was served "upon a person who claimed to be respondent." The returns made by the Sheriff and the Process Server contained general statements and noncompliance with the rule laid down in G.R. No. 130974, entitled "*Ma. Imelda M. Manotoc v. Honorable Court of Appeals and Agapita Trajano, et al.*" decided on August 16, 2006. Likewise, there was no statement in the Return of the facts and circumstances surrounding the attempted personal service and there were no details on the date and time of the attempts on personal service, the inquiries made to locate the defendant, the name of occupants of the alleged residence of the defendant and the acts done to serve the summons. No statement was made that the person found in the alleged dwelling of the defendant is of legal age, his relationship with the defendant and whether that person understood the significance of the receipt of the summons and the mandate to immediately deliver it to the defendant or at least notify the defendant of the receipt of summons.

Quilab vs. Quilab; 5) Civil Case No. 13-12605, *Jimenez vs. Jimenez*; 6) Civil Case No. 13-13071, *Paguirigan vs. Paguirigan*; 7) Civil Case No. 13-13387, *Punta vs. Guervarra*; 8) Civil Case No. 13-13873, *G. Fevidal vs. A. Monforte-Fevidal*; 9) Civil Case No. 13-13931, *Michelle San Diego Sy Lee Yong vs. James Grundy*; 10) Civil Case No. 13-14933, *Ramos vs. Ramos*; 11) Civil Case No. 13-14949, *Alido vs. Alido*; 12) Civil Case No. 14-15241, *Alangcao vs. Alangcao*; 13) Civil Case No. 14-15571, *R. Dela Cruz vs. I. Babiera*; 14) Civil Case No. 14-15837, *Avila vs. Matawaran-Avila*; 15) Civil Case No. 14-16153, *Asuero vs. Asuero*; 16) Civil Case No. 14-16311, *Yamaro vs. Yamaro*; 17) Civil Case No. 14-17081, *Rivera vs. Rivera*; 18) Civil Case No. 14-17503, *Lising vs. Lising*; 19) Civil Case No. 14-17509, *Paz vs. Tolentino*; 20) 14-17609, *Malapit vs. Malapit*; 21) Civil Case No. 14-17717, *Lleno vs. Lleno*; 22) Civil Case No. 14-17863, *Joson vs. Joson*; 23) Civil Case 14-17915, *Libang vs. Libang*; 24) Civil Case No. 14-17931, *M. Cura Canda vs. R. Canda*; 25) Civil Case No. 14-18006, *Gilhang vs. Gilhang*; 26) Civil Case No. 14-18009, *Dedicatoria vs. Dedicatoria*; 27) Civil Case No. 14-18235, *Bamba vs. Bamba*; 28) Civil Case No. 14-18263, *Cruz vs. Lugiano*; 29) Civil Case No. 15-18583, *Escurel vs. Linsangan*; 30) Civil Case No. 15-18851, *Suehara vs. Suehara*; 31) Civil Case No. 15-18947, *Almirez vs. Almirez*; and 32) Civil Case No. 15-19027, *Faelnar vs. Faelnar*.

4. Cases proceeded even if respondent was not validly served with summons, no Notice of Appearance of the Office of the Solicitor General was received by the court, and the prosecutor had not yet complied with the submission of the report on collusion. There were also cases where the copy of the orders sent to the petitioners was returned by the post office with the notation that petitioners are not residents of the area.[6] It was also observed that Judge Guiling prioritized the hearing of annulment of marriage cases and that they were decided within a short span of time.[7]

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[6] Some of these cases are: 10-02866; 10-04276; 10-04198; 11-05662; 11-06700; 11-07202; 11-08178; 12-09545; 12-09975; 12-10346; 12-10379; 12-10878; 12-11329; 12-11641; 12-11650; 12-11724; 12-11896; 12-12035; 13-12834; 13-13091; 13-13280; 13-13373; 13-13359; 13-13625; 13-13657; 13-13680; 13-13813; 13-13834; 13-13914; 13-13970; 13-14042; 13-14099; 13-14268; 13-14289; 13-14487; 13-14623; 13-14816; 13-14878; 13-14944; 13-14949; 13-14977; 13-15050; 13-15028; 13-15077; 13-15151; 14-14641; 14-15185; 14-15224; 14-15241; 14-15312; 14-15394; 14-15436; 14-15450; 14-15462; 14-15477; 14-15524; 14-15572; 14-15685; 14-15698; 14-15732; 14-15736; 14-15742; 14-15763; 14-15908; 14-16069; 14-16108; 14-16211; 14-16417; 14-16680; 14-16754; 14-16758; 14-16933; 14-16966; 14-16011; 14-16183; 14-16208; 14-16269; 14-16271; 14-16315; 14-16333; 14-16390; 14-16497; 14-16408; 14-16430; 14-16500; 14-16503; 14-16506; 14-16522; 14-16548; 14-16549; 14-16610; 14-16881; 14-16899; 14-16917; 14-16919; 14-16932; 14-17015; 14-17036; 14-17072; 14-17090; 14-17097; 14-17105; 14-17153; 14-17228; 14-17360; 14-17404; 14-17415; 14-17451; 14-17460; 14-17472; 14-17501- 14-17503; 14-17518; 14-17521; 14-17734; 14-17556; 14-17569; 14-17577; 14-17761; 14-17609; 14-17751; 14-17788; 14-17864; 14-17948; 14-17990; 14-18008; 14-17990; 14-18008; 14-18024; 14-18056; 14-18207; 14-18230; 14-18234; 14-18235; 14-18307; 14-18462; 14-18505; 15-18630; 15-18786; 15-18809; 15-18851; 15-18915; 15-18970.

[7] Some of these cases are: 13-13970; 13-14338; 13-14878; 13-14944; 13-14977; 13-15050; 14-15205; 15207; 14-15233; 14-15236; 14-15241; 14-15264; 14-15312; 14-15329; 14-15394; 14-15436; 14-15446; 14-15450; 14-15479; 14-15480; 14-15485; 14-15522; 14-15531; 14-15548; 14-15660; 14-15688; 14-15720; 14-15732; 14-15742; 14-15809; 14-15811; 14-15871; 14-16011; 14-16014; 14-16039; 14-16110; 14-16150; 14-16153; 14-16201; 14-16211; 14-16252; 14-16267; 14-16265; 14-16337; 14-16383; 14-16390; 14-16497; 14-16408; 14-16450; 14-16467; 14-16500; 14-16548; 14-16549; 14-16597; 14-16610; 14-16701, 14-16713; 14-16739; 14-16777; 14-16787; 14-16919; 14-17072; 14-17091; 14-17140; 14-17153; 14-17356; 14-18016.

The team also observed the continued presence of a certain male person conversing with the staff during the audit. That man was present in the court the entire day from 14 to 29 April 2015 (Monday to Thursday). The man introduced himself as "Mang Boy" or Mr. Adolf Mantala. The team first thought that he was a friend of the staff but information was gathered on the last day of the audit that Mr. Mantala is the personal secretary of Sheriff de Jesus who takes the call of petitioners in replevin cases whenever Sheriff de Jesus is not around. His presence was tolerated by Judge Guiling and OIC Paulo.

During the exit conference, the team brought to the attention of the court that information was received earlier about some records being kept by Sheriff de Jesus in the trunk of his car. On one hand, Sheriff de Jesus replied that he had already returned all the replevin cases to the court. On the other hand, OIC Cleotilde Paulo did not offer any explanation as to why said records were in the possession of Sheriff de Jesus.

With the team's several adverse findings, Judge Guiling, Officer-in-Charge Ms. Cleotilde Paulo, Sheriff Reyner de Jesus, and Process Server Mr. Gaudencio Sioson were ordered to explain why they should not be administratively charged.[8]

Meanwhile, Judge Guiling was directed to: 1) take appropriate action on all cases that require his immediate action, especially those with pending motions or incidents, and those that are submitted for decision; 2) explain (a) why he should not be administratively charged when he proceeded to hear cases involving annulment of marriage despite invalid service of summons, and prior to the receipt of the Notice of Appearance of the OSG and the Report on Collusion, and non-compliance of the parties on the Manifestation and Motion of the OSG to be furnished with copies of the petitions and their annexes; and (b) why the court, as of April 2015, failed to submit within the prescribed period the Monthly Report of Cases from June to February 2015, and the Semestral Docket Inventory from July to December 2011 to July to December 2014; and 3) prioritize

[8] *Rollo*, Volume II, pp. 1167-1171.

the hearing of criminal and civil cases (except annulment and nullity of marriage) especially those filed beyond the ten (10) year period.[9]

The Report and Recommendation of the OCA

On June 27, 2016, the OCA submitted the following recommendations:[10]

1. The instant judicial audit report be **RE-DOCKETED** as an **administrative complaint** against Hon. Tingaraan U. Guiling, Presiding Judge, Branch 109, Offlcer-in-Charge Ms. Cleotilde P. Paulo, Process Server Gaudencio P. Sioson and Sheriff Reyner de Jesus, all of Regional Trial Court, Pasay City;

2. Judge Guiling be found **GUILTY** of gross dereliction of duty, gross inefficiency, and gross incompetence for undue delay in rendering judgment in twenty-three (23) criminal cases and forty (40) civil cases; undue delay in the resolution of motions or incidents in seventeen (17) criminal cases and sixty-three (63) civil cases, violation of Supreme Court rules, directives and circulars; undue delay in the submission of monthly reports; failure to maintain the confidentiality of court records and proceedings; and violation of the rules on annulment of marriage;

3. Judge Guiling be **RELIEVED** of the judicial and administrative functions effective immediately and to continue until further orders from this Court, **EXCEPT TO**;

   (a) **DECIDE** with dispatch the remaining five (5) criminal and eleven (11) civil cases submitted for decision referred to above, and **SUBMIT** to the Court, through the Office of the Court Administrator (OCA), copies of the decisions within thirty (30) days from notice;

   (b) **RESOLVE** with dispatch the remaining motions/ incidents in six (6) criminal and fifty-four (54) civil cases, and **SUBMIT** to the Court, through the OCA, copies of the corresponding resolutions within thirty (30) days from notice;

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[9] *Id.*

[10] *Rollo*, Volume I, pp. 61-63.

(c) **TAKE APPROPRIATE ACTION** immediately in the two (2) criminal and eight (8) civil cases wherein no action was taken from the time of their filing, and thirty-eight (38) criminal and sixty (60) civil cases without further setting for a considerable length of time, and **SUBMIT** to the Court, through the OCA, within thirty (30) days from notice a copy of each order and resolution, if any, issued in connection therewith; and

(d) **EXPLAIN** within thirty (30) days from notice why he proceeded to hear cases involving annulment of marriage despite invalid service of summons, and prior to the receipt of the Notice of Appearance of the Office of the Solicitor General and the Report of Collusion (in cases grounded on Article 36 of the Family Code); and the non-compliance of the parties with the Manifestation and Motion of Office of the Solicitor General to be furnished with copies of the petitions and their annexes;

4. Judge Guiling be **FINED** in the amount of FIFTY THOUSAND PESOS (₱50,000.00) and the salaries and other benefits accruing to him be **WITHHELD** effective immediately until such time that the Court shall have ordered the restoration of his judicial and administrative functions;

5. Hon. Caridad G. Cuerdo, Presiding Judge, Branch 113, Regional Trial Court, Pasay City, be **DESIGNATED** as Assisting Judge of Branch 109, Regional Trial Court, Pasay City, to **HEAR** all active cases in that court;

6. Judge Cuerdo be **ENTITLED** to an additional expense allowance and judicial incentive allowance as provided in the Resolution dated 2 February 1999 of the Court *En Banc* in A.M. No. 99-1-04-SC, as amended by the Resolution of the Court *En Banc* dated 17 January 2006;

7. Officer-in-Charge Ms. Cleotilde P. Paulo be **SUSPENDED** for six (6) months without salaries and allowances for violation of Supreme Court rules, directives and circulars, undue delay in the submission of monthly reports, failure to maintain the confidentiality of court records and proceedings, and violation of the rules on annulment of marriage;

8. Sheriff Mr. Reyner de Jesus be **FINED** in the amount of TWENTY THOUSAND PESOS (₱20,000.00) for failure to

maintain the confidentiality of court records and proceedings, and violation of the rules on annulment of marriage; and

9. Process Server Mr. Gaudencio P. Sioson be **FINED** in the amount of FIVE THOUSAND PESOS (₱5,000.00) for violation of the rules on annulment of marriage.

The Ruling of the Court

After a judicious review of the records of the case, this Court agrees with the findings and recommendations of the OCA.

I. Judge Tingaraan Guiling

Judge Guiling was granted an extension of thirty (30) days from February 9, 2016 to fully comply with the directives issued to him by the Deputy Court Administrator. On March 11, 2016, Judge Guiling forwarded copies of orders, alias warrants of arrest and decisions issued by him in compliance with the Memorandum[11] dated January 12, 2016, directing him to take appropriate action on the remaining criminal and civil cases.

However, despite these submissions from Judge Guiling, the OCA still found two (2) criminal and eight (8) civil cases with no action taken from the time of their filing; thirty-eight (38) criminal and sixty (60) civil cases without further setting; and six (6) criminal and fifty-four (54) civil cases with unresolved motions or incidents, and five (5) criminal and eleven (11) civil cases undecided and submitted for decision. Judge Guiling did not provide any justification for his delay in the rendition of judgment in numerous cases. He failed to submit any explanation as to why he should not be administratively charged for proceeding to hear cases involving annulment of marriage despite invalid service of summons, prior to the receipt of the Notice of Report on Collusion (in cases grounded on Article 36 of the Family Code), and the non-compliance of the parties with the Manifestation and Motion of the OSG to be furnished with copies of the petitions and their annexes.

Article VIII, Section 15 (1)[12] of the 1987 Constitution mandates lower court judges to decide a case within the reglementary

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[11] *Rollo*, Volume II, pp. 1086-1171.

[12] SECTION 15. (1) All cases or matters filed after the effectivity of

period of ninety (90) days. The New Code of Judicial Conduct under Section 5 of Canon 6 likewise directs judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the 90-day period is mandatory.[13] The speedy disposition of cases in our courts is a primary aim of the Judiciary, so that the ends of justice may not be compromised and the Judiciary will be true to its commitment to provide litigants their constitutional right to speedy trial and speedy disposition of their cases.[14]

Judge Guiling incurred delay in rendering judgment in twenty-three (23) criminal cases and forty (40) civil cases, and in resolving motions or incidents in seventeen (17) criminal cases and sixty-three (63) civil cases. Worse, when given the chance to explain his side, respondent judge did not offer any explanation as to why there was delay in the rendition of judgment and resolution of pending motions or incidents.

As to the charges of violation of Supreme Court rules, directives and circulars, undue delay in the submission of monthly reports, and failure to maintain the confidentiality of court records and proceedings, the findings of the OCA are substantiated. Judge Guiling again failed to submit any explanation as to why he proceeded to hear cases of annulment of marriage despite invalid service of summons, before the receipt of the Notice of Report on Collusion (in cases grounded on Article 36 of the Family

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this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

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[13] *Re: Findings on the Judicial Audit Conducted at the 7th Municipal Circuit Trial Court, Liloan–Compostela, Liloan, Cebu*, 784 Phil. 334, 340 (2016).

[14] *Re: Judicial Audit Conducted in the RTC, Br. 20, Cagayan de Oro City, Misamis Oriental*, 730 Phil. 23, 41 (2014).

Code), and before the parties with the Manifestation and Motion of the OSG to be furnished with copies of the petitions and their annexes.

Anent the presence of a certain Mr. Adolf Mantala in Branch 109, this Court finds that Judge Guiling, Ms. Paulo (being the officer-in-charge of the court) and Sheriff de Jesus (as he allowed Mr. Mantala to be his alter ego in facilitating replevin cases and receiving phone calls from petitioners) guilty of violation of Section 1, Canon 2 of the New Code of Judicial Conduct for Court Personnel.[15] As correctly found by the OCA, Mr. Mantala is an outsider and should not have been granted access to the cases or proceedings in court. Mr. Mantala was allowed to answer calls from parties regarding replevin cases and to drive the seized vehicles in replevin cases. This runs counter to the mandate that court personnel shall not disclose to any unauthorized person any confidential information acquired by them while employed in the judiciary.

Classified as less serious charges under Section 9, 14 Rule 140 of the Rules of Court are undue delay in rendering decisions or orders, and violation of Supreme Court rules, directives and circulars, penalized with either suspension without pay for a period of not less than one (1) month, but not more than three (3) months, or a fine of more than ₱10,000.00, but not more than ₱20,000.00.[16]

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[15] SECTION 1. Court personnel shall not disclose to any unauthorized person any confidential information acquired by them while employed in the Judiciary, whether such information came from authorized or unauthorized sources.

Confidential information means information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any justice or judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations, and similar papers.

The notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers that a justice or judge uses in preparing a decision, resolution or order shall remain confidential even after the decision, resolution or order is made public.

[16] *Re: Evaluation of Administrative Liability of Judge Lubao*, 785 Phil. 14, 28 (2016).

With respect to Judge Guiling's offense of undue delay in rendering decisions or orders, the Court imposes upon him a penalty of fine in the amount of Twenty Thousand Pesos (₱20,000.00). For his violation of Supreme Court rules, directives and circulars, and violation of the rules on annulment of marriage, Judge Guiling is ordered to pay a fine of Twenty Thousand Pesos (₱20,000.00).

Meanwhile, under Section 10 of the same Rule 140, undue delay in the submission of monthly reports is considered a light offense. Section 11(C) of Rule 140 provides that if the respondent is guilty of a light offense, any of the following may be imposed: (i) a Fine of not less than ₱1,000.00 but not exceeding ₱10,000.00; and/or (ii) Censure, (iii) Reprimand, (iv) Admonition with warning.[17] Thus, a fine in the amount of Ten Thousand Pesos (₱10,000.00) is imposed against Judge Guiling for undue delay in the submission of monthly reports.

In fine, this Court finds that the OCA's recommended fine of Fifty Thousand Pesos (₱50,000.00) imposed against Judge Guiling is proper for all his infractions. However, the recommendation by the OCA to relieve Judge Guiling of his judicial and administrative functions has already been rendered moot by his compulsory retirement last February 25, 2018. In view of the retirement of Judge Guiling, the aforementioned penalty of fine shall be deducted from his retirement benefits.

II. Cleotilde P. Paulo

The OCA found OIC Cleotilde P. Paulo guilty of violation of Supreme Court rules, directive and circulars, undue delay in the submission of monthly reports, failure to maintain the confidentiality of court records and proceedings and violation of rules on annulment of marriage. However, in the judicial audit report, no adverse findings for violation of rules on annulment of marriage against Ms. Paulo was found by the audit team. Such violation was only imputed against Judge Guiling. Thus, this Court deems that the finding and recommendation for violation of rules on annulment of judgment against Ms. Paulo be not considered.

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[17] *Id*.

In a Letter[18] dated January 22, 2016, Cleotilde Paulo explained that as officer-in-charge, she performs multiple functions. She explained that the failure to submit the required monthly reports was not intentional but was merely due to the absence of criminal in-charge and civil in-charge from 2010 to 2013. The previous civil in-charge was promoted to legal researcher of another court while the criminal in-charge took a study leave for the Bar examinations. Ms. Paulo further explained that she has no knowledge of any records being taken outside the court by Sheriff de Jesus other than for the purpose of having the same photocopied at the request of interested parties. She did not allow, consent to, nor tolerate Sheriff de Jesus taking court records inside his car and she will never tolerate such acts. As to the presence of Mr. Mantala, Ms. Paulo stated that he started to regularly visit Sheriff de Jesus only a couple of months before the audit commenced. Mr. Mantala never performed any task in Branch 109. His interaction in Branch 109 is limited to Sheriff de Jesus and nothing else. However, this statement of Ms. Paulo was contradicted by the report of Executive Judge Racquelen A. Vasquez who stated that upon his assumption as Presiding Judge of Branch 109, Judge Guiling brought Mr. Mantala with him as his personal aide.[19]

The Court finds the explanation given by Ms. Paulo with respect to the findings of the audit team regarding her violation of Supreme Court rules, directive and circulars, undue delay in the submission of monthly reports, and failure to maintain the confidentiality of court records inadequate to absolve her. As officer-in-charge, Ms. Paulo is charged with safekeeping of all records, papers, files, exhibits and public property committed to her charge, including the library of the court, and the seals and furniture belonging to her office. The Rules of Court provides that no record shall be taken from the clerk's office without an order from the court except as otherwise provided by the rules. Clearly, Ms. Paulo was remiss in the discharge of her function in allowing Sheriff de Jesus to bring some records out

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[18] *Rollo*, Volume I, pp. 293-297.

[19] *Id.* at 1084-1085.

of the court premises which were found inside the trunk of his car, and Mr. Adolf Mantala to have an access to court records and proceedings.

Anent the charge of undue delay in the submission of monthly reports, this Court finds Ms. Paulo's explanation unmeritorious. The dates pointed out by Ms. Paulo when the civil in-charge and criminal in-charge were promoted and took a leave of absence, respectively, were way before June 2014 to February 2015. As admitted by Ms. Paulo in her letter, a new civil cases clerk-in-charge was appointed in 2013. Through an office Memorandum dated October 23, 2013, she gave Mr. Alonto Paramihan, Jr., former criminal cases clerk-in-charge who was promoted to court interpreter, additional duty to temporarily act as criminal clerk-in-charge. In September 2014, a new criminal clerk-in-charge was appointed to Branch 109. All of these facts show that Ms. Paulo could have submitted the court's monthly reports on time had she exerted more effort to comply with Supreme Court directive as there was no shortage of personnel, an excuse she would like the Court to consider.

Hence, the Court adopts the penalty of suspension for six (6) months without salaries and allowances recommended by the OCA as it is in accordance with Section 11(B)[20] of Rule 140 of the Rules of Court.

III. Sheriff Reyner De Jesus

The OCA recommended that Sheriff Mr. Reyner de Jesus be fined in the amount of ₱20,000.00 for failure to maintain the confidentiality of court records and proceedings and for violation of the rules on annulment of marriage.

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[20] SECTION 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

x x x x x x x x x

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

Sheriff de Jesus, in a Letter[21] dated January 22, 2016, admitted that he was not familiar with the ruling laid down in the case of *Manotoc v. Court of Appeals*.[22] Sheriff de Jesus denied that he took custody of case records involving replevin, brought them out of the court room, and placed them inside the trunk of his car. He likewise denied any knowledge of Mr. Mantala taking calls for him but admitted that sometimes he requested Mr. Mantala to drive for him when he implemented his writs of replevin outside Metro Manila.

The explanation submitted by Sheriff de Jesus why he availed of substituted service of summons and made a general statement in his returns in cases of annulment of marriage cannot absolve him from liability. He should have been aware of existing rules and jurisprudence governing the functions of his office. Worthy to note that the *Manotoc* case is not a new case but was promulgated way back in 2006.

With respect to the charge of failure to maintain the confidentiality of court records and proceedings, his denial cannot prevail over the observations and findings of the audit team. Furthermore, Ms. Paulo, in her Letter dated January 22, 2016, admitted there were occasions when Sheriff de Jesus would bring records outside the court premises to accommodate parties requesting to photocopy the records. This is contrary to the statement of Sheriff de Jesus that only the respective clerks-in-charge of criminal and civil cases were able to bring records outside the court to photocopy the records. Thus, the Court is inclined to believe the observation and findings of the audit team that Sheriff de Jesus kept some records in the trunk of his car.

In fine, this Court adopts the recommendation of the OCA to impose the penalty of fine of Twenty Thousand Pesos (₱20,000.00) against Sheriff de Jesus.

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[21] *Rollo*, Volume I, pp. 363-365.

[22] 530 Phil. 454 (2006).

IV. Process Server Gaudencio Sioson

Lastly, the OCA recommended that Process Server Mr. Gaudencio Sioson be **fined** in the amount of ₱5,000.00 for violation of the rules on annulment of marriage.

In his Letter[23] filed on January 25, 2016, Process Server Gaudencio Sioson explained that it was his honest belief that service made to the relative of the respondent was sufficient compliance with the rules. However, after his attention was called, he started to observe the procedures laid down in the *Manotoc* case.

The explanation submitted by Sheriff de Jesus cannot absolve him from liability. He should have been aware of existing rules and jurisprudence governing the functions of his office. It is worthy to note that the *Manotoc* case is not a new case but was promulgated way back in 2006. Thus, this Court sustains the recommendation of the OCA to impose the penalty of fine of Five Thousand Pesos (₱5,000.00) against Process Server Gaudencio Sioson.

WHEREFORE, premises considered, the Court finds as follows:

(1) JUDGE TINGARAAN GUILING, former Presiding Judge of the Regional Trial Court, Branch 109 of Pasay City, **GUILTY** of gross dereliction of duty, gross inefficiency and gross incompetence for undue delay in rendering judgment in 23 criminal cases and 40 civil case; undue delay in the resolution of motions or incidents in 17 criminal cases and 63 civil cases, violation of Supreme Court rules, directives and circulars, undue delay in the submission of monthly reports; failure to maintain the confidentiality of court records and proceedings, and violation of the rules of annulment of marriage, for which he is **FINED** Fifty Thousand Pesos (₱50,000.00) to be deducted from his retirement benefits;

[23] *Rollo*, Volume I, pp. 319-320.

(2) CLEOTILDE P. PAULO, officer-in-charge RTC, Branch 109 of Pasay City, **GUILTY** of violation of Supreme Court rules, directive and circulars, undue delay in the submission of monthly reports, and failure to maintain the confidentiality of court records and proceedings, for which she is **SUSPENDED** for six (6) months without salaries and allowances;

(3) REYNER DE JESUS, Sheriff of RTC, Branch 109 of Pasay City **GUILTY** for failure to maintain the confidentiality of court records and proceedings, and violation of the rules on annulment of marriage for which he is **FINED** Twenty Thousand Pesos (₱20,000.00); and

(4) GAUDENCIO P. SIOSON, process server of RTC, Branch 109 of Pasay City **GUILTY** of violation of the rules on annulment of marriage for which he is **FINED** Five Thousand Pesos (₱5,000.00).

SO ORDERED.

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

Peralta and *Hernando, JJ.*, on official business.

INDEX

INDEX

to be presumed innocent and to have regularly performed his duty as officer of the court must remain in place; as the Court has invariably pronounced, it will not hesitate to mete out proper disciplinary punishment upon a lawyer who is shown to have failed to live up to his or her sworn duties. (Morales *vs.* Atty. Borres, Jr., A.C. No. 12476, June 10, 2019) p. 26

ADMISSIONS

Judicial admission — The admission by Nonito's counsel during the pre-trial proceedings before the RTC that there was no sale between Tranquilino and Nonito qualifies as a judicial admission because the statement is a deliberate, clear, unequivocal statement of a party's attorney during judicial proceedings in open court about a concrete or essential fact within that party's peculiar knowledge; since such statement is a judicial admission, it does not require proof according to Sec. 4, Rule 129 of the Rules of Court. (Agbayani *vs.* Lupa Realty Holding Corp., G.R. No. 201193, June 10, 2019) p. 49

AGRARIAN REFORM

Just compensation — It is doctrinal that the concept of just compensation contemplates of just and timely payment (prompt payment); it embraces not only the correct determination of the amount to be paid to the landowner, but also the payment of the land within a reasonable time from its taking, as otherwise compensation cannot be considered "just," for the owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for years before actually receiving the amount necessary to cope with his loss; prompt payment encompasses the payment in full of the just compensation to the landholders as finally determined by the courts; the Court finds that it will not be fair and just to reckon the rate of imposable legal interest on the just compensation for the subject land (or any other property/ies valued under DAR AO No. 1, Series of 2010) from the time of taking since the land had been valued using *current prices* and had already considered

months' selling prices prior to the date of receipt of the CF by the LBP for processing; however, in cases where the just compensation is computed pursuant to the formula under DAR AO No. 5, Series of 1998, the Court has imposed legal interest on the amount of just compensation reckoned from the time of taking, or the time when the landowner was deprived of the use and benefit of his property, such as when EPs are issued by the government – for the delay in the payment of the just compensation to the owner since the obligation is deemed to be an effective forbearance on the part of the State; the CNI factor in the DAR formulas refers to the Income Capitalization Approach under the standard appraisal approaches which is considered the most applicable valuation technique for income producing properties such as agricultural landholdings; explained; the use of the higher prices from a later time under DAR AO No. 1, Series of 2010 assumes that the property to be acquired is already operating at such capacity as of the earlier time of taking, and will continue operating at such capacity in perpetuity. (*Id*.)

ALIBI

Defense of — In order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene; given the positive identification by AAA of Pendoy as the culprit, and the failure to establish physical impossibility of said petitioner to be at the scene of the crime at the time of its commission, his defenses of denial and alibi must fail. (Pendoy *y* Posadas *vs*. Court of Appeals (18th Div.) - Cebu City, G.R. No. 228223, June 10, 2019) p. 242

ALIBI AND DENIAL

Defenses of — Adajar's defense of denial must necessarily fail; being a negative defense, the defense of denial, if not substantiated by clear and convincing evidence, as in the instant case, deserves no weight in law and cannot

the vehicle belongs to a person other than the offender himself; 3. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things; and 4. That the offender intends to gain from the taking of the vehicle. (People *vs*. Gonzales *y* Villa, G.R. No. 230909, June 17, 2019) p. 610

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Section 3 (e) — As to petitioner's guilt for violation of Sec. 3(e) of R.A. No. 3019, such has been established beyond reasonable doubt; the elements of the above violation are: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference; all the above elements are present in this case. (Arias *vs*. People, G.R. Nos. 237106-07, June 10, 2019) p. 407

— The elements of violation of Sec. 3 (e) of R.A. No. 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; the Court is convinced that the SB correctly convicted Ferrer of the crime charged; elements constituting a violation of Sec. 3(e) of R.A. No. 3019, sufficiently established considering that: (a) Ferrer was indisputably a public officer at the time of the commission of the offense, discharging his administrative and official functions as the IA Administrator; (b) he acted with gross inexcusable negligence when he knowingly allowed OCDC to commence construction on the Intramuros Walls without

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 raised as errors by the parties; "the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law." (People *vs*. Moya, G.R. No. 228260, June 10, 2019) p. 279

Appeal in labor cases — The issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact; as a rule, this Court is not a trier of facts and this applies with greater force in labor cases; only errors of law are generally reviewed by this Court; however, this rule is not absolute and admits of exceptions like in labor cases where the Court may look into factual issues when the factual findings of the Labor Arbiter, the NLRC, and the CA are conflicting; in this case, the findings of the Labor Arbiter differed from those of the NLRC and the CA necessitating this Court to review and to reevaluate the factual issues and to look into the records of the case and reexamine the questioned findings. (Atienza *vs.* Saluta, G.R. No. 233413, June 17, 2019) p. 661

Factual findings of labor officials — The Court finds no reason to disturb the findings of the labor tribunals; well-settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their jurisdiction, are generally accorded not only respect but even finality and bind this Court when supported by substantial evidence, as in the case at bar; the mere existence of these guest relations officers/ waitresses employed under the same terms and conditions as the respondents is sufficient to disqualify petitioner and MPRB from the exemption under R.A. No. 6727. (Pablico *vs*. Cerro, Jr., G.R. No. 227200, June 10, 2019) p. 207

not in accord with law or with the applicable decisions of the Court; while only questions of law may be raised in a Rule 45 *certiorari* petition, there are admitted exceptions, which includes the instance when there is conflict in the findings of fact of the trial court and the CA. (Agbayani *vs.* Lupa Realty Holding Corp., G.R. No. 201193, June 10, 2019) p. 49

— The issues raised herein are purely factual in nature, the determination of which is generally beyond this Court's judicial review under Rule 45 of the Rules of Court; a petition for review under Rule 45 should only cover questions of law; it is only in exceptional circumstances that the Court admits and reviews questions of fact considering that this Court is not a trier of facts; and the determination of factual issues is best left to the courts below, especially the trial courts; no such exceptional circumstances herein. (Booklight, Inc. *vs.* Tiu, G.R. No. 213650, June 17, 2019) p. 525

Points of law, issues, theories, and arguments — A writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction; the arguments raised by Pendoy delved into the wisdom or legal soundness of the Decision of the CA which disposed on the merits his appeal in CA-G.R. CEB CR. No. 02486, and not on the jurisdiction of the appellate court to render said decision; thus, the same is beyond the province of a petition for *certiorari;* the appropriate remedy available to Pendoy then was to appeal before this Court the assailed decision and resolution of the CA via a petition for review on *certiorari* under Rule 45 of the Rules of Court and not to file a petition for *certiorari* under Rule 65; the instant petition should be dismissed outright. (Pendoy *y* Posadas *vs*. Court of Appeals (18th Div.) - Cebu City, G.R. No. 228223, June 10, 2019) p. 242

— Considering that CRV Corporation did not appeal the decision of the appellate court, the same stands insofar as the corporation is concerned; a reversal of a judgment

action under Rule 65; the CA correctly dismissed the appeal for being the wrong remedy. (Sps. Cruz *vs*. Onshore Strategic Assets (SPV-AMC), Inc., G.R. No. 212862, June 17, 2019) p. 509

ARRESTS

Warrantless arrest — In sustaining appellant's conviction, the CA ruled that this was a clear case of an "*in flagrante delicto* warrantless arrest" under par. (a) of Sec. 5, Rule 113 of the Revised Rules on Criminal Procedure; a warrantless arrest under par. (a) of Sec. 5 is valid when these two elements are present: (1) the person to be arrested must perform an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act was done in the presence or within the view of the arresting officer; here, both conditions concurred. (People *vs*. Maneclang *y* Abdon, G.R. No. 230337, June 17, 2019) p. 593

—— Sec. 5 of Rule 113 of the Rules on Criminal Procedure provides instances when warrantless arrest may be affected; here, appellant was arrested during an entrapment operation where he was caught in flagrante delicto selling and in possession of *shabu; People v. Rivera,* cited; a buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers; in a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense; if carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction; consequently, appellant's warrantless arrest as well as the incidental search effected by the PDEA agents on his person validly conformed with Sec. 5 of Rule 113 of the Rules on Criminal Procedure. (People *vs*. Frias *y* Sarabia, G.R. No. 234686, June 10, 2019) p. 377

ATTORNEYS

Disbarment — A disbarment complaint is not an appropriate remedy to be brought against a lawyer simply because he lost a case he handled for his client; a lawyer's acceptance of a client or case is not a guarantee of victory; when a lawyer agrees to act as counsel, what is guaranteed is the observance and exercise of reasonable degree of care and skill to protect the client's interests and to do all acts necessary therefor; but once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free; thus, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable; respondent here was not shown to have neglected his duty to complainant in the cases for which he was engaged as counsel. (Morales *vs.* Atty. Borres, Jr., A.C. No. 12476, June 10, 2019) p. 26

Disbarment or suspension proceedings — Because of the serious consequences flowing from the imposition of severe disciplinary sanctions such as disbarment or suspension against a member of the Bar, we emphasized in *Aba v. Guzman* that: The Court has consistently held that in suspension or disbarment proceedings against lawyers, the lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to prove the allegations in his complaint; the evidence required in suspension or disbarment proceedings is preponderance of evidence; in case the evidence of the parties are equally balanced, the equipoise doctrine mandates a decision in favor of the respondent; preponderance of evidence, defined. (Rajesh Gagoomal *vs.* Atty. Bedona, A.C. No. 10559, June 10, 2019) p. 11

Negligence of counsel — The doctrinal rule is that the negligence of counsel binds the client; otherwise, there would be no end to a suit so long as a new counsel could be employed who would allege and show that the prior counsel had not been sufficiently diligent, experienced, or learned; this rule admits certain exceptions, such as:

— Petitioner did not assert his right to a speedy disposition of his case at the earliest possible time; he took more than a year after the filing of the information in the Sandiganbayan before he invoked his right; petitioner's failure to invoke his right to a speedy disposition of his case during the preliminary investigation amounted to a waiver of said right; in *Magante*, the Court categorically held that "it is the duty of the respondent to bring to the attention of the investigating officer the perceived inordinate delay in the proceedings of the formal preliminary investigation; failure to do so may be considered a waiver of his/her right to speedy disposition of cases"; this could also address the rumored "parking fee" allegedly being paid by some respondents so that delay can be set up as a ground for the dismissal of their respective cases. (*Id*.)

— Sec. 16, Art. III of the Constitution guarantees every person's right to a speedy disposition of his case before all judicial, quasi-judicial or administrative bodies; this constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as in all proceedings, either judicial or quasi-judicial; in this accord, any party to a case may demand expeditious action of all officials who are tasked with the administration of justice. (*Id*.)

— The right to a speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient; jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for or secured, or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried; equally applicable is the balancing test used to determine whether a defendant has been denied his right to speedy trial, or a speedy disposition of a case for that matter, in which the conduct

of both the prosecution and the defendant are weighed, and such factors as length of delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered. (*Id*.)

— We see no reason to disturb the findings and conclusions of the Sandiganbayan Sixth Division's assailed Resolutions; there was no inordinate delay committed by the Office of the Ombudsman that transgressed petitioner's right to a speedy disposition of his case; the Office of the Ombudsman cannot be faulted for giving petitioner and his co-respondents every opportunity to exhaust legal remedies afforded to them by law; the state, like any other litigant, is entitled to its day in court, and to a reasonable opportunity to present its case. (*Id*.)

CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

Action to correct misspelled name — Rule 108 implements judicial proceedings for the correction or cancellation of entries in the civil registry pursuant to Art. 412 of the Civil Code; the action filed by petitioner before the RTC seeks to correct a supposedly misspelled name, and thus, properly falls under Rule 108; to correct simply means "to make or set aright; to remove the faults or error from"; considering that petitioner complied with the procedural requirements under Rule 108, the RTC had the jurisdiction to resolve the petition which included a prayer for "other reliefs just and equitable x x x"; a general prayer for "other reliefs just and equitable" appearing on a petition enables the court to award reliefs supported by the complaint or other pleadings, by the facts admitted at the trial, and by the evidence adduced by the parties, even if these reliefs are not specifically prayed for in the complaint; the CA erred in holding that petitioner has to refile another petition before the trial court could resolve his claim; petitioner failed to sufficiently establish that his father's last name was

CIVIL SERVICE COMMISSION

Petitions for correction of entries in government employee's service records — In *Police Senior Superintendent Macawadib v. The Philippine National Police Directorate for Personnel and Records Management*, it was held that there is a necessity to implead the CSC in petitions for correction of entries that would affect a government employee's service records; in this case, respondent sought from the RTC the correction of his birthdate; he impleaded in his petition for correction the BOC, the agency where he was working at so as to update his service records, but did not implead the CSC; one of the CSC's mandated functions under E.O. No. 292 is to keep and maintain personnel records of all officials and employees in the civil service; therefore, the CSC has an interest in the petition for correction of respondent's birth certificate since the correction entails a substantial change in its public record, *i.e.*, he would have an additional four years before reaching his compulsory retirement age; Sec. 3 of Rule 108 mandatorily requires that the civil registrar and the interested parties who would be affected by the grant of a petition for correction should be made parties; considering that the CSC is an indispensable party, it should have been impleaded in respondent's petition, and sent a personal notice to comply with the requirements of fair play and due process, before it could be affected by the decision granting the correction of his date of birth. (CSC *vs.* Rasuman, G.R. No. 239011, June 17, 2019) p. 690

CLERKS OF COURT

Functions — Time and again, the Court emphasized that Clerks of Courts perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises; as such, they have the duty to immediately deposit the various funds received by them to the authorized government depositories for they are not supposed to keep funds in their custody; such functions are highlighted by OCA Circular Nos. 50-95 and 113-

the administration of justice as a whole, and render her unfit for the position of clerk of court; her willingness to pay her shortages will not absolve her from the consequences of her wrongdoing; since the penalty of dismissal from the service is no longer imposable, a fine can be imposed instead, and its amount is subject to the sound discretion of the Court; Sec. 51(d) of Rule X of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that fine as a penalty shall be in an amount not exceeding the salary for six months of the respondent; thus, a fine equivalent to Patiag's salary for her last six months in the service to be deducted from whatever accrued leave benefits remained for her is deemed in order, but with accessory penalties of dismissal from service, *i.e.*, forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations. (Re: Non-Submission of Monthly Financial Reports of Erlinda P. Patiag, Clerk of Court, MTCC, Gapan City, Nueva Ecija, A.M. No. 11-6-60-MTCC, June 18, 2019) p. 752

CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (R.A. NO. 6713)

Section 7(d) — In order to sustain a conviction for violation of Sec. 7(d) of R.A. No. 6713, the following elements must be proved with moral certainty: (a) that the accused is a public official or employee; (b) that the accused solicited or accepted any loan or anything of monetary value from any person; and (c) that the said act was done in the course of the accused's official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his office; the prosecution was able to establish all the foregoing elements. (Villanueva *vs.* People, G.R. No. 237738, June 10, 2019) p. 449

–– That R.A. No. 6938, otherwise known as the "Cooperative Code of the Philippines," makes membership in cooperatives "available to all individuals regardless of their social,

political, racial or religious background or beliefs," does not accord petitioner, by virtue of the functions of her office, complete freedom in any of her personal transactions with any cooperative despite her membership therein; as observed by the Court in *Martinez v. Villanueva*, the limitation of CDA officials and employees to obtain loans from cooperatives is but a necessary consequence of the privilege of holding their public office, viz: True, R.A. No. 6938 allows CDA officials and employees to become members of cooperatives and enjoy the privileges and benefits attendant to membership; however, R.A. No. 6938 should not be taken as creating in favor of CDA officials and employees an exemption from the coverage of Sec. 7(d), R.A. No. 6713 considering that the benefits and privileges attendant to membership in a cooperative are not confined solely to availing of loans and not all cooperatives are established for the sole purpose of providing credit facilities to their members; such limitation is but a necessary consequence of the privilege of holding a public office and is akin to the other limitations that, although interfering with a public servant's private rights, are nonetheless deemed valid in light of the public trust nature of public employment; the overarching policy objective of R.A. No. 6713 is "to promote a high standard of ethics in public service"; accordingly, certain acts which violate these ethics, such as that provided under Sec. 7(d), have been declared unlawful and accordingly, classified as *mala prohibita;* R.A. No. 6713 exhorts that "public officials and employees shall always uphold the public interest over and above personal interest"; thus, public officials do not enjoy the same autonomy as that of private individuals, and hence, usually normal transactions such as that of obtaining loans – as in this case – come with necessary restrictions whereby personal interests take a back seat for the sake of preserving the pristine image and unqualified integrity of one's public office; the Court upholds petitioner's conviction for violation of Sec. 7(d) of R.A. No. 6713. (*Id*.)

— The Court deems it appropriate to modify the penalty imposed against petitioner, considering that the penalty of five (5) years imprisonment – the maximum prison sentence under the law – is not commensurate to the gravity of her offense, which is essentially, the act of obtaining loans from an entity whose transactions and operations ordinarily fall under the regulatory powers of her office; Sec. 11 of R.A. No. 6713 provides that a violation of Sec. 7, among others, shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (₱5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office. (*Id*.)

COMPLAINT OR INFORMATION

Two or more offenses — Sec. 13, Rule 110 of the Revised Rules on Criminal Procedure requires that "a complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses"; failure to comply with this rule is a ground for quashing the duplicitous complaint or information and the accused may raise the same in a motion to quash before he enters his plea, otherwise, the defect is deemed waived; Sec. 3, Rule 120, as well as settled jurisprudence, states that "when two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict the appellant of as many as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense"; in this case, inasmuch as Pendoy failed to object and file a motion to quash anchored on the ground that more than one offense is charged in the Information before he pleads to the same, the effect is that he is deemed to have waived such defect and he can be convicted of the crimes of rape and rape as an act of sexual assault. (Pendoy *y* Posadas *vs*. Court of Appeals (18th Div.) - Cebu City, G.R. No. 228223, June 10, 2019) p. 242

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

second link – the turnover of the seized shabu by the apprehending officer to the investigating officer; this procedural lapse or defect cannot be overlooked lest the Court blatantly disregard the very safeguards enshrined in R.A. No. 9165; the rule on chain of custody expressly demands the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court; as a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be; the Court finds that the apprehending officers failed to properly preserve the integrity and evidentiary value of the confiscated *shabu.* (*Id.*)

— In cases involving dangerous drugs, the State bears not only the burden of proving the elements, but also of proving the *corpus delicti* or the body of the crime; in drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law; while a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded; in all drugs cases, therefore, 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 to presentation in court for destruction; Sec. 21, Art. II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence: (1) the seized items be inventoried and photographed immediately after seizure

3) the turnover by the investigating officer of said item to the forensic chemist for examination; and, 4) the turnover and submission thereof from the forensic chemist to the court." (People *vs*. Maneclang *y* Abdon, G.R. No. 230337, June 17, 2019) p. 593

— The case is governed by R.A. No. 9165 prior to its amendment in 2014; Sec. 21 of R.A. No. 9165 lays down the procedure in handling the dangerous drugs starting from their seizure until they are finally presented as evidence in court; this makes up the chain of custody rule; as required, the physical inventory and photograph of the seized or confiscated drugs immediately after seizure or confiscation shall be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official; the saving clause under Sec. 21(a) commands that non-compliance with the prescribed requirement shall not invalidate the seizure and custody of the items provided such non-compliance is justified and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers; *People v. Jugo* specified the twin conditions for the 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; 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; here, it was not mentioned that a representative from the DOJ was present; as no justifiable reasons exist to excuse the deviation, it is the Court's duty to acquit appellant and overturn the verdict of conviction. (People *vs*. Frias *y* Sarabia, G.R. No. 234686, June 10, 2019) p. 377

— The prosecution witnesses had conflicting statements as to who had possession of the seized items after they were seized and marked - a crucial link in the chain of custody; there being confusion as to who had possession of the seized items after they were marked, it constitutes a break in the first link of the chain; as held in *People*

unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence; accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime. (*Id*.)

— To establish the chain of custody, Sec. 21, Art. II of R.A. No. 9165, prior to its amendment by R.A. No. 10640 pertinently provided: x x x The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; the law mandates that the insulating witnesses be present during the actual inventory and photographing of the seized drugs to deter the common practice of planting evidence; while non-compliance will not render the seizure and custody over the items invalid, honest-to-goodness efforts must be made to effect compliance; *People v. Lim*, cited; mere statements that the required witnesses were unavailable, absent serious and actual attempts to contact them were unacceptable reasons for non-compliance; owing to the breaches of procedure committed by the apprehending officers, the prosecution miserably failed to prove the *corpus delicti* of the crimes and to establish an unbroken chain of custody; the presumption of regularity in the performance of official duty accorded to the apprehending officers cannot arise. (People *vs*. Maneclang *y* Abdon, G.R. No. 230337, June 17, 2019) p. 593

Failure to prove the corpus delicti of the offense — The prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug;

of the violation of the law; while it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also require strict compliance with procedure laid down by it to ensure that rights are safeguarded. (People *vs*. Tubera, G.R. No. 216941, June 10, 2019) p. 142

— To sustain a conviction for the illegal sale of dangerous drugs, it must be proven that a transaction took place and the *corpus delicti* or the illicit drug must be presented into evidence; although not easily identifiable, the identity of the illicit drug must be clearly established since its very existence is essential to convict an accused; ***People v. Jaafar,*** cited; in all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself; its existence is essential to a judgment of conviction; hence, the identity of the dangerous drug must be clearly established; narcotic substances are not readily identifiable; to determine their composition and nature, they must undergo scientific testing and analysis; they are also highly susceptible to alteration, tampering, or contamination; it is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence; the chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed. (People *vs*. Gajir Acub *y* Arakani, G.R. No. 220456, June 10, 2019) p. 171

Illegal sale/possession of dangerous drugs — For the conviction of illegal sale of *shabu*, it was incumbent upon the prosecution to prove: (1) identities of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor; on the other hand, in illegal possession of *shabu*, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug;

Physical inventory and photographing of the seized items – – The Court has consistently held that the prosecution has the burden of (1) proving its compliance with Sec. 21, R.A. No. 9165, and (2) providing a sufficient explanation in case of non-compliance; as the Court *en banc* unanimously held in the recent case of *People vs. Lim,* it must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Art. 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape; in the case at bar, the police officers offered no such explanation. (People *vs.* Flores *y* Fonbuena, G.R. No. 220464, June 10, 2019) p. 190

—— The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension; it is only when the same is not practicable that the Implementing Rules and Regulations of R.A. No. 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team; the three required witnesses should already be physically present at the time of the

in the absence of the representative from the media and from the DOJ during the physical inventory and the photographing of the seized *shabu*, the evils of switching, "planting" or contamination of the evidence create serious lingering doubts as to its integrity and evidentiary value; in the context of these circumstances, the conviction of the appellant cannot be upheld. (People *vs*. Cadiente *y* Quindo, G.R. No. 228255, June 10, 2019) p. 267

Section 21 — In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction; it is essential that the identity and integrity of the seized drug be established with moral certainty; the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime; Sec. 21, Art. II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence; the provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice, all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. (People *vs*. Flores *y* Fonbuena, G.R. No. 220464, June 10, 2019) p. 190

—— In *People v. Tomawis*, the Court held that the presence of the three witnesses is required at the time of the conduct of the physical inventory of the seized items at the place of seizure, *i.e.*, at the time of the warrantless arrest; the presence of the witnesses from the DOJ, media,

representative and an elected public official within the period required under Art. 125 of the Revised Penal Code proved futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. (People *vs*. Cadiente *y* Quindo, G.R. No. 228255, June 10, 2019) p. 267

— Sec. 21 of the Comprehensive Dangerous Drugs Act, as amended by R.A. No. 10640, provides the manner of custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia; the Court has repeatedly emphasized that strict compliance is the expected standard when it comes to the custody and disposition of seized illegal drugs, to prevent tampering and planting of evidence; *People v. Que* and *People v. Ganzales,* cited; these provisions obviously demand strict compliance, for only by such strict compliance may be eliminated the grave mischiefs of planting or substitution of evidence and the unlawful and malicious prosecution of the weak and unwary that they are intended to prevent; such strict compliance is also consistent with the doctrine that penal laws shall be construed strictly against the Government and liberally in favor of the accused. (People *vs*. Gajir Acub *y* Arakani, G.R. No. 220456, June 10, 2019) p. 171

— The buy-bust team failed to comply with the mandatory requirements under Sec. 21, which thus creates reasonable doubt as to the identity and integrity of the seized drugs; none of the three required witnesses was present during the arrest of the accused and the marking, photography, and inventory of the seized drugs; the barangay official and media representative only arrived at the police station to sign the Certificate of Inventory, which was already prepared beforehand by the police officers; neither did the police officers offer any sufficient explanation as to the absence of the DOJ representative; the presence of

— The prosecution failed to prove that an inventory of the seized sachet was prepared and that it was photographed in the presence of accused-appellant, an elected public official, and representatives from the National Prosecution Service or the media; despite the blatant lapses, the prosecution did not explain the arresting officers' failure to comply with the requirements in Sec. 21; nonetheless, despite the prosecution's indifference to the established legal safeguards, both the lower courts still found accused-appellant guilty of the charge against him; the unjustified lapses or noncompliance with Sec. 21 is tantamount to a substantial gap in the chain of custody; *Matiñas v. People,* cited; the unjustified absence of an elected public official and DOJ representative during the inventory of the seized item constitutes a substantial gap in the chain of custody; there being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti;* as such, the petitioner must be acquitted. (People *vs.* Gajir Acub *y* Arakani, G.R. No. 220456, June 10, 2019) p. 171

— The prosecution utterly failed to provide any justifiable ground for the arresting officers' failure to inventory and photograph the seized sachet in the presence of accused-appellant, an elected public official, and representatives from the National Prosecution Service or the media; worse, the prosecution remained silent as to the noncompliance with Sec. 21; this noncompliance created a huge gap in the chain of custody that not even the presumption of regularity in the performance of official duties may remedy, as the lapses themselves are undeniable evidence of irregularity. (*Id.*)

— Under varied field conditions, strict compliance with the requirements of Sec. 21 of R.A. No. 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 does not *ipso facto* render the seizure and custody over the items void; however, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and

the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same"; in the instant case, the prosecution did neither. (*Id*.)

CONSPIRACY

Existence of — Based on the interlocking testimonies of the eyewitnesses, both the trial court and the Court of Appeals correctly ruled that appellants and their co-accused each took an active part in assaulting Jun Balmores; they in fact acted in concert toward one common purpose: to kill Jun Balmores; this is conspiracy; in conspiracy, the parties need not actually come together and agree in express terms to enter into and pursue a common design; it is enough that at the time of the commission of the offense, the accused or assailants had the same purpose and were united in its execution, as in this case. (People *vs*. Reyes *y* Hilario, G.R. No. 227013, June 17, 2019) p. 536

— Direct proof of conspiracy among the accused-appellants is not essential as it may be inferred from their conduct before, during, and after the commission of the crime, that they acted with a common purpose and design; where the pieces of evidence presented by the prosecution are consistent with one another, the only rational proposition that can be drawn therefrom is that the accused-appellants killed their victim for the purpose of taking the latter's vehicle to be used for their own benefit. (People *vs*. Gonzales *y* Villa, G.R. No. 230909, June 17, 2019) p. 610

COURT PERSONNEL

Conduct — Administrative Circular No. 5 dated October 4, 1988, cited; court employees have been enjoined to strictly observe official time and to devote every second or moment of such time to serving the public; this is in line with Sec. 1, Canon IV of A.M. No. 03-06-13-SC, entitled the "Code of Conduct of Court Personnel," which reads: CANON IV. PERFORMANCE OF DUTIES. Section 1. Court personnel shall at all times perform official duties properly and with diligence; They shall commit themselves

a crime and the identification of the accused as its culprit. (Pendoy *y* Posadas *vs.* Court of Appeals (18th Div.) - Cebu City, G.R. No. 228223, June 10, 2019) p. 242

DOMESTIC WORKERS ACT OR *BATAS KASAMBAHAY* (R.A. NO. 10361)

Family drivers — Art. 141, Chap. III, Book III on Employment of Househelpers of the Labor Code provides that family drivers are covered in the term domestic or household service; thus, under the Labor Code, the rules for indemnity in case a family driver is terminated from the service shall be governed by Art. 149 thereof; however, Sec. 44 of R.A. No. 10361, otherwise known as the "Domestic Workers Act" or "*Batas Kasambahay*" (*Kasambahay Law*), expressly repealed Chap. III (Employment of Househelpers) of the Labor Code, which includes Arts. 141 and 149 mentioned above; Sec. 4(d) of the *Kasambahay* Law pertaining to who are included in the enumeration of domestic or household help cannot also be interpreted to include family drivers because the latter category of worker is clearly not included; it is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others — this is expressed in the familiar maxim, *expressio unius est exclusio alterius;* moreover, Sec. 2 of the Implementing Rules and Regulations of the *Kasambahay* Law provides: x x x The following are *not* covered: (a) Service providers; (b) Family drivers; (c) Children under foster family arrangement; and (d) Any other person who performs work occasionally or sporadically and not on an occupational basis; the aforecited administrative rule clarified the status of family drivers as among those *not* covered by the definition of domestic or household help as contemplated in Sec. 4(d) of the *Kasambahay* Law; such provision should be respected by the courts, as the interpretation of an administrative government agency, which is tasked to implement the statute, is accorded great respect and ordinarily controls the construction of the courts; moreover, the statutory validity of the same administrative rule

encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner; the immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate; as defined by jurisprudence, an easement is "a real right on another's property, corporeal and immovable, whereby the owner of the latter must refrain from doing or allowing somebody else to do or something to be done on his property, for the benefit of another person or tenement. (Sps. Garcia *vs*. Santos, G.R. No. 228334, June 17, 2019) p. 555

Easement acquired through title — Aside from prescription, easements may likewise be acquired through title; the term "title" refers to a juridical act or law sufficient to create the encumbrance; the mode of acquiring an easement under Art. 624 is a "legal presumption or apparent sign"; Art. 624 finds application in situations wherein two or more estates were previously owned by a singular owner, or even a single estate but with two or more portions being owned by a singular owner; originally, there is no true easement that exists as there is only one owner; hence, at the outset, no other owner is imposed with a burden; subsequently, one estate or a portion of the estate is alienated in favor of another person, wherein, in that estate or portion of the estate, an apparent visible sign of an easement exists; according to Art. 624, there arises a title to an easement of light and view, even in the absence of any formal act undertaken by the owner of the dominant estate, if this apparent visible sign, such as the existence of a door and windows, continues to remain and subsist, unless, at the time the ownership of the two estates is divided, (1) the contrary should be provided in the title of conveyance of either of them, or (2) the sign aforesaid should be removed before the execution of the deed; jurisprudence has recognized that Art. 624 is an exception carved out by the Civil Code that must be taken out of the coverage of the general rule that an easement of light and view in the case of windows opened in one's own wall is a negative easement

head, or *oblique views* – those openings in a wall which form an angle to the boundary line, and therefore of necessity requires in order to see the neighboring tenement to thrust the head out of the opening and look to the right or left; the openings found on the property of the Sps. Garcia offer a direct view of the property of the respondents. (Sps. Garcia *vs*. Santos, G.R. No. 228334, June 17, 2019) p. 555

—— The three-meter distance rule is embodied in Art. 673 of the Civil Code, which states that whenever by any title a right has been acquired to have direct views, balconies or belvederes overlooking an adjoining property, the owner of the servient estate cannot build thereon at less than a distance of three meters, not two meters, from the property line, to be measured in the manner provided in Art. 671; Art. 673 is the exception to the general rule; in a situation wherein an easement is established or recognized by title or prescription, affording the dominant estate the right to have a direct view overlooking the adjoining property, *i.e.*, the servient estate, which is the exact situation in the instant case, the two-meter requirement under Art. 670 is not applicable; instead, Art. 673 is the applicable rule as it contemplates the exact circumstance attendant in the instant case, *i.e.*, wherein an easement of view is created by virtue of law; this provision has already been previously applied to easements of light and view acquired under Art. 624; *Gargantos v. Tan Yanon*, cited; the distance between the structures erected on the servient estate and the boundary line of the adjoining estate must be *at least three meters*. (*Id*.)

—— There is the two-meter distance rule under Art. 670 of the Civil Code, which provides: "no windows, apertures, balconies, or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of two meters between the wall in which they are made and such contiguous property"; this Article is to be read in conjunction with Art. 671 as the latter provides the

mechanism by which the two-meter distance is to be measured, to wit: "the distances x x x shall be measured in cases of direct views from the outer line of the wall when the openings do not project, from the outer line of the latter when they do, and in cases of oblique views from the dividing line between the two properties"; under Art. 670, which is the general rule, when a window or any similar opening affords a direct view of an adjoining land, the distance between the wall in which such opening is made and the border of the adjoining land should be at least two meters; R.A. No. 6541 as revised by P.D. No. 1096 or the National Building Code of the Philippines provides the same two-meter distance requirement pursuant to Sec. 708(a). (*Id.*)

— What the law merely states is that there must be two estates that were once owned by one owner, regardless of the existence of improvements in the (future) servient estate; what law requires is that, at the time the ownership of the estates is divided, there must be an apparent sign of easement that exists, such as a window, door, or other opening, in the dominant estate; as exhaustively explained by recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, the existence of an easement of light and view under Art. 624 is established as long as (1) there exists an apparent sign of servitude between two estates; (2) the sign of the easement must be established by the owner of both tenements; (3) either or both of the estates are alienated by the owner; and (4) at the time of the alienation nothing is stated in the document of alienation contrary to the easement nor is the sign of the easement removed before the execution of the document; the prior existence of another structure or building in the other estate, in addition to the apparent sign of easement existing on the dominant estate, is not a requirement for the application of Art. 624; *Amor v. Florentino* and *Gargantos v. Tan Yanon*, cited; by virtue of Art. 624 of the Civil Code and applicable jurisprudence, the Court holds that the Sps. Garcia have acquired an easement of light and view by title. (*Id.*)

Legal and voluntary easements — Easements are established either by law or by the will of the owner; the former are called legal, and the latter, voluntary easements"; an easement has been described as "a real right which burdens a thing with a prestation consisting of determinate servitudes for the exclusive enjoyment of a person who is not its owner or of a tenement belonging to another"; legal easements are ones imposed by law, and which have, for their object, either public use or interest of private persons, as opposed to voluntary easements that are established by the agreements of the parties; the different legal easements are: (a) easement relating to waters; (b) right of way; (c) party wall; (d) light and view; (e) drainage; (f) intermediate distances; (g) easement against nuisance; and (h) lateral and subjacent support. (Sps. Garcia *vs*. Santos, G.R. No. 228334, June 17, 2019) p. 555

Legal easements — The legal easement called easement of light and view refers to an easement whereby the dominant estate enjoys the right to have free access to light, a little air, and a view overlooking the adjoining estate, *i.e*., the servient estate; the easement of light and view has two components; the easement of light or *jus luminum* has the purpose of admitting light and a little air, as in the case of small windows, not more than 30 centimeters square, at the height of the ceiling joists or immediately under the ceiling; the easement of view is broader than the easement of light because the latter is always included in the former; as held by jurisprudence, the easement of light and view is intrinsically intertwined with the easement of the servient estate not to build higher or *altius non tollendi;* these two necessarily go together "because an easement of light and view requires that the owner of the servient estate shall not build to a height that will obstruct the window." (Sps. Garcia *vs*. Santos, G.R. No. 228334, June 17, 2019) p. 555

Positive and negative easements — Art. 616 of the Civil Code states that easements may be classified into positive and negative easements; a positive easement is one which

ESTAFA THROUGH FALSIFICATION OF PUBLIC DOCUMENTS

Elements — The falsified documents (Disbursement Vouchers, Reports of Waste Materials, Requisition for Supplies and/or Equipment and Certificates of Emergency Purchase) involved in this case are official or public documents; public documents are: (a) the written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines or of a foreign country; (b) documents acknowledged before a notary public except last wills and testaments; and (c) public records, kept in the Philippines, of private documents required by law to be entered therein; a public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court; in considering whether the accused is liable for the complex crime of estafa through falsification of public documents, it would be wrong to consider the component crimes separately from each other; while there may be two component crimes (estafa and falsification of public documents), both felonies are animated by and result from one and the same criminal intent for which there is only one criminal liability; that is the concept of a complex crime; while there are two crimes, they are treated only as one, subject to a single criminal liability; the two crimes of estafa and falsification of public documents are not separate crimes but component crimes of the single complex crime of estafa and falsification of public documents; in this case, the prosecution was able to prove the elements of the crime. (Arias *vs*. People, G.R. Nos. 237106-07, June 10, 2019) p. 407

EVIDENCE

an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. (People *vs*. Floresta *y* Selencio, G.R. No. 239032, June 17, 2019) p. 705

Documentary evidence — The dismissal of the allegation of forgery only means, at most, that the signatures therein are genuine; the Resolution issued by the Assistant City Prosecutor provides that the basis of dismissal is not the absolute certainty that the signatures in the payroll belong to the respondents; rather, it is because of the failure by the respondents to adduce evidence to establish the manner in which the petitioner committed the alleged forgery; the dismissal notwithstanding, the fact remains that the documents presented by the petitioner are plain photocopies and insufficient in this regard to support his allegation of payment; while photocopied documents are generally admitted and given probative value in administrative proceedings, allegations of forgery and fabrication prompt the petitioner to present the original documents for inspection; the non-presentation of the original without any explanation, that the photocopied documents do not present a complete list of MPRB's employees, the absence of certification as to their authenticity, and the allegation of forgery by the respondents raise legitimate doubts on the authenticity of the payrolls which renders the same devoid of any rational probative value. (Pablico *vs*. Cerro, Jr., G.R. No. 227200, June 10, 2019) p. 207

Expert opinion — Jurisprudence however teaches us that: Expert opinions are not ordinarily conclusive; they are generally regarded as purely advisory in character; the courts may place whatever weight they choose upon and may reject them, if they find them inconsistent with the facts in the case or otherwise unreasonable; when faced with conflicting expert opinions, as in this case, courts give more weight and credence to that which is more complete, thorough, and scientific; the value of the opinion of a handwriting expert depends not upon his mere statements of whether a writing is genuine or false, but

JUDGES

Undue delay in rendering decisions or orders — Art. VIII, Sec. 15 (1) of the 1987 Constitution mandates lower court judges to decide a case within the reglementary period of ninety (90) days; the New Code of Judicial Conduct under Sec. 5 of Canon 6 likewise directs judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness; Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases; thus, the 90-day period is mandatory; the speedy disposition of cases in our courts is a primary aim of the Judiciary, so that the ends of justice may not be compromised and the Judiciary will be true to its commitment to provide litigants their constitutional right to speedy trial and speedy disposition of their cases; Judge Guiling incurred delay in rendering judgment in twenty-three (23) criminal cases and forty (40) civil cases, and in resolving motions or incidents in seventeen (17) criminal cases and sixty-three (63) civil cases; worse, when given the chance to explain his side, he did not offer any explanation as to why there was delay in the rendition of judgment and resolution of pending motions or incidents; as to the charges of violation of Supreme Court rules, directives and circulars, undue delay in the submission of monthly reports, and failure to maintain the confidentiality of court records and proceedings, the findings of the OCA are substantiated. (OCA *vs.* Pres. Judge Guiling, A.M. No. RTJ-19-2549 [Formerly OCA IPI No. 19-4920-RTJ], June 18, 2019) p. 767

Undue delay in rendering decisions or orders, and violation of Supreme Court rules, directives and circulars — Classified as less serious charges under Sec. 9, Rule 140 of the Rules of Court are undue delay in rendering decisions or orders, and violation of Supreme Court rules, directives and circulars, penalized with either suspension without pay for a period of not less than one (1) month, but not more than three (3) months, or a fine of more than

nature, which this Court cannot judiciously determine for lack of evidence; these are matters which should be presented before, and determined by the trial court in the execution of the final judgment; while the proceeds of the sale of the attached properties may indeed be considered by the sheriff in the satisfaction of judgment pursuant to Sec. 15, Rule 57 of the Rules of Court, it is unwarrantedly premature for this Court to rule on the matter when no writ of execution had been issued and referred to the sheriff yet; there is no breach of the procedure in the execution which this Court may evaluate at this point; the court's intervention may, if at all, eventuate only if the sheriff should refuse to follow the outlined procedure in the execution of judgment under the Rules. (Booklight, Inc. *vs.* Tiu, G.R. No. 213650, June 17, 2019) p. 525

Satisfaction of — Contrary to petitioner's position, the satisfaction of judgment out of property attached is not mandatory to warrant this Court to unconditionally order the satisfaction of the judgment against petitioner out of the attached properties; Sec. 15, Rule 57 of the Rules of Court provides: SEC. 15. *Satisfaction of judgment out of property attached; return of officer.* – If judgment be recovered by the attaching party and execution issue thereon, the sheriff *may* cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose; the use of the word, "may" clearly makes the procedure directory, in which case, the sheriff may disregard the properties attached and proceed against other properties of the judgment debtor, if necessary; the proper procedure is for the prevailing party, respondent in this case, to move for the execution of the judgment upon finality before the RTC, wherein the proper satisfaction thereof should be addressed. (Booklight, Inc. *vs.* Tiu, G.R. No. 213650, June 17, 2019) p. 525

Writ of execution — Sec. 14, Rule 39 of the Rules explicitly provides the manner by which a writ of execution is to be returned to court, as well as the requisite reports to be made by the sheriff or officer, should the judgment

are with the residents and homeowners: x x x From all these, we hold that the Policy "No sticker, No ID; No Entry" is valid; *De Guzman v. Commission on Audit,* cited; the Policy maintains the public nature of the subdivision roads; it neither prohibits nor impairs the use of the roads; it does not prevent the public from using the roads, as all are entitled to enter, exit, and pass through them; one must only surrender an identification card to ensure the security of the residents; the Policy, likewise, neither denies nor impairs any of the local government's rights of ownership; respondent does not assert that it owns the subdivision roads or claims any private right over them; even with the Policy, the State still has the *jus possidendi* (right to possess), *jus utendi* (right to use), *just fruendi* (right to its fruits), *jus abutendi* (right to consume), and *jus disponendi* (right to dispose) of the subdivision roads; it still has the power to temporarily close, permanently open, or generally regulate the subdivision roads. (William G. Kwong Mgm't., Inc. *vs*. Diamond Homeowners & Residents Assoc., G.R. No. 211353, June 10, 2019) p. 71

Right to regulate access to, or passage through the subdivision/ village roads — Diamond Subdivision was authorized in enacting the Policy; there is no question that the subdivision roads have been donated to the City of Angeles; therefore, they are public property, for public use; this donation is consistent with Sec. 31 of P.D. No. 957, or the Subdivision and Condominium Buyers' Protection Decree; on October 14, 1977, P.D. No. 957 was amended by P.D. No. 1216, which made the donation to the local government unit mandatory; however, both P.D. Nos. 957 and 1216 are silent on the right of homeowners' associations to issue regulations on using the roads to ensure the residents' safety and security; this silence was addressed in 2010 when R.A. No. 9904, or the Magna Carta for Homeowners and Homeowners' Associations, was enacted; Sec. 10(d) gives homeowners' associations the right to "regulate access to, or passage through the subdivision/village roads for purposes of preserving

Macapagal-Arroyo v. People; in addressing the said issue in its Resolution, the Court ruled: In thereby averring the predicate act of malversation, the State did not sufficiently allege the aforementioned essential elements of malversation in the information; consequently, the State's position is entirely unfounded; the foregoing ruling squarely applies in the instant petition; the Information subject of the aforementioned cases of Arroyo and Aguas is the very same information under scrutiny in the present case wherein petitioner is their co-accused and where all the incidental matters stemmed and had their origin; there is no reason not to apply the afore-quoted ruling in the present petition since it has reached its finality; in denying petitioner's Demurrer to Evidence and ruling that there was sufficient evidence to hold him liable for malversation despite the lack of specific allegations of the factual details pertaining to the crime of malversation in the information, respondent *Sandiganbayan* is said to have gravely abused its discretion amounting to lack of jurisdiction. (Valencia *vs.* Sandiganbayan, G.R. No. 220398, June 10, 2019) p. 161

MURDER

Commission of — Accused-appellant's argument that he should be acquitted since the prosecution had not established motive as to why he would attack and kill Rodolfo does not persuade because: motive is not an essential element of a crime and hence the prosecution need not prove the same; as a general rule, proof of motive for the commission of the offense charged does not show guilt and absence of proof of such motive does not establish the innocence of the accused for the crime charged such as murder; the history of crimes shows that murders are generally committed from motives comparatively trivial; in murder, the specific intent is to kill the victim. (People *vs*. Arpon *y* Ponferrada, G.R. No 229859, June 10, 2019) p. 309

Elements — 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

duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law; in labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion; thus, if the NLRC ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare, and accordingly, dismiss the petition. (Career Phils. Shipmanagement, Inc. *vs*. Tiquio, G.R. No. 241857, June 17, 2019) p. 724

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Conditions for compensability of illness — For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1. The seafarer's work must involve the risks described herein: 2. The disease was contracted as a result of the seafarer's exposure to the described risks; 3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4. There was no notorious negligence on the part of the seafarer; as the Court held in *Romana v. Magsaysay Maritime Corporation* in contrast with the matter of work-relatedness which is indeed presumed, "no legal presumption of compensability is accorded in favor of the seafarer x x x and thus, x x x he bears the burden of proving that these conditions are met"; jurisprudence settles that the legal presumption of work-relatedness of a non-listed illness can be overturned only by contrary substantial evidence as defined above; in all instances, the seafarer must prove compliance with the conditions for compensability, whether or not the work-relatedness of his illness is disputed by the employer. (Career Phils. Shipmanagement, Inc. *vs*. Tiquio, G.R. No. 241857, June 17, 2019) p. 724

while in the employment of the company and for this purpose, shall effect a 24-hour insurance coverage in accordance with Appendix III to the agreement; an accident has been defined as an unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct; that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual, and unforeseen; for being an unintended and unforeseen injurious occurrence, the sudden snap on petitioner's back could qualify as an accident; petitioner is entitled to the total and permanent disability compensation under the CBA in the amount of US$120,000.00, as well as attorney's fees equivalent to ten percent (10%) of the award for being forced to litigate. (Ampo-On *vs.* Reinier Pacific Int'l. Shipping, Inc., G.R. No. 240614, June 10, 2019) p. 483

— It is basic that the entitlement of overseas seafarers to disability benefits is a matter governed, not only by medical findings, but also by law and contract; by law, the pertinent statutory provisions are Arts. 197 to 199 (formerly Arts. 191 to 193) of the Labor Code, as amended, in relation to Sec. 2 (a), Rule X of the Amended Rules on Employees Compensation; by contract, material are: (a) the POEA-SEC, which is a standard set of provisions that is deemed incorporated in every seafarer's contract of employment; (b) the Collective Bargaining Agreement (CBA), if any; and (c) the employment agreement between the seafarer and his employer; in *C.F. Sharp Crew Management, Inc. v. Taok*, cited in V*eritas Maritime Corporation v. Gepanaga, Jr.*, the Court has held that a seafarer may have basis to pursue an action for total and permanent disability benefits, if any of the conditions are present; enumerated. (Career Phils. Shipmanagement, Inc. *vs.* Tiquio, G.R. No. 241857, June 17, 2019) p. 724

— Pursuant to the 2010 POEA-SEC, which applies to this case, the employer is liable for disability benefits only

disciplinary action; *Doble, Jr. v. ABB, Inc./Nitin Desai,* cited. (Sps. Cruz *vs*. Onshore Strategic Assets (SPV-AMC), Inc., G.R. No. 212862, June 17, 2019) p. 509

— Bar Matter No. 1922 requires lawyers to indicate in all the pleadings and motions they file before the courts, the number and date of their MCLE Certificate of Completion or Exemption would cause the dismissal of the case and the expunction of the pleadings from the records; it provides: xxx Bar Matter No. 1922. - Re: Recommendation of the Mandatory Continuing Legal Education (MCLE) Board to Indicate in All Pleadings Filed with the Courts the Counsel's MCLE Certificate of Compliance or Certificate of Exemption. – Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records; there is no dispute that when the subject complaint was filed before the RTC, petitioners' counsel failed to indicate the date and number of her MCLE Compliance Certificate for the immediately preceding period, which is the third compliance period in this case, as required by Bar Matter No. 1922; the inclusion of information regarding compliance with (or exemption from) MCLE seeks to ensure that legal practice is reserved only for those who have complied with the recognized mechanism for "keeping abreast with law and jurisprudence, maintaining the ethics of the profession, and enhancing the standards of the practice of law"; the dismissal of petitioners' complaint for non-compliance therewith was proper. (*Id*.)

— The dismissal was brought about by their counsel's non-observance of Bar Matter No. 1922; such dismissal did not prejudice petitioners' cause or rights because the same complaint may be re-filed with complete compliance of the rules as it had not been adjudicated on the merits; moreover, such dismissal could not be considered a violation of due process as rights were never deprived or taken away from the petitioners. (*Id*.)

must be acquitted; as a result of the buy-bust team's many unexplained violations and deviations in the seizure, custody, and handling of the seized illegal drugs, the prosecution miserably failed to prove the *corpus delicti* of the offenses charged. (People *vs*. Gabriel, Jr., G.R. No. 228002, June 10, 2019) p. 226

Presumption of regular performance of official duties — The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused; otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent; in this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Sec. 21 of R.A. No. 9165; the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent; this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases: this burden of proof never shifts. (People *vs*. Garcia *y* Suing, G.R. No. 215344, June 10, 2019) p. 112

— The prosecution bears the burden of proving strict compliance with the chain of custody because the accused has the constitutional right to be presumed innocent until the contrary is proved; an accused may not be convicted on the basis of the supposed presumption of regularity in the performance of duties simply because he or she is unable to present proof of ill motive and especially when there are irregularities committed by police officers in the seizure of the dangerous drugs and the arrest of the accused; *People v. Malana*, cited; the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused; rationale. (People *vs*. Tubera, G.R. No. 216941, June 10, 2019) p. 142

— The RTC and the CA erroneously relied on the presumption that the police officers regularly performed their functions and convicted Gabriel for having failed

procedural lapses cast reasonable doubt as to the identity and integrity of the drugs seized and consequently, reasonable doubt as to the guilt of accused-appellant Tubera; Tubera must be acquitted. (*Id*.)

PRE-TRIAL

Pre-trial brief and pre-trial conference — While it was correct to allow respondent to present his evidence *ex parte* for petitioner's failure to file a pre-trial brief and to appear in the pre-trial conference, it was not proper for petitioner, being the defendant in the case *a quo*, to be declared "non-suited" under the Rules of Court; the failure of a party to appear at the pre-trial has adverse consequences; Section 5, Rule 18 of the Rules of Court provides that if the absent party is the plaintiff, then he may be declared non-suited and his case dismissed; if it is the defendant who fails to appear, then the plaintiff may be allowed to present his evidence *ex parte* and the court to render judgment on the basis thereof; such declaration of non-suit against petitioner was already upheld by this Court with finality; due to its failure to file a pre-trial brief and to appear in the pre-trial conference, petitioner lost its right to present evidence to support its allegations; it is, thus, bad enough for petitioner's case that the questions posed before us are purely factual matters that this Court, generally, cannot review. (Booklight, Inc. *vs.* Tiu, G.R. No. 213650, June 17, 2019) p. 525

PUBLIC OFFICERS AND EMPLOYEES

Grave misconduct — Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross neglect of duty by a public officer; the misconduct is considered to be grave if it also involves other elements such as corruption or the willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple; in grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule, must be evident; corruption, as an element of grave

sanctions ranging from reprimand to the extreme penalty of dismissal from the service, as in this case. (*Id*.)

Gross inexcusable negligence — As the SB correctly pointed out, even if a development clearance was belatedly granted to OCDC, the construction had already reached 75% completion by then; as the IA Administrator, Ferrer is presumed aware of the requirements before any construction work may be done on the Intramuros Walls; despite knowing the requirements and conditions precedent mandated by law, he knowingly allowed OCDC to proceed with construction without such permits or clearances; this amounted to gross inexcusable negligence on his part; gross negligence has been defined as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected; it is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." (Ferrer, Jr. *vs.* People, G.R. No. 240209, June 10, 2019) p. 473

Gross neglect of duty and simple neglect of duty — Gross Neglect of Duty is defined as "negligence characterized by want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected; it is the omission of that care that even inattentive and thoughtless men never fail to give to their own property"; in contrast, Simple Neglect of Duty is the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference." (Andaya *vs.* Field Investigation Office of the Office of the Ombudsman, G.R. No. 237837, June 10, 2019) p. 459

Criminal Case No. 6263; in Criminal Case Nos. 6264, 6265 and 6266, appellant is ordered to pay the victim civil indemnity, moral damages and exemplary damages in the amount of ₱75,000.00 each. (People *vs.* Moya, G.R. No. 228260, June 10, 2019) p. 279

RAPE

Civil liability of accused-appellant — Pursuant to *People* v. *Jugueta,* the amount of exemplary damages awarded by the CA should be increased to ₱75,000.00; also, the amount of damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid. (People *vs.* Adajar *y* Tison, G.R. No. 231306, June 17, 2019) p. 623

— The award of civil indemnity and moral damages for the crime of Rape should be increased to 75,000.00 each in line with the ruling in *People v. Jugueta;* the Court awards the victim with exemplary damages of 75,000.00 as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse. (Pendoy *y* Posadas *vs.* Court of Appeals (18th Div.) - Cebu City, G.R. No. 228223, June 10, 2019) p. 242

Commission of — AAA's conduct after the sexual molestation, as if nothing happened, is not enough to discredit her; victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations; it is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim; naivete is not equivalent to consensual sex and cannot erase the rape committed by Pendoy against AAA. (Pendoy *y* Posadas *vs.* Court of Appeals (18th Div.) - Cebu City, G.R. No. 228223, June 10, 2019) p. 242

— AAA's testimony was corroborated by the medical findings of Dr. Pizarras who testified that when she conducted a physical examination on the victim, she noted that the latter sustained a trauma or injury in the genitalia which can be readily observed even without the use of any

deed; rape may be committed inside a room in a crowded squatters' colony and even during a wake. (People *vs*. Adajar *y* Tison, G.R. No. 231306, June 17, 2019) p. 623

Force and intimidation — We are convinced that Pendoy had employed force to subjugate AAA's will; force need not be irresistible or of such character that it could not be repelled; all that is necessary is that the force used by the accused is sufficient to consummate his evil purpose, or that it was successfully used; AAA pleaded to Pendoy to desist from what he was doing on her but no amount of begging subdued him; in *People v. Quintos*, it was held that "sexual congress with a person who expressed her resistance by words or deeds constitutes force; it is rape." (Pendoy *y* Posadas *vs*. Court of Appeals (18th Div.) - Cebu City, G.R. No. 228223, June 10, 2019) p. 242

Penalty — In line with our pronouncement in *Tulagan*, Adajar was correctly convicted of rape under Art. 266-A, par. 1 (d), in relation to Art. 266-B of the RPC, and sentenced to suffer the penalty of *reclusion perpetua;* the Court, however, notes that there is no need to qualify the sentence of *reclusion perpetua* with the phrase "without eligibility for parole," as held by the appellate court.; this is pursuant to the A.M. No. 15-08-02-SC, in cases where death penalty is not warranted, such as this case, it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole. (People *vs*. Adajar *y* Tison, G.R. No. 231306, June 17, 2019) p. 623

— The Court affirms that Pendoy should suffer the penalty of *reclusion perpetua* for Rape in accordance with par. 1(a) of Art. 266-A in relation to Art. 266-B of the RPC, as amended by R.A. No. 8353. (Pendoy *y* Posadas *vs*. Court of Appeals (18th Div.) - Cebu City, G.R. No. 228223, June 10, 2019) p. 242

RAPE BY SEXUAL ASSAULT

Elements — The elements of rape by sexual assault are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting

necessary that the same be by virtue of a valid personnel action made according to the proper procedure; an employee cannot just decide in what office or department he or she will work; hence, given the lack of authority or justifiable reason, respondent's performance of work in the ICTD cannot be counted as attendance at work; consequently, he is considered on AWOL for his failure to report for work for more than thirty (30) days, and therefore, correctly dropped from the rolls under Memorandum No. 33/12. (Mayor Pamintuan *vs.* Dr. Villaroman, G.R. No. 234630, June 10, 2019) p. 366

— Sec. 93(a)(1), Rule 19 of the Revised Rules on the Administrative Cases in the Civil Service (RRACCS) provides that a public officer or employee shall be dropped from the rolls if he was on AWOL for at least thirty (30) days; AWOL means that the employee is leaving or abandoning his post without justifiable reason and without notifying his employer; jurisprudence is clear that a government employee could not have incurred absences in his reassigned station if his reassignment thereat was void, as in this case; respondent could not be validly dropped from the rolls merely for failing to report for work at the Mayor's office; this notwithstanding, respondent should still be considered on AWOL, and therefore validly dropped from the rolls because he neither: (*a*) reported for work at his original post at the OCV; nor (*b*) filed leave applications during the period he was contesting his reassignment to the Office of the Mayor. (*Id.*)

Simple misconduct — Sec. 46(D)(2), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service classifies Simple Misconduct as a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense; in *Cabigao v. Nery*, the Court explained that it has the discretion to temper the harshness of the penalties imposed on erring officials and employees of the judiciary when warranted by the circumstances; the Court finds it proper to impose

by Bar Matter No. 1922. (Sps. Cruz *vs*. Onshore Strategic Assets (SPV-AMC), Inc., G.R. No. 212862, June 17, 2019) p. 509

SEARCH AND SEIZURES

Illegal search — Cristobal's first violation – failure to wear a helmet while riding a motorcycle – is punishable by R.A. No. 10054, or the Motorcycle Helmet Act of 2009, punishable by fine; his second violation – failure to furnish the OR and CR of the motorcycle – is likewise punishable only by fine; Land Transportation Office (LTO) Department Order No. 2008-39, or the "Revised Schedule of LTO Fines and Penalties for Traffic and Administrative Violations," provides that the offense of "failure to carry certificate of registration or official receipt of registration" is punishable only with a fine of One Hundred Fifty Pesos (₱150.00); the police officers conducted an illegal search when they frisked Cristobal on the basis of the foregoing violations. (People *vs*. Cristobal *y* Ambrosio, G.R. No. 234207, June 10, 2019) p. 352

Search incidental to a lawful arrest — The police officers' act of proceeding to search Cristobal's body, despite their own admission that they were unable to find any weapon on him, constitutes an invalid and unconstitutional search; the Court, in *Sindac vs. People*, reminds: Sec. 2, Art. III of the 1987 Constitution mandates that a search and seizure must be carried out through or on the strength of a judicial warrant predicated upon the existence of probable cause, absent which, such search and seizure becomes "unreasonable" within the meaning of said constitutional provision; to protect the people from unreasonable searches and seizures, Sec. 3 (2), Art. III of the 1987 Constitution provides that evidence obtained from unreasonable searches and seizures shall be inadmissible in evidence for any purpose in any proceeding; one of the recognized exceptions to the need for a warrant before a search may be affected is a search incidental to a lawful arrest; in this instance, the law requires that there first be a lawful arrest before a search

into her vagina; in view of the *Tulagan* doctrine, however, a modification of the penalty imposed, damages awarded, and nomenclature of the crime is in order; 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 v. People,* and *People v. Caoili;* the Court held that if the acts constituting sexual assault are committed against a victim under 12 years of age or is demented, the nomenclature of the offense should now be "Sexual Assault under par. 2, Art. 266-A of the RPC in relation to Sec. 5(b), Art. III of R.A. No. 7610" instead of "rape by sexual assault under Art. 266-A, par. 2 and penalized under 266-B of the RPC," as held by the CA. (People *vs*. Adajar *y* Tison, G.R. No. 231306, June 17, 2019) p. 623

SHERIFFS

Functions — The conduct required of court personnel must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary; "'sheriffs, as officers of the court and agents of the law, play an important role in the administration of justice; they are in the forefront of things, tasked as they are to serve judicial writs, execute all processes, and carry into effect the orders of the court'; as a front-line representative of the judicial system, sheriffs must always demonstrate integrity in their conduct for once they lose the people's trust, they also diminish the people's faith in the entire judiciary." (Anonymous *vs*. Ibarreta, A.M. No. P-19-3916 [Formerly OCA IPI No. 17-4710-P], June 17, 2019) p. 498

Ministerial functions — The records of the case reveal that the respondent deliberately disregarded the standard procedure for implementing a writ of execution; the complainant's case was covered by the Rule of Procedure for Small Claims Cases; considering that the Rule contains no specific provisions as regards the duties of the sheriff

TREACHERY

As a qualifying circumstance — Likewise untenable is the accused-appellant's contention that treachery should not have been appreciated to have attended the commission of the crime considering that Rodolfo was then accompanied by Bernardo; in *People v. Cagas*, the Court held that treachery was present when accused-appellant stabbed the victim, even if the latter had been talking or conversing with his companion; the same situation obtains in the case at bar. (People *vs*. Arpon *y* Ponferrada, G.R. No 229859, June 10, 2019) p. 309

— The essence of treachery is the swift, deliberate, and unexpected manner by which the offense was committed, affording the victim no opportunity to resist, escape, much less, defend himself or herself; the offender must have planned the mode of attack to ensure its execution without exposing himself to any danger which may come from the victim's act of retaliation or self-defense; appellants and their co-accused appeared to have spontaneously acted as soon as they saw Jun back in the area; *People of the Philippines vs. Canaveras* ruled that treachery is not present when the killing is not premeditated or where the sudden attack is not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim, or when the killing is done at the spur of the moment; the qualifying circumstance of treachery was not shown to have attended the killing of Jun Balmores. (People *vs*. Reyes *y* Hilario, G.R. No. 227013, June 17, 2019) p. 536

— Treachery, as defined in Art. 14, par. 16 of the RPC, is present when at the time of the attack, the victim was not in a position to defend himself, or when the offender consciously adopted the particular means of attack employed; in this case, both were unarmed and were totally unaware of the impending assault from the accused-appellant. (People *vs*. Arpon *y* Ponferrada, G.R. No 229859, June 10, 2019) p. 309

WAGE RATIONALIZATION ACT (R.A. NO. 6727)

Coverage — It is a basic principle in procedure that the burden is upon the person who asserts the truth of the matter that he has alleged; the Court emphasized in *C. Planas Commercial v. NLRC (Second Division)* that in order to be exempted under R.A. No. 6727 or the *Wage Rationalization Act*, two elements must concur - *first*, it must be shown that the establishment is regularly employing not more than ten (10) workers, and *second*, that the establishment had applied for and was granted exemption by the appropriate Regional Board in accordance with the applicable rules and regulations issued by the Commission; the policy of the Labor Code, under which R.A. No. 6727 is premised, is to include all establishments, except a few specific classes, under the coverage of the law; as the petitioner failed to apply for an exemption, and it is undisputed that the respondents are MPRB's employees and are paid less than the prescribed minimum wage, the petitioner's liability for wage differential cannot be denied. (Pablico *vs*. Cerro, Jr., G.R. No. 227200, June 10, 2019) p. 207

Violation of — Since there is a clear violation of R.A. No. 6727, the petitioner is also liable to pay interest on the appropriate compensation due, not only by the express provision of the law but because the failure to pay constitutes a loan or forbearance of money, at the rate of one percent (1%) per month or twelve percent (12%) *per annum;* in keeping with the reason behind the law in imposing the same interest, and in light of the Court's ruling in *Nacar v. Gallery Frames, et al.*, the imposition of interest must be reconciled with Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796 dated May 16, 2013, which effectively amended the rate of interest; accordingly, the amount of wage differentials which the petitioner owed to the respondents shall earn interest at the rate of twelve percent (12%) *per annum* from the time payment thereof has accrued or their respective dates of employment until the date they last reported for work or July 1, 2013, whichever is earlier; thereafter, it

having been concluded that the respondents have not been illegally dismissed and as such entitled to reinstatement, provided that they have rendered services within the period, the interest shall be six percent (6%) *per annum* until their full satisfaction. (Pablico *vs*. Cerro, Jr., G.R. No. 227200, June 10, 2019) p. 207

WITNESSES

Credibility of — A young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction. (People *vs*. Moya, G.R. No. 228260, June 10, 2019) p. 279

— After a careful review of the records of this case, the Court finds no cogent reason to reverse the ruling of the CA; basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the CA, as in the instant case; at the trial, AAA was able to narrate all the details of the sexual abuses she suffered in Adajar's hands; her account of her ordeal being straightforward, candid, and corroborated by the medical findings of the examining physician, as well as her positive identification of Adajar as the perpetrator of the crime, are, thus, sufficient to support a conviction of rape. (People *vs*. Adajar *y* Tison, G.R. No. 231306, June 17, 2019) p. 623

— As the trial court observed, AAA was able to narrate in detail the abusive acts done to her by Adajar; the account constitutes AAA's direct, positive, and convincing narration of what transpired on that fateful day; time and again, the Court has held that "trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying; having seen and heard the witnesses themselves and observed

misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case. (People *vs.* Moya, G.R. No. 228260, June 10, 2019) p. 279

— The Court has ruled that discrepancies referring only to minor details and collateral matters do not affect the veracity or detract from the essential credibility of a witness' declarations, as long as these are coherent and intrinsically believable on the whole; it is an accepted doctrine in rape cases that in the absence of evidence of improper motive on the part of the victim to falsely testify against the accused, her testimony deserves credence. (*Id.*)

— Worth noting too is the fact that there is no evidence or even a slightest indication that AAA was actuated by any dubious reason or impelled by improper motive to testify falsely against Pendoy or implicate him in such a serious offense; also, the fact that AAA resolved to face the ordeal and related in public what she suffered evinces that she did so to obtain justice and to vindicate the outrageous wrong done to her person, honor and dignity; AAA's natural interest in securing the conviction of the perpetrator would strongly deter her from implicating a person other than the real culprit. (Pendoy *y* Posadas *vs.* Court of Appeals (18th Div.) - Cebu City, G.R. No. 228223, June 10, 2019) p. 242

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

Page

B. STATUTES

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS
(Local)

II. FOREIGN AUTHORITIES

A. STATUTES

B. BOOKS