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FROM

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2021

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PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.M. No. MTJ-19-1927. June 19, 2019]
(Formerly OCA IPI No. 15-2764-MTJ)

RAQUEL L. BANAWA and SIMONE JOSEFINA L. BANAWA, *complainants, vs.* **HON. MARCOS C. DIASEN, JR., then Presiding Judge, Victoria E. Dulfo, Clerk of Court III and RICARDO R. ALBANO, Sheriff III, all of Branch 62, Metropolitan Trial Court, Makati City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE 2002 REVISED MANUAL FOR CLERKS OF COURT DEFINED THE NATURE AND SCOPE OF WORK AND SPECIFIC FUNCTION OF THE CLERKS OF COURT.— The 2002 Revised Manual for Clerks of Court defines the nature and scope of the work and specific function of Clerks of Court as follows: **The Clerk of Court has general administrative supervision over all the personnel of the Court.** As regards the Court's funds and revenues, records, properties and premises, said officer is the custodian. Thus, the Clerk of Court is generally also the treasurer, accountant, guard and physical plant manager thereof. The law also requires the Clerk of Court, in most instances, to act as *ex-officio* Sheriff and *ex-officio* Notary Public. In all official matters, and in relation with other governmental agencies, the Clerk of Court is also usually

the liaison officer. As to specific functions, the Clerk of Court attends Court sessions (either personally or through deputies), **takes charge of the administrative aspects of the Court's business** and chronicles its will and directions. The Clerk of Court **keeps the records** and seal, **issues processes**, enters judgments and orders, and gives, upon request, certified copies from the records.

2. ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY IS DEFINED AS THE FAILURE OF AN EMPLOYEE TO GIVE ONE'S ATTENTION TO A TASK EXPECTED OF HIM, AND SIGNIFIES DISREGARD OF A DUTY RESULTING FROM CARELESSNESS OR INDIFFERENCE; IMPOSABLE PENALTY.— Clearly, both Dulfo and Albano were remiss in their respective duties as Clerk of Court and as Sheriff. And as Clerk of Court, Dulfo was chiefly responsible for the shortcomings of Albano to whom was assigned the task of serving said court processes to complainants. In light of these, the Court finds Dulfo and Albano guilty of **simple neglect of duty**, which is defined as "the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference." Pursuant to Section 46(D) of the Revised Rules on Administrative Cases in the Civil Service, the penalty for simple neglect of duty, a less grave offense, is suspension for a period of one (1) month and one (1) day, to six (6) months for the first violation. Section 48 of the same Rules provides the circumstances which mitigate the penalty, such as length of service in the government, physical illness, good faith, education, and/or other analogous circumstances. The Court weighs, on one hand, the *serious* consequence of Dulfo's and Albano's negligence (a Decision was rendered against complainants without their having been able to defend themselves in court); and on the other, the *mitigating circumstance* in favor of Dulfo and Albano (this is their first offense), and deems suspension from office for two (2) months appropriate under the circumstances.

3. LEGAL ETHICS; CODE OF JUDICIAL CONDUCT; JUDGES; A JUDGE PRESIDING OVER A BRANCH OF A COURT IS, IN LEGAL CONTEMPLATION, THE HEAD THEREOF HAVING EFFECTIVE CONTROL AND AUTHORITY TO DISCIPLINE ALL EMPLOYEES WITHIN THE BRANCH, IN CASE AT BAR,

A JUDGE IS FOUND GUILTY OF SIMPLE NEGLECT OF DUTY THAT RESULTED FROM A SHARED ACCOUNTABILITY FOR ADMINISTRATIVE LAPSES; IMPOSABLE PENALTY.— [T]he Court finds that Judge Diasen failed to comply with his administrative responsibilities under Rules 3.08 and 3.09 of the Code of Judicial Conduct which state: x x x A judge should x x x **facilitate the performance of the administrative functions of other judges and court personnel**. x x x A judge should **organize and supervise the court personnel to ensure the prompt and efficient dispatch of business**, and **require at all times** the observance of high standards of public service and fidelity. x x x It is settled that "[a] judge presiding over a branch of a court is, in legal contemplation, the head thereof having effective control and authority to discipline all employees within the branch." Consequently, Judge Diasen **shares accountability** for the administrative lapses of Dulfo and Albano in this case. As the OCA observed, had Judge Diasen meticulously examined the records in Small Claims No. 12-3822, he could have been prompted by the lack of Notice of Hearing therein to look further into the matter. Accordingly, the Court finds Judge Diasen similarly guilty of simple neglect of duty. Given that Judge Diasen has already retired from the service on January 27, 2017, the Court imposes upon him a fine in the amount of ₱20,000.00, to be deducted from his retirement benefits.

D E C I S I O N

DEL CASTILLO, *J.*:

This administrative case is rooted on a Verified Affidavit[1] dated November 21, 2014 filed by complainants Raquel L. Banawa and Simone Josefina L. Banawa charging then Presiding Judge Marcos C. Diasen, Jr. (Judge Diasen), Clerk of Court III Victoria E. Dulfo (Dulfo), and Sheriff III Ricardo R. Albano (Albano), all of Branch 62, Metropolitan Trial Court (MeTC) of Makati City, with gross negligence and gross ignorance of the law in relation to Small Claims No. 12-3822, entitled "*Standard*

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

Insurance Co., Inc. v. Simone Josefina L. Banawa and Raquel L. Banawa."

In their Verified Affidavit, complainants alleged that: *(a)* they received summons by substituted service on January 13, 2013 directing them to file a verified response to the attached statement of claims filed by Standard Insurance Co., Inc. (Standard Insurance) in Small Claims No. 12-3822;[2] *(b)* although they filed their response on January 24, 2013, they were not notified of the hearings apparently set on November 29, 2012, December 11, 2012, February 19, 2013, and March 19, 2013;[3] *(c)* they were surprised when they received a copy of the Decision[4] dated March 19, 2013 rendered by Judge Diasen finding them jointly and solidarily liable to pay Standard Insurance the amount of ₱30,445.93 with interest at 6% per annum until fully paid;[5] and (*d*) upon verification, they discovered that Standard Insurance was able to send a representative during those scheduled hearings despite the lack of notice of hearing in the records of the case.[6]

Complainants claimed that Dulfo and Albano were both guilty of gross negligence and gross ignorance of the law as these two failed to properly serve the notice of hearing together with the summons.[7] They further faulted Dulfo for allowing the case to be submitted for decision without the requisite hearing.[8] As regards Judge Diasen, complainants averred that he failed to fulfill his judicial duty to ensure that all the parties to a case were afforded the fundamental opportunity to be heard.[9]

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[2] *Id*. at 1.

[3] *Id*. at 2.

[4] *Id*. at 14-16.

[5] *Id*. at 1.

[6] *Id*. at 2.

[7] *Id*. at 3.

[8] *Id*.

[9] *Id*. at 4.

The Report and Recommendation of the Office of the Court Administrator

In its Report[10] dated December 12, 2016, the Office of the Court Administrator (OCA) found Dulfo and Albano guilty of simple neglect of duty as it was clearly shown in the records in Small Claims No. 12-3822 that no notice of hearing was served upon complainants,[11] *viz.*:

> Respondent Clerk of Court Dulfo ought to ensure that complainants receive the notices of hearing so as not to render inutile their right to have their day in court. Indeed, even assuming that she had prepared the notice of hearing and attached the same to the summons, still[,] she failed to exercise sufficient diligence to ascertain that Sheriff Albano expeditiously performed his duty to serve said court processes on complainants. As the officer of the court next in line to the Presiding Judge, it is incumbent upon respondent Clerk of Court Dulfo to regularly check not only the status of the cases, but also the prompt performance of functions by the other court personnel and employees under her supervision.[12] x x x
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> x x x x x x x x x
>
> As regards Sheriff Albano, he fell short of his mandate to diligently exert effort to serve the notice of hearing on complainants. Well aware that his initial attempts to serve the summons were unsuccessful, he should have been more assiduous in ascertaining that the notice of hearing and summons had been served as mandated under Section 10 of the [Rule] of Procedure for Small Claims Cases. His carelessness and incompetence betray his unconcern for the importance of court processes which he is expected to serve with utmost fidelity.[13] x x x

The OCA, however, absolved Judge Diasen from the administrative charges of gross negligence and gross ignorance of the law as his act of immediately rendering judgment due to the non-appearance of complainants was allowed under Section 18

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[10] *Id*. at 53-60.

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

[12] *Id*. at 56.

[13] *Id*. at 57.

of the Rule of Procedure in Small Claims Cases, as amended.[14] Nevertheless, the OCA found that Judge Diasen had failed to diligently discharge his judicial duties for "[h]ad he been more meticulous in examining the records, he could have been alerted by the lack of notice of hearing on the part of complainants and looked further into the matter."[15]

The OCA thus recommended that:

(1) the instant administrative complaint against Presiding Judge Marcos C. Diasen, Jr., Clerk of Court III Victoria E. Dulfo, and Sheriff III Ricardo R. Albano, all of Branch 62, Metropolitan Trial Court, Makati City, be **RE-DOCKETED** as a regular administrative matter;

(2) respondents Clerk of Court Dulfo and Sheriff Albano be found **GUILTY** of simple neglect of duty and imposed a **FINE** in the amount of ₱5,000.00 each, payable within thirty (30) days from receipt of notice;

(3) respondent Judge Diasen, Jr. be found **GUILTY** of violation of Supreme Court rules, directives, and circulars and imposed a **FINE** in the amount of ₱10,000.00, payable within thirty (30) days from receipt of notice; and

(4) respondents Judge Diasen, Jr., Clerk of Court Dulfo and Sheriff Albano be **STERNLY WARNED** that a repetition of the same or similar offenses shall be dealt with more severely by the Court.[16]

The Court's Ruling

The 2002 Revised Manual for Clerks of Court defines the nature and scope of the work and specific function of Clerks of Court as follows:

The Clerk of Court has general administrative supervision over all the personnel of the Court. As regards the Court's funds and

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[14] *Id*. at 59.

[15] *Id*.

[16] *Id*. at 60.

revenues, records, properties and premises, said officer is the custodian. Thus, the Clerk of Court is generally also the treasurer, accountant, guard and physical plant manager thereof. The law also requires the Clerk of Court, in most instances, to act as *ex-officio* Sheriff and *ex-officio* Notary Public. In all official matters, and in relation with other governmental agencies, the Clerk of Court is also usually the liaison officer.

As to specific functions, the Clerk of Court attends Court sessions (either personally or through deputies), **takes charge of the administrative aspects of the Court's business** and chronicles its will and directions. The Clerk of Court **keeps the records** and seal, **issues processes**, enters judgments and orders, and gives, upon request, certified copies from the records. (Emphasis supplied)

Thus, Dulfo, as Clerk of Court, was responsible for the preparation of court processes, including notices of hearing, and for seeing to it that all returns of notices were attached to the corresponding case records. On the other hand, Albano, as Sheriff, was responsible for the service of the notices and other court processes assigned by the judge and/or the clerk of court.[17]

In this case, complainants were *not served* with the Notices of Hearing for the scheduled hearings on November 29, 2012, December 11, 2012, February 19, 2013, and March 19, 2013. Said Notices, too, were conspicuously *missing* from the records in Small Claims No. 12-3822. Although Dulfo presented a Notice of Hearing dated October 17, 2012,[18] it was not shown that the same was actually served upon complainants, either by personal or substituted service, as the original copy of said notice bore no signature of a receiver as proof of receipt.

Clearly, both Dulfo and Albano were remiss in their respective duties as Clerk of Court and as Sheriff. And as Clerk of Court, Dulfo was chiefly responsible for the shortcomings of Albano to whom was assigned the task of serving said court processes to complainants.[19]

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[17] The 2002 Revised Manual for Clerks of Court, Section 17.7.

[18] *Rollo*, p. 35.

[19] See *Panaligan v. Valente*, 692 Phil. 1, 11 (2012).

In light of these, the Court finds Dulfo and Albano guilty of **simple neglect of duty**, which is defined as "the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference."[20]

Pursuant to Section 46(D) of the Revised Rules on Administrative Cases in the Civil Service, the penalty for simple neglect of duty, a less grave offense, is suspension for a period of one (1) month and one (1) day, to six (6) months for the first violation. Section 48 of the same Rules provides the circumstances which mitigate the penalty, such as length of service in the government, physical illness, good faith, education, and/or other analogous circumstances.

The Court weighs, on one hand, the *serious* consequence of Dulfo's and Albano's negligence (a Decision was rendered against complainants without their having been able to defend themselves in court); and on the other, the *mitigating circumstance* in favor of Dulfo and Albano (this is their first offense), and deems suspension from office for two (2) months appropriate under the circumstances.[21]

As for the administrative liability of Judge Diasen, the Court agrees with the OCA that Judge Diasen's act of immediately rendering judgment due to the non-appearance of complainants during the hearing in Small Claims Case No. 12-3822 did not constitute gross negligence or gross ignorance of the law as the same was authorized under Section 18,[22] in relation with

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[20] See *Dr. Dignum v. Diamla*, 522 Phil. 369, 378 (2006).

[21] *Panaligan v. Valente*, *supra* note 19.

[22] SEC. 18. *Non-appearance of Parties*. — Failure of the plaintiff to appear shall be cause for the dismissal of the claim without prejudice. The defendant who appears shall be entitled to judgment on a permissive counterclaim.

Failure of the defendant to appear shall have the same effect as failure to file a Response under Section 12 of this Rule. This shall not apply where one of two or more defendants who are sued under a common cause of action and have pleaded a common defense appears at the hearing.

Section 12,[23] of the Rule of Procedure in Small Claims Cases, as amended. Nevertheless, the Court finds that Judge Diasen failed to comply with his administrative responsibilities under Rules 3.08 and 3.09 of the Code of Judicial Conduct which state:

RULE 3.08 — A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and **facilitate the performance of the administrative functions of other judges and court personnel**.

RULE 3.09 —A judge should **organize and supervise the court personnel to ensure the prompt and efficient dispatch of business**, and **require at all times** the observance of high standards of public service and fidelity. (Emphasis supplied)

It is settled that "[a] judge presiding over a branch of a court is, in legal contemplation, the head thereof having effective control and authority to discipline all employees within the branch."[24] Consequently, Judge Diasen **shares accountability** for the administrative lapses of Dulfo and Albano in this case. As the OCA observed, had Judge Diasen meticulously examined the records in Small Claims No. 12-3822, he could have been prompted by the lack of Notice of Hearing therein to look further into the matter.[25]

Accordingly, the Court finds Judge Diasen similarly guilty of simple neglect of duty. Given that Judge Diasen has already

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Failure of both parties to appear shall cause the dismissal with prejudice of both the claim and counterclaim.

[23] SEC. 12. *Effect of Failure to File Response.* — Should the defendant fail to file his Response within the required period, and likewise fail to appear at the date set for hearing, the court shall render judgment on the same day, as may be warranted by the facts.

Should the defendant fail to file his Response within the required period but appears at the date set for hearing, the court shall ascertain what defense he has to offer and proceed to hear, mediate or adjudicate the case on the same day as if a Response has been filed.

[24] *Amane vs. Atty. Mendoza-Arce*, 376 Phil. 575, 600 (1999).

[25] *Rollo*, p. 59.

retired from the service on January 27, 2017, the Court imposes upon him a fine in the amount of ₱20,000.00, to be deducted from his retirement benefits.

WHEREFORE, the Court:

(1) finds Clerk of Court III Victoria E. Dulfo and Sheriff III Ricardo R. Albano, Metropolitan Trial Court, Branch 62, Makati City, **GUILTY** of simple neglect of duty and imposes upon them the penalty of **SUSPENSION FROM OFFICE** for a period of two (2) months without pay, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely; and,

(2) finds Hon. Marcos C. Diasen, Jr., then Presiding Judge, Metropolitan Trial Court, Branch 62, Makati City, **GUILTY** of simple neglect of duty and orders him to pay a **FINE** in the amount of Twenty Thousand Pesos (₱20,000.00), the same to be deducted from his retirement benefits.

SO ORDERED.

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

SECOND DIVISION

[G.R. No.183324. June 19, 2019]

SPOUSES JOSE and CORAZON RODRIGUEZ, *petitioners, vs.* **HOUSING AND LAND USE REGULATORY BOARD (HLURB), SPS. JOHN SANTIAGO and HELEN KING, IMELDA ROGANO and SPS. BONIE GAMBOA and NANCY GAMBOA, represented by JOHN SANTIAGO,** *respondents.*

[G.R. No. 209748. June 19, 2019]

SPOUSES DR. AMELITO S. NICOLAS and EDNA B. NICOLAS, *petitioners, vs.* **SPOUSES JOSE and CORAZON RODRIGUEZ and EDJIE[*] MANLULU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FOR A WRIT OF *CERTIORARI* TO ISSUE, A PETITIONER MUST NOT ONLY PROVE THAT THE TRIBUNAL, BOARD OR OFFICER EXERCISING JUDICIAL OR QUASI-JUDICIAL FUNCTIONS HAS ACTED WITHOUT OR IN EXCESS OF JURISDICTION, HE MUST ALSO SHOW THAT THERE IS NO PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AGAINST WHAT HE PERCEIVES TO BE A LEGITIMATE GRIEVANCE.— As held time and time again by the Court, for a writ of *certiorari* to issue, a petitioner must not only prove that the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction. He must also show that there is **no plain, speedy and adequate remedy in the ordinary course of law** against what he perceives to be a legitimate grievance. **An available recourse affording prompt relief from the injurious effects of the judgment or acts of a lower court or tribunal is considered a plain, speedy and adequate remedy.** x x x In the instant Petition, the Sps. Rodriguez failed to provide any explanation whatsoever to justify their failure to seek prior recourse before the OP. To stress, **the special civil action of *certiorari* cannot be used as a substitute for an appeal which petitioner has lost**. The fact that the only question raised in a petition is a jurisdictional question is of no moment. ***Certiorari* lies only when there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.**

2. ID.; ID.; CONTEMPT; THE RULES OF COURT IS CLEAR AND UNEQUIVOCAL IN STATING THAT, WITH RESPECT TO CONTUMACIOUS ACTS COMMITTED AGAINST THE QUASI-JUDICIAL BODIES, IT IS THE REGIONAL TRIAL COURT

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[*] Spelled as "Edgie" in some parts of the *rollo*.

OF THE PLACE WHERE THE CONTEMPTUOUS ACTS HAVE BEEN COMMITTED THAT ACQUIRES JURISDICTION OVER THE INDIRECT CONTEMPT CASE.— Section 12, Rule 71 of the Rules of Court is clear and unequivocal in stating that, with respect to contumacious acts committed against quasi-judicial bodies such as the HLURB, it is the regional trial court of the place where the contemptuous acts have been committed, and not the Court, that acquires jurisdiction over the indirect contempt case: x x x There is absolutely no basis under the Rules of Court to support the Sps. Nicolas' theory that the Court has jurisdiction over a case for indirect contempt allegedly committed against a quasi-judicial body just because the decision of the said quasi-judicial body is pending appeal before the Court. To the contrary, the Rules of Court unambiguously state that it is the regional trial courts that have jurisdiction to hear and decide indirect contempt cases involving disobedience of quasi-judicial entities. In the instant Petition for Indirect Contempt, the Sps. Nicolas pray that the Court conduct a hearing and receive evidence on the supposed disobedience and resistance being committed by the Sps. Rodriguez and Manlulu. x x x Obviously, such a prayer cannot be seriously entertained. As held time and time again, it is elementary that the Court is not a trier of facts. It is within the province of the lower courts, and not the Court, to receive evidence and to make factual findings based on such evidence.

APPEARANCES OF COUNSEL

Cloma & Perez Law Office for spouses Jose & Corazon Rodriguez & Edgie Manlulu.

Marilyn Macauba Ballega for respondents Sps. John Santiago & Helen King, *et al*.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court are two consolidated petitions. In **G.R. No. 183324**, the Spouses Jose and Corazon Rodriguez (Sps. Rodriguez) filed a Petition for Review on *Certiorari*[1] (Petition)

[1] *Rollo* (G.R. No. 183324), pp. 18-27.

under Rule 45 against the Housing and Land Use Regulatory Board (HLURB), the Spouses John Santiago and Helen King (Sps. Santiago), Imelda Rogano (Rogano), and the Spouses Bonie and Nancy Gamboa (Sps. Gamboa), assailing the Resolutions dated January 7, 2008[2] (first assailed Resolution) and May 6, 2008[3] (second assailed Resolution) rendered by the Court of Appeals (CA) in CA-G.R. SP No. 101644.

In **G.R. No. 209748**, the Spouses Dr. Amelito S. Nicolas and Edna B. Nicolas (Sps. Nicolas) filed a Petition for Indirect Contempt[4] dated November 22, 2013 against the Spouses Rodriguez and Edjie Manlulu (Manlulu).

The Facts and Antecedent Proceedings

As culled from the records of the instant case, the pertinent facts and antecedent proceedings are as follows:

A verified Complaint[5] dated October 20, 2004 was filed by the Spouses Rustico and Erlinda Balbino (Sps. Balbino) and the Sps. Nicolas against the Sps. Rodriguez before the Regional Field Office III (RFO III) of the HLURB. The complainants therein filed an Amended Complaint[6] on November 4, 2004. An Order[7] dated November 19, 2004 was issued by the HLURB-RFO III issuing a Writ of Preliminary Injunction/Cease and Desist Order against the Sps. Rodriguez.

Another Complaint[8] involving the same issues was filed by the Sps. Santiago, Rogano and the Sps. Gamboa on November

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[2] *Id*. at 28-30. Penned by Associate Justice Estela M. Perlas-Bernabe (now a Member of this Court) with Associate Justices Portia Aliño-Hormachuelos and Lucas P. Bersamin (now a Member of this Court), concurring.

[3] *Id*. at 40.

[4] *Rollo* (G.R. No. 209748), pp. 3-17.

[5] *Rollo* (G.R. No. 183324), pp. 165-170.

[6] *Id*. at 174-180.

[7] *Id*. at 195.

[8] *Id*. at 196-200.

23, 2004 before the HLURB-RFO III. An Order[9] dated November 23, 2004 was issued by the HLURB-RFO III issuing a Temporary Restraining Order against the Sps. Rodriguez. Eventually, the two Complaints, *i.e.*, HLURB Case No. REM-03-04-0051 and HLURB Case No. REM-03-04-0055, were consolidated by the HLURB-RFO III.

The aforementioned Complaints deal with the Ruben San Gabriel Subdivision (subject subdivision), which is located at Barangay Wakas, Bocaue, Bulacan. The subject subdivision consists of two (2) blocks with a total of twenty (20) residential lots and **one (1) road lot (subject road lot)** which served as an access of the inner lots to the MacArthur Highway. In 1978, Ruben San Gabriel (San Gabriel), the owner of the subdivision, sold nine (9) lots to one Renato Mendoza (Mendoza). Sometime in 1995, the Sps. Rodriguez acquired these nine (9) lots from Mendoza. All in all, the Sps. Rodriguez acquired thirteen (13) lots from San Gabriel and Mendoza.[10]

On May 24, 1996, San Gabriel and Mendoza executed an Assignment of Right,[11] wherein the latter's interest in the subdivision road lot was assigned and transferred in favor of the Sps. Rodriguez. Subsequently, the Sps. Rodriguez applied for and was granted an approval for Alteration of Plan[12] that consolidated all their titles on January 21, 1998. On the basis of this, the Land Management Services of the Department of Environment and Natural Resources (DENR) subsequently approved the consolidation plan on February 2, 1998. Consequently, the separate titles of the lots, including that of the subject road lot, were cancelled and in lieu thereof, Transfer Certificate of Title (TCT) No. 336132 covering an area of 4,865 square meters was issued in the name of the Sps. Rodriguez.[13]

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[9] *Id*. at 201.

[10] *Id*. at 42.

[11] *Id*. at 87-90.

[12] *Id*. at 91.

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

It was alleged by the complainants that they are residents of the subject subdivision. They asserted that the subject road lot being claimed by the Sps. Rodriguez as their own property cannot be closed or conveyed without the prior approval of the court because it is an existing road lot subject to the provisions of Republic Act No. 440. The complainants alleged that the Sps. Rodriguez are taking control and possession of the subject road lot by introducing diggings, construction for fencing, and closing the said road lot for the exclusive use of the Sps. Rodriguez. The complainants prayed for the issuance of a permanent cease and desist order preventing the Sps. Rodriguez from developing and fencing the subject road lot, and for declaring the Assignment of Rights executed by San Gabriel null and void with respect to the subject road lot.[14]

The Ruling of the HLURB-RFO III

In its Consolidated Decision[15] dated October 3, 2005, the HLURB-RFO III found merit in the Complaint and held that "[t]here can be no consolidation of the road lot with the other properties of the [Sps. Rodriguez.]"[16]

The HLURB-RFO III held that:

> Prior to its sale of subdivision lots to the prospective residents of the subdivision and in keeping with the provisions of PD 957, the developer had represented to the former what areas are available for residential lots and what open areas are reserved for parks, roads, etc. It was also represented that there would be a major thoroughfare or road lot with an area of 634.00 square meters. Acting upon the strength of the subdivision plan, the prospective residents (herein complainants) chose which lot they preferred to occupy, bearing in mind the access to the open areas and to their lots. The owners of a subdivision (*sic*) include all costs, such as the setting aside of road spaces and open areas for parks, and possibly the construction of curbs and gutters, underground drainage, an adequate water supply,

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

[15] *Id*. at 45-49. Penned by Housing and Land Use Arbiter Pher Gedo B. de Vera.

[16] *Id*. at 47.

and whatever improvements it may have published to entice lot buyers, in computing the value at which all the lots shall be sold. If the subdivision owner/developer reneges on any of its commitments, as exemplified in this case, the lot buyers are short-changed. They are made to pay more for less than what was agreed upon. They are, in the whole context of the issues presented, parties in interest.

Subdivision owners are mandated to set aside such open spaces before their proposed subdivision plans may be approved by this Office and other the (*sic*) government authorities, and that such open spaces shall be devoted exclusively for the use of the **general public** and the subdivision owner need not be compensated for the same. A subdivision owner must comply with such requirement before the subdivision plan is approved and the authority to sell is issued. That said, it can be easily inferred that road lots, which are part and parcel of the open space, are for public use, non-buildable and are, therefore[,] beyond the commerce of men.[17]

The dispositive portion of the Consolidated Decision reads:

Wherefore, above premises considered, this Board **ORDERS** the [Sps. Rodriguez] to cease and desist from further including the road lot in the consolidation of their title. This Board **ORDERS** and makes permanent the cease and desist (*sic*) of the development of the road lot.

Cost against the respondent.

SO ORDERED.[18]

The Sps. Rodriguez appealed the Consolidated Decision rendered by the HLURB-RFO III before the HLURB, Board of Commissioners, First Division (Board).

The Ruling of the HLURB Board

In its Decision[19] dated October 10, 2006, the HLURB Board overturned the HLURB-RFO III's Consolidated Decision. The HLURB Board held that "the closure of a road lot in a subdivision

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[17] *Id*. at 48.

[18] *Id*. at 49.

[19] *Id*. at 42-44.

is not absolutely prohibited. When the same is done with or pursuant to an Alteration Plan approved by this Board as required under Section 22 [of PD 957], the same is allowable."[20]

The complainants filed a reconsideration of the aforesaid Decision.

On January 17, 2007, the HLURB Board issued a Resolution[21] granting the complainants' motion for reconsideration, reinstating HLURB-RFO III's Consolidated Decision dated October 3, 2005.

In reversing itself, the HLURB Board held that "until a valid alteration permit for the road lot's conversion into a regular lot is obtained, said road lot shall remain as such and may not be appropriated, consolidated with regular lots or closed."[22] The HLURB Board explained that it previously "ruled that the closure of the road lot was allowable but this conclusion was based on the premise that the alteration approval covered the road lot. While we maintain that the alteration permit was validly issued, a closer scrutiny thereof discloses that the approval did not include the conversion of the road lot into a regular lot and hence, its consolidation with the properties of [the Sps. Rodriguez] into one title was bereft of basis."[23]

The Sps. Rodriguez filed their Motion for Reconsideration[24] dated January 28, 2007, which was denied by the HLURB Board in its Resolution[25] dated August 10, 2007.

Without filing an appeal before the Office of the President (OP), the Sps. Rodriguez filed a Petition for *Certiorari*, Prohibition, and *Mandamus*[26] (Rule 65 Petition) dated December 12, 2007

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[20] *Id*. at 44.

[21] *Id*. at 50-52.

[22] *Id*. at 52.

[23] *Id*. at 51.

[24] *Id*. at 53-59.

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

[26] *Id*. at 281-290.

under Rule 65 of the Rules of Court before the CA against the HLURB, the Sps. Santiago, Rogano, and the Sps. Gamboa.

The Ruling of the CA

In its first assailed Resolution, the CA dismissed outright the Sps. Rodriguez' Rule 65 Petition for failing to exhaust available administrative remedies, as well as for not being accompanied with the pertinent pleadings. The dispositive portion of the first assailed Resolution reads:

> **IN VIEW THEREOF**, the petition is hereby **DISMISSED** outright.
>
> **SO ORDERED.**[27]

The Sps. Rodriguez filed their Motion for Reconsideration[28] dated January 28, 2008, which was denied by the CA in its second assailed Resolution.

Hence, the instant Petition in G.R. No. 183324.

The respondents filed their Comment[29] to the Petition on October 28, 2008, to which the Sps. Rodriguez responded with their Reply,[30] which was filed on July 15, 2009.

G.R. No. 209748 — Petition for Indirect Contempt

On November 22, 2013, the Sps. Nicolas filed a Petition for Indirect Contempt against the Sps. Rodriguez and Manlulu, alleging that "despite vigorous protestation on the part of the [Sps. Nicolas], and after having been warned of the existence of the Cease and Desist Order [issued by the HLURB], [the Sps. Rodriguez], in complete defiance of the injunction issued by the HLURB continuously, maliciously and feloniously dump[ed] filling materials that [would] ultimately block the road lot leading to the inner lots of the subdivision."[31]

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[27] *Id*. at 30.

[28] *Id*. at 31-39.

[29] *Id*. at 107-114.

[30] *Id*. at 136-164.

[31] *Rollo* (G.R. No. 209748), p. 4.

On April 1, 2014, the Court issued a Resolution[32] consolidating G.R. Nos. 183324 and 209748.

On October 13, 2014, the Sps. Rodriguez and Manlulu filed their Comment[33] to the Petition for Indirect Contempt, to which the Sps. Nicolas responded by filing their Reply to Comment[34] on March 25, 2015.

The Sps. Santiago filed their Manifestation[35] dated November 24, 2015, manifesting that during the pendency of G.R. Nos. 183324 and 209748 before the Court, the Sps. Rodriguez still filed a Motion and Manifestation[36] before the HLURB, praying that they be allowed to construct and introduce developments with respect to the subject road lot. The Sps. Santiago also manifested that they opposed this Motion and Manifestation of the Sps. Rodriguez before the HLURB.

On July 15, 2016, the Sps. Nicolas filed a Manifestation,[37] alleging that the supposed continuing defiance by the Sps. Rodriguez' of the HLURB's Cease and Desist Order has caused the flooding of their property.

Issues

With respect to G.R. No. 183324, the singular issue is whether the CA erred in dismissing the Sps. Rodriguez' Rule 65 Petition outright. With respect to G.R. No. 209748, the singular issue is whether the Petition for Indirect Contempt filed by the Sps. Nicolas is meritorious.

The Court's Ruling

The Court finds both Petitions in G.R. Nos. 183324 and 209748 unmeritorious.

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[32] *Id*. at 58.

[33] *Id*. at 78-87.

[34] *Id*. at 106-116.

[35] *Id*. at 125-127.

[36] *Id*. at 128-135.

[37] *Id*. at 162-169.

I. G.R. No. 183324

The CA did not err in dismissing the Sps. Rodriguez' Rule 65 Petition.

As held time and time again by the Court, for a writ of *certiorari* to issue, a petitioner must not only prove that the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction. He must also show that there is **no plain, speedy and adequate remedy in the ordinary course of law** against what he perceives to be a legitimate grievance. **An available recourse affording prompt relief from the injurious effects of the judgment or acts of a lower court or tribunal is considered a plain, speedy and adequate remedy**.[38]

The Sps. Rodriguez do not dispute whatsoever that they have failed to appeal the assailed Resolutions of the HLURB Board before the OP prior to filing its Rule 65 Petition before the CA.

To emphasize, under the Rules of Procedure of the HLURB, "[a]ny party may, upon notice to the Board and the other party, appeal a decision rendered by the Board of Commissioners to the **Office of the President** within fifteen (15) days from receipt thereof, in accordance with P.D. No. 1344 and A.O. No. 18 Series of 1987."[39]

In the instant Petition, the Sps. Rodriguez failed to provide any explanation whatsoever to justify their failure to seek prior recourse before the OP.

To stress, **the special civil action of *certiorari* cannot be used as a substitute for an appeal which petitioner has lost**. The fact that the only question raised in a petition is a jurisdictional question is of no moment. ***Certiorari* lies only**

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[38] *National Irrigation Administration v. Court of Appeals*, 376 Phil. 362, 372 (1999).

[39] HLURB Resolution No. 765, Rule XXI, Sec. 2 (2004); emphasis supplied.

when there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.[40]

Nevertheless, even if the Court entertains the Sps. Rodriguez' central argument in their Petition, *i.e.*, that the HLURB does not have jurisdiction over the subject road lot, the instant Petition still fails to convince. The Sps. Rodriguez argue that "what is involved in this case is a private titled land and definitely NOT a subdivision or condominium."[41] Hence, according to the Sps. Rodriguez' theory, since the subject road lot is private property owned by a private lot owner, not being owned by the subdivision, the subject matter is within the province of the regular courts.

This theory is directly belied by the factual findings of the HLURB, which found that "[n]either the approved alteration plan nor the permit issued therefor indicated approval for the consolidation of the road lot with the other lots of the subdivision, much less its conversion into a regular lot."[42] Time and again, the Court has ruled that in reviewing administrative decisions, the findings of fact made therein must be respected as long as they are supported by substantial evidence, even if not overwhelming or preponderant.[43] In the instant case, as factually held by the HLURB, the subject road lot never became a "regular" private lot that is beyond the scope of the HLURB's jurisdiction.[44] There is no cogent reason to overturn the HLURB's factual findings. In fact, in clear recognition of the HLURB's jurisdiction over the subject road lot, it is not disputed that the Sps. Rodriguez themselves filed a Motion and Manifestation before the HLURB praying that they be allowed to construct and introduce developments with respect to the subject road lot.

Hence, the Sps. Rodriguez' Petition in G.R. No. 183324 is denied for lack of merit.

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[40] *Republic v. Court of Appeals*, 379 Phil. 92, 97 (2000).

[41] *Rollo* (G.R. No. 183324), p. 23.

[42] *Id*. at 51.

[43] *Energy Regulatory Board v. Court of Appeals*, 409 Phil. 36, 53 (2001).

[44] *Rollo* (G.R. No. 183324), p. 51.

II. G.R. No. 209748

In G.R. No. 209748, the Sps. Nicolas allege in their Petition for Indirect Contempt that the Court should cite the Sps. Rodriguez and Manlulu in indirect contempt for allegedly defying and disobeying the injunction issued by the HLURB when the Sps. Rodriguez began dumping filling materials that blocked the subject road lot leading to the inner lots of the subdivision.

The Court holds that the Sps. Nicolas' Petition for Indirect Contempt should be dismissed.

In the instant case, the Sps. Nicolas allege that there is a case for indirect contempt against the Sps. Rodriguez and Manlulu as the latter supposedly disobeyed and resisted the lawful order of a quasi-judicial body, *i.e.*, the HLURB.

Section 12, Rule 71 of the Rules of Court is clear and unequivocal in stating that, with respect to contumacious acts committed against quasi-judicial bodies such as the HLURB, it is the regional trial court of the place where the contemptuous acts have been committed, and not the Court, that acquires jurisdiction over the indirect contempt case:

> SEC. 12. *Contempt against quasi-judicial entities.*— Unless otherwise provided by law, this Rule shall apply to contempt committed against persons, entities, bodies or agencies exercising quasi-judicial functions, or shall have suppletory effect to such rules as they may have adopted pursuant to authority granted to them by law to punish for contempt. **The Regional Trial Court of the place wherein the contempt has been committed shall have jurisdiction over such charges as may be filed therefor**.[45]

There is absolutely no basis under the Rules of Court to support the Sps. Nicolas' theory that the Court has jurisdiction over a case for indirect contempt allegedly committed against a quasi-judicial body just because the decision of the said quasi-judicial body is pending appeal before the Court. To the contrary, the Rules of Court unambiguously state that it is the regional

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[45] Emphasis and underscoring supplied.

trial courts that have jurisdiction to hear and decide indirect contempt cases involving disobedience of quasi-judicial entities.

In the instant Petition for Indirect Contempt, the Sps. Nicolas pray that the Court conduct a hearing and receive evidence on the supposed disobedience and resistance being committed by the Sps. Rodriguez and Manlulu. In other words, the Sps. Nicolas would want the Court to conduct a fact-finding hearing to determine whether the Sps. Rodriguez and Manlulu committed indirect contempt. Obviously, such a prayer cannot be seriously entertained. As held time and time again, it is elementary that the Court is not a trier of facts.[46] It is within the province of the lower courts, and not the Court, to receive evidence and to make factual findings based on such evidence.

Hence, the Sps. Nicolas' Petition for Indirect Contempt is dismissed.

WHEREFORE, in view of the foregoing, the appeal in G.R. No. 183324 is hereby **DENIED**. The Resolutions dated January 7, 2008 and May 6, 2008 rendered by the Court of Appeals in CA-G.R. SP No. 101644 are **AFFIRMED**.

Further, in G.R. No. 209748, the Petition for Indirect Contempt instituted by petitioners Spouses Dr. Amelito S. Nicolas and Edna B. Nicolas is hereby **DISMISSED**.

SO ORDERED.

Carpio (*Chairperson*), *Jardeleza,*[**] *Reyes, J. Jr.*, and *Lazaro-Javier, JJ.*, concur.

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[46] *Magno v. Court of Appeals*, 287 Phil. 247, 253 (1992).

[**] Designated Additional Member per Raffle dated February 14, 2018.

SECOND DIVISION

[G.R. No. 198998. June 19, 2019]

YOUNG BUILDERS CORPORATION, *petitioner, vs.* **BENSON INDUSTRIES, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF THE APPELLATE COURTS WILL NOT BE REVIEWED NOR DISTURBED ON APPEAL TO THE SUPREME COURT; THE RULE, HOWEVER ADMITS EXCEPTIONS, ONE OF WHICH IS WHEN THE FINDINGS OF FACT OF THE REGIONAL TRIAL COURT AND THAT OF THE COURT OF APPEALS ARE OBVIOUSLY CONFLICTING.—** The Rules require that only questions of law should be raised in a *certiorari* petition filed under Rule 45. The Court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding or conclusive on the parties and upon this Court." Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to the Court. The Rules however do admit exceptions. A close reading of the present Petition shows that what the Court is being asked to resolve is, what should prevail — the findings of fact of the RTC or the findings of fact of the CA. Considering that the findings of fact of both courts are obviously conflicting, the review of which is an admitted exception, the Court will proceed to rule on the present Petition.

2. **ID.; CIVIL PROCEDURE; PLEADINGS; ACTION OR DEFENSE BASED ON DOCUMENT; WHEN AN INSTRUMENT OR DOCUMENT QUALIFIES AS AN ACTIONABLE INSTRUMENT, THEN THE GENUINENESS AND DUE EXECUTION THEREOF ARE DEEMED ADMITTED UNLESS THE ADVERSE PARTY, UNDER OATH, SPECIFICALLY DENIES THEM, AND SETS FORTH WHAT HE CLAIMS TO BE THE FACTS; INSTANCES WHEN A SIMPLE SPECIFIC DENIAL WITHOUT OATH IS DEEMED SUFFICIENT, ENUMERATED.—** As provided in the Rules, a written instrument or document is "actionable" when an action or defense is based

upon such instrument or document. While no contract or other instrument need not and cannot be set up as exhibit which is not the foundation of the cause of action or defense, those instruments which are merely to be used as evidence do not fall within the rule on actionable document. x x x To qualify as an actionable document pursuant to Section 7, Rule 8 of the Rules, the specific right or obligation which is the basis of the action or defense must emanate therefrom or be evident therein. If the document or instrument so qualifies and is pleaded in accordance with Section 7 — the substance thereof being set forth in the pleading, and the original or a copy thereof attached to the pleading as an exhibit — then the genuineness and due execution thereof are deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts pursuant to Section 8 of Rule 8. Thus, a simple specific denial without oath is sufficient: (1) where the instrument or document is not the basis but a mere evidence of the claim or defense; (2) when the adverse party does not appear as a party to the document or instrument; and (3) when compliance with an order for an inspection of the original instrument is refused.

3. **ID.; ID.; ID.; ID.; EVEN WHERE THE WRITTEN INSTRUMENT OR DOCUMENT COPIED IN OR ATTACHED TO THE PLEADING IS THE BASIS OF THE CLAIM OR DEFENSE ALLEGED THEREIN, IF THE PARTY AGAINST WHOM THE WRITTEN INSTRUMENT OR DOCUMENT SOUGHT TO BE ENFORCED DOES NOT APPEAR THEREIN TO HAVE TAKEN PART IN ITS EXECUTION, SUCH PARTY IS NOT BOUND TO MAKE A VERIFIED SPECIFIC DENIAL; CASE AT BAR.—** [E]ven where the written instrument or document copied in or attached to the pleading is the basis of the claim or defense alleged therein, if the party against whom the written instrument or document is sought to be enforced does not appear therein to have taken part in its execution, such party is not bound to make a verified specific denial. For example, heirs who are sued upon a written contract executed by their father, are not bound to make a verified specific denial; and the defendant, in an action upon a note executed by him and endorsed by the payee to the plaintiff, is not bound to make a verified specific denial of the genuineness and due execution of the indorsement. Since BII does not appear to have taken part in the execution of the Accomplishment Billing, a verified specific denial of its

genuineness and due execution is therefore unnecessary. The Court cannot, thus, sustain YBC's contention that the subject Accomplishment Billing should be admitted in evidence due to BII's failure to specifically deny under oath its genuineness and due execution.

4. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; BEFORE A PRIVATE DOCUMENT CAN BE RECEIVED IN EVIDENCE, PROOF OF THEIR DUE EXECUTION AND AUTHENTICITY MUST BE PRESENTED; FAILURE TO COMPLY WITH THE RULE ON AUTHENTICATION OF PRIVATE DOCUMENT IN CASE AT BAR.— Under Section 20 of Rule 132, before a private document is admitted in evidence, it must be authenticated by any of the following: the person who executed it, the person before whom its execution was acknowledged, any person who was present and saw it executed, the person who after its execution, saw it and recognized the signature, being familiar thereto or an expert, or the person to whom the parties to the instrument had previously confessed execution thereof. In this case, Alfredo Young (Young), the Chairman of the Board of YBC, who signed the Accomplishment Billing, never testified in court. In his stead, Nelson Go Yu (Yu) merely identified Exhibit "B" as the Accomplishment Billing which YBC submitted to BII. Yu did not testify that he saw the execution of the Accomplishment Billing. Neither did Yu affirm the genuineness of the signature of Young nor did he testify that Young previously confessed execution of the same to him. In the case of *Chua v. Court of Appeals*, it was held that before private documents can be received in evidence, proof of their due execution and authenticity must be presented. This may require the presentation and examination of witnesses to testify as to the due execution and authenticity of such private documents. When there is no proof as to the authenticity of the writer's signature appearing in a private document, such private document may be excluded. Thus, in line with prevailing jurisprudence, the subject Accomplishment Billing should be excluded in evidence due to YBC's failure to comply with this rule on authentication of private documents. Thus, it cannot be accorded any probative value. x x x For the Ernesto Letter to be given credence as an admission against BII's interest, it should first be admissible as a documentary evidence. Like the Accomplishment Billing, which is also a private document, the due execution and authenticity of the Ernesto Letter must be proved by YBC.

x x x Here, the records of the case show that the Ernesto Letter was only entered into evidence but was never actually identified in open court by YBC's witness, Yu. The CA thus correctly ruled that the Ernesto Letter is inadmissible in evidence in view of YBC's failure to authenticate the same. No probative value can be accorded to it.

5. ID.; ID.; ID.; BEST EVIDENCE RULE; WHEN THE SUBJECT OF THE INQUIRY IS THE CONTENTS OF A DOCUMENT, NO EVIDENCE SHALL BE ADMISSIBLE OTHER THAN THE ORIGINAL DOCUMENT ITSELF; EXCEPTIONS, ENUMERATED; NOT PRESENT IN CASE AT BAR.— The Court notes that Exhibit "E" is a mere photocopy. Pursuant to Section 3, Rule 130 of the Rules or the Best Evidence Rule: SEC. 3. *Original document must be produced; exceptions*. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases: (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and (d) When the original is a public record in the custody of a public officer or is recorded in a public office. The records show that YBC did not invoke any of the foregoing exceptions to the Best Evidence Rule to justify the admission of a secondary evidence in lieu of the original Mary Certification. Having been admitted in violation of the Best Evidence Rule, Exhibit "E" should have been excluded and not accorded any probative value.

6. ID.; ID.; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE, DEFINED; NOT ESTABLISHED IN CASE AT BAR.— YBC being the claimant or plaintiff in this case, has not discharged its burden of proof — the duty to present evidence on the facts in issue necessary to establish its claim by the amount of evidence required by law, which is preponderance of evidence. Preponderance of evidence is defined as —x x x [T]he **weight, credit, and value** of the aggregate evidence

> on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." [It] is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as it is worthier of belief than that which is offered in opposition thereto. In addition, according to *United Airlines, Inc. v. Court of Appeals*, the plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant's.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioner.
Alvarez Nuez Galang Espina & Lopez Law Firm for respondent.

R E S O L U T I O N

CAGUIOA, *J.*:

This is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) filed by petitioner Young Builders Corporation (YBC) assailing the Decision[2] dated June 28, 2011 and Resolution[3] September 14, 2011 of the Court of Appeals[4] (CA) in CA-G.R. CEB-CV No. 02984, reversing the Decision[5] dated November 21, 2008 of the Regional Trial Court, Branch 21, Cebu City (RTC) in Civil Case No. CEB- 22526, and dismissing the complaint against Benson Industries, Inc. (BII).

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[1] *Rollo*, pp. 3-26, excluding Annexes.

[2] *Id*. at 28-37. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Ramon Paul L. Hernando (now a member of this Court) and Victoria Isabel A. Paredes concurring.

[3] *Id*. at 61-64.

[4] Twentieth and Nineteenth Divisions.

[5] *Rollo*, pp. 96-102. Penned by Presiding Judge Eric F. Menchavez.

Facts

The Decision of the CA states the facts as follows:

On 13 August 1998, plaintiff-appellee Young Builders Corporation (YBC for brevity) filed before the Regional Trial Court in Cebu City (RTC) a complaint for collection of sum of money against defendant-appellant Benson Industries, Inc. [(BII)]. In its complaint, YBC claimed that it was contracted by [BII] sometime in 1994 for the purpose of constructing [BII]'s commercial building located at Escario St., corner F. Ramos Extension, Cebu City, pursuant to an accomplishment billing basis. As of 18 May 1998, YBC alleged that it had accomplished works on the main contract amounting to Php54,022,551.39, of which only Php40,678,430 was paid by [BII] leaving a balance of Php13,344,121.39. In addition, [BII] required YBC to do extra works amounting to Php11,839,110.99 which, after deducting Php350,880 for the water cistern, resulted in a total collectible of Php24,832,352.38 both on the main contract and the extra works as per accomplishment billing dated 18 May 1998. However, despite demand, [BII] failed to pay its account constraining YBC to file the collection case.

In its Answer, [BII] admitted that it contracted YBC to construct the former's building but denied that it was on an accomplishment billing basis. On the contrary, [BII] averred that the construction was pursuant to a timetable with which YBC failed to comply. Objecting to YBC's monetary claims, [BII] asserted that YBC committed prior breaches in the agreement particularly the latter's delay and eventual abandonment of the construction as well as its defective and inferior workmanship and materials which unduly affected the usefulness and value of the building. [BII] also denied YBC's claim for extra works, maintaining that those were remedial not additional works. Even assuming that YBC still has a collectible, [BII] contended that the same has been offset against YBC's liability as a result of the latter's default and its substandard work. [BII] consequently prayed for the dismissal of the complaint.

After pre-trial, trial on the merits ensued. For the plaintiff-appellee, it presented its lone witness, architect Nelson Go Yu as the Vice President of the corporation, who testified on the material allegations in the complaint.

After YBC rested its case and formally offered its exhibits, [BII] tiled a Demurrer to Evidence dated 12 March 2002 and a Supplemental

Motion on Demurrer to Evidence dated 20 March 2002. YBC, in turn, filed its Opposition.

In an Order dated 16 July 2002, the RTC denied [BII]'s Demurrer to Evidence, ruling that there was an imperative need for [BII] to present countervailing evidence against YBC.

[BII] filed a Motion for Reconsideration but this was to no avail as evidenced by the court *a quo*'s Order dated 29 August 2002.

Subsequently, [BII] presented its evidence in chief. Five (5) witnesses took the witness stand, particularly: 1) Engr. Diego Bariquet, [BII]'s representative in the construction; 2) Frank Yap, [BII]'s Assistant Vice President; 3) Leonardo Guco, a liaison officer of [BII]; 4) Atty. Josh Carol Ventura, a representative of the Department of Trade and Industry (DTI); and 5) Ramon Abella, finance officer of the Dakay Group of Companies under which [BII] belongs.

On 21 November 2008, the RTC resolved the case in favor of YBC, thus:

> "WHEREFORE, in view of the foregoing premises, judgment is rendered in favor of the plaintiff and hereby orders the defendant to pay the plaintiff:
>
> (a) the amount of Php24,832,352.38 plus interest at the legal rate from the filing of this case until the said amount shall have been fully paid;
>
> (b) Php500,000.00 as attorney's fees; and
>
> (c) Php100,000.00 as litigation expenses.
>
> SO ORDERED."[6]

Aggrieved, [BII] filed [an] appeal [to the CA] assailing the RTC's decision finding it liable to YBC. [BII] aver[red] that contrary to the court *a quo*'s finding, YBC never actually completed the construction of the building since YBC failed to substantiate its claims by presenting the approved plans and building permits for the construction of the 8-storey building it had committed to build. Accusing YBC of legal default, [BII] claim[ed] that YBC miserably failed to complete the construction of the 8-storey building within the 360-day timeframe agreed upon by the parties. Since the original agreement cited the

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[6] *Id*. at 102.

amount of Php36,900,000 as the total contract price, [BII] maintain[ed] that the same amount [should] stand in the absence of any written contract saying otherwise. Considering that no written authority was given by [BII] regarding the changes in the construction contract, [BII] argue[d] that YBC [was] precluded from claiming additional costs pursuant to Article 1724 of the Civil Code and the ruling in *Powton Conglomerate vs. Agcolicol* (400 SCRA 523). Moreover, [BII] insist[ed] that full payment, if not overpayment, was already complied with since YBC was able to collect over Php40 million which [was] much more than the original contract price. Finally, [BII] question[ed] the admissibility and probative value of the private documents submitted by YBC in support of its monetary claim specifically Exhibits "B" to "F".[7]

The CA ruled that BII's appeal was impressed with merit, finding that YBC failed to prove that it was entitled to collect any balance from BII.[8]

The CA noted that the only evidence showing YBC's alleged monetary claims against BII was its Accomplishment Billing (Exhibit "B") which showed BII's purported balance of ₱13,344,121.39 on the main contract and ₱11,488,230.89 on the extra works.[9] The CA ruled that apart from the Accomplishment Billing, which was self-serving, YBC failed to submit other credible evidence to prove the actual expenses and amount of work it claimed to have accomplished such as receipts, payrolls or other similar documents.[10] The CA further ruled that the Accomplishment Billing, which was a private document, could not be given probative weight considering that its due execution and authenticity was not duly proven in accordance with procedural rules.[11] The CA excluded Exhibit "B" as evidence because of YBC's failure to authenticate it.[12]

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[7] *Id*. at 28-31.

[8] *Id*. at 31.

[9] *Id*. at 31-32.

[10] *Id*. at 32.

[11] *Id*.

[12] *Id*. at 34.

With the exclusion of the Accomplishment Billing, the CA concluded that YBC's cause of action for collection no longer had any leg to stand on.[13]

The dispositive portion of the CA Decision states:

> **WHEREFORE**, in view of the foregoing premises, the present petition is GRANTED. The assailed Decision dated 21 November 2008 rendered by the Regional Trial Court, Branch 21 in Cebu City in Civil Case No. CEB-22526 is REVERSED and SET ASIDE. Consequently, the x x x complaint of plaintiff-appellee is dismissed.
>
> **SO ORDERED.**[14]

YBC filed a Motion for Reconsideration,[15] which was denied by the CA in its Resolution[16] dated September 14, 2011.

Hence, the present Petition. BII filed a Comment[17] dated April 20, 2012. YBC filed a Reply[18] dated October 17, 2012.

The Issues

YBC raises the following issues in its Petition:

1. Whether the CA erred in setting aside the formal requirements of law on specific denial by not giving probative value to YBC's Accomplishment Billing (Exhibit "B") even though it was offered by BII as its own evidence (Exhibit "2");
2. Whether the CA erred when it held that the letter of BII's Ernesto Dacay, Sr. (Exhibit "F") was not duly authenticated; and
3. Whether the CA erred when it reversed the judgment of the RTC on the basis of its ruling that:

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[13] *Id*.

[14] *Id*. at 37.

[15] *Id*. at 38-59.

[16] *Id*. at 61-64.

[17] *Id*. at 116-146.

[18] *Id*. at 149-158.

a. YBC's Accomplishment Billing has no probative value;

b. The letter of BII's Ernesto Dacay, Sr. (Exhibit "F") was not duly authenticated.

c. The Certification of BII (Exhibit "E") that the subject building was completed was contradicted by YBC's own evidence.[19]

The Court's Ruling

The Petition is without merit.

The Rules require that only questions of law should be raised in a *certiorari* petition filed under Rule 45.[20] The Court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding or conclusive on the parties and upon this Court."[21] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to the Court.[22]

The Rules however do admit exceptions[23] A close reading of the present Petition shows that what the Court is being asked to resolve is, what should prevail — the findings of fact of the RTC or the findings of fact of the CA. Considering that the findings of fact of both courts are obviously conflicting, the review of which is an admitted exception, the Court will proceed to rule on the present Petition.[24]

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

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

[21] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc*., 364 Phil. 541, 546 (1999).

[22] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016), citing *Siasat v. Court of Appeals*, 425 Phil. 139, 145 (2002); *Tabaco v. Court of Appeals*, 309 Phil. 442 (1994); and *Padilla v. Court of Appeals*, 241 Phil. 776, 781 (1988).

[23] *Pascual v. Burgos*, *id*. at 182.

[24] *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistic Systems, Inc*., 805 Phil. 244, 255 (2017).

To prove its monetary claims, YBC presented the following documents: (1) the revised cost proposal dated October 17, 1995 wherein the parties agreed on the construction of the initial five-story building at a cost of ₱36,900,000.00 (Exhibit "A"); (2) the cost breakdown for the additional works in the building bearing the conformity of BII's representatives (Exhibit "C"); and (3) the Accomplishment Billing dated May 18, 1998 showing ₱24,832,352.38 as YBC's total collectible both on the main contract and the extra works (Exhibit "B").[25]

The CA correctly pointed out that while Exhibits "A" and "C" provide bases for the agreed cost in the construction of the building, it cannot be determined from those documents alone the amount or extent of work actually accomplished by YBC (and accepted by BII or if unaccepted by BII, conformed with agreed specifications) which would entitle it to collect from BII.[26]

The Accomplishment Billing is thus crucial to YBC's cause of action. Its purpose, as duly acknowledged by the CA, was precisely to show the progress of the work done and the expenses incurred as a result thereof.[27]

YBC's Accomplishment Billing dated May 18, 1998 (Exhibit "B"/Exhibit "2")

YBC is of the position that there is no longer the need to prove the genuineness and due execution of the Accomplishment Billing because it is an actionable document that was attached to the complaint and not specifically denied under oath by BII.[28] YBC argues that BII's denial in its Answer was insufficient because it did not specifically deny the genuineness and due execution of the Accomplishment Billing.[29]

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[25] *Rollo*, p. 31.

[26] *Id*. at 34.

[27] *Id*.

[28] *Id*. at 9.

[29] *Id*. at 10.

To recall, YBC's complaint alleged, among others, that:

3. That sometime in 1994, the defendant contracted the services of plaintiff for the purpose of constructing its commercial building located at Escario St. corner F. Ramos Extension, Cebu City on an accomplishment billing basis;

4. As of May 18, 1998, on the main contract, the plaintiff has accomplished works in the total amount of ₱54,022,551.39;

5. Of said accomplished work in the main contract, the defendant has paid the total amount of ₱40,678,430.00, leaving a balance of ₱13,344,121.39;

6. The defendant also required the plaintiff to do extra works on said building in the amount of ₱11,839,110.99;

7. That of said amount, the amount of ₱350,880.00 for the water cistern has been deducted, leaving a balance of ₱11,488,230.89;

8. Thus the plaintiff has a collectible amount of ₱24,832,352.38 from the defendant on both the main contract and extra works per accomplishment billing hereto attached as Annex "A";

9. That the plaintiff demanded payment of said amount from the defendant, but despite demand, the defendant has failed to pay its account with the plaintiff, prompting the filing of the present action[.][30]

On the other hand, BII responded in its Answer, under oath, that:

4. It specifically denies paragraph 4 of the complaint as to the value of plaintiff's alleged accomplishment as the same appears to be bloated and exaggerated.

5. It admits the allegation in paragraph 5 of the complaint that defendant has paid at least ₱40,768,430.00 but denies the allegation therein that there is an unpaid balance. Considering plaintiffs actual accomplishments, the quality (or lack thereof) of its workmanship, and its delay in the completion of the construction, the amount already paid to plaintiff is more than enough.

6. It specifically denies paragraph 6 of the complaint. Plaintiff has not done extra works. The supposed extra works were actually

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[30] *Id*. at 65-66.

remedial works, which were necessitated by plaintiff's defective workmanship and construction inadequacies.

7. It specifically denies paragraph 7 of the complaint. Defendant maintains that it is not liable to pay alleged extra works, as there were none.

8. It specifically denies paragraph 8 of the complaint. Plaintiff does not anymore have any collectible amount from defendant.

9. It specifically denies paragraph 9 of the complaint. Plaintiff has not actually made demands to pay. What plaintiff submitted to defendant were "requests for evaluation of accomplishments".[31]

BII Claims that even the Petition admits that the Answer was verified and there was a specific denial of the Accomplishment Billing in paragraphs 8 and 9 of the Answer.[32]

BII takes the position that the Accomplishment Billing is not an actionable document because it is not in the nature of a contract which could be the source of rights and obligations and, pursuant to Section 8, Rule 8 of the Rules, the requirement of a denial under oath does not apply when the adverse party does not appear to be a party to the instrument.[33] BII considers it self-serving.[34] Furthermore, BII used the said exhibit as an admission against interest of YBC that the building was not yet 100% completed as of May 18, 1998 despite the supposed agreement to complete it within 360 days from its commencement in 1994.[35]

The Court finds that the subject Accomplishment Billing is NOT an actionable document.

Sections 7 and 8, Rule 8 of the Rules provide:

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[31] *Id*. at 73-74.

[32] *Id*. at 140-141.

[33] *Id*. at 140.

[34] *Id*.

[35] *Id*. at 141.

SEC. 7. *Action or defense based on document.*— Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

SEC. 8. *How to contest such documents.* — **When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding Section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument** or when compliance with an order for an inspection of the original instrument is refused. (Emphasis and underscoring supplied)

As provided in the Rules, a written instrument or document is "actionable" when an action or defense is based upon such instrument or document. While no contract or other instrument need not and cannot be set up as exhibit which is not the foundation of the cause of action or defense, those instruments which are merely to be used as evidence do not fall within the rule on actionable document.[36]

To illustrate, in an action to enforce a written contract of lease, the lease contract is the basis of the action and therefore a copy thereof must either be set forth in the complaint or its substance must be recited therein, attaching either the original or a copy to the complaint.[37] The lease contract is an actionable document. Any letter or letters written by the lessee to the lessor or *vice versa* concerning the contract should not be set forth in the complaint.[38] While such letters might have some

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[36] Vicente J. Francisco, *THE REVISED RULES OF COURT IN THE PHILIPPINES*, Vol. I, 1973 ed., pp. 586-587, citing 71 C.J.S. 780-783.

[37] *Id.* at 587.

[38] *Id.*

evidential value, evidence, even in writing, does not necessarily have a proper place in the pleadings.[39]

To clarify, not all documents or instruments attached or annexed to the complaint or the answer are actionable documents. To qualify as an actionable document pursuant to Section 7, Rule 8 of the Rules, the specific right or obligation which is the basis of the action or defense must emanate therefrom or be evident therein. If the document or instrument so qualifies and is pleaded in accordance with Section 7 — the substance thereof being set forth in the pleading, and the original or a copy thereof attached to the pleading as an exhibit — then the genuineness and due execution thereof are deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts pursuant to Section 8 of Rule 8. Thus, a simple specific denial without oath is sufficient: (1) where the instrument or document is not the basis but a mere evidence of the claim or defense;[40] (2) when the adverse party does not appear as a party to the document or instrument;[41] and (3) when compliance with an order for an inspection of the original instrument is refused.[42]

The complaint filed by YBC is an action for a sum of money arising from its main contract with BII for the construction of a building. YBC's cause of action is primarily based on BII's alleged non-payment of its outstanding debts to YBC arising from their main contract, despite demand. If there was a written building or construction contract that was executed between BII and YBC, then that would be the actionable document because its terms and stipulations would spell out the rights

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[39] *Id*., citing *Gregorio Araneta, Inc. v. Lyric Film Exchange, Inc*., 58 Phil. 736, 741 (1933).

[40] Manuel V. Moran, *COMMENTS ON THE RULES OF COURT*, Vol. I (1979 ed.), p. 326, citing *Gregorio Araneta, Inc. v. Lyric Film Exchange Inc*., *id*.

[41] RULES OF COURT, Rule 8, Sec. 8.

[42] *Id*.

and obligations of the parties. However, no such contract or agreement was attached to YBC's Complaint.

Clearly, the subject Accomplishment Billing is not an actionable document contemplated by the Rules, but is merely evidentiary in nature. As such, there was no need for BII to specifically deny its genuineness and due execution under oath.

Besides, even where the written instrument or document copied in or attached to the pleading is the basis of the claim or defense alleged therein, if the party against whom the written instrument or document is sought to be enforced does not appear therein to have taken part in its execution, such party is not bound to make a verified specific denial.[43] For example, heirs who are sued upon a written contract executed by their father, are not bound to make a verified specific denial;[44] and the defendant, in an action upon a note executed by him and endorsed by the payee to the plaintiff, is not bound to make a verified specific denial of the genuineness and due execution of the indorsement.[45]

Since BII does not appear to have taken part in the execution of the Accomplishment Billing, a verified specific denial of its genuineness and due execution is therefore unnecessary.

The Court cannot, thus, sustain YBC's contention that the subject Accomplishment Billing should be admitted in evidence due to BII's failure to specifically deny under oath its genuineness and due execution.

Proceeding now to the probative value of the Accomplishment Billing, the Court agrees with the CA's ruling that it should be excluded as evidence on the ground of YBC's failure to authenticate the same.

The annexation of an exhibit to a pleading, such as the Accomplishment Billing in this case, does not amount to an

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[43] Moran, *supra* note 40, at 326.

[44] *Id*., citing *Lim-Chingco v. Terariray*, 5 Phil. 120 (1905).

[45] *Id*., citing *Heinszen & Co. v. Jones*, 5 Phil. 27 (1905); *Banco Español-Filipino v. McKay & Zoeller*, 27 Phil. 183 (1914).

allegation or averment that the statements and recitals contained therein are true and correct or that the truth of the recitals therein is tendered as an issue in the case; rather, the truth of such recitals must be expressly alleged in the pleading in order to raise the issue.[46]

The CA correctly ruled that the Accomplishment Billing, being a private document, was not admissible considering that its due execution and authenticity were not duly proven in accordance with Section 20, Rule 132 of the Rules, to wit:

> SEC. 20. *Proof of private document.*— Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
>
> (a) By anyone who saw the document executed or written; or
>
> (b) By evidence of the genuineness of the signature or handwriting of the maker.
>
> Any other private document need only be identified as that which it is claimed to be.

Under Section 20 of Rule 132, before a private document is admitted in evidence, it must be authenticated by any of the following: the person who executed it, the person before whom its execution was acknowledged, any person who was present and saw it executed, the person who after its execution, saw it and recognized the signature, being familiar thereto or an expert, or the person to whom the parties to the instrument had previously confessed execution thereof.

In this case, Alfredo Young (Young), the Chairman of the Board of YBC, who signed the Accomplishment Billing, never testified in court. In his stead, Nelson Go Yu (Yu) merely identified Exhibit "B" as the Accomplishment Billing which YBC submitted to BII. Yu did not testify that he saw the execution of the Accomplishment Billing. Neither did Yu affirm the

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[46] 71 C.J.S. 790.

genuineness of the signature of Young nor did he testify that Young previously confessed execution of the same to him.[47]

In the case of *Chua v. Court of Appeals*,[48] it was held that before private documents can be received in evidence, proof of their due execution and authenticity must be presented. This may require the presentation and examination of witnesses to testify as to the due execution and authenticity of such private documents.[49] When there is no proof as to the authenticity of the writer's signature appearing in a private document, such private document may be excluded.[50]

Thus, in line with prevailing jurisprudence, the subject Accomplishment Billing should be excluded in evidence due to YBC's failure to comply with this rule on authentication of private documents.[51] Thus, it cannot be accorded any probative value.

With the exclusion of Exhibit "B" (Accomplishment Billing), the Court agrees with the CA that YBC's cause of action for collection no longer has any veritable leg to stand on.[52]

Even if its genuineness and due execution are conceded, the Accomplishment Billing is, by itself, not worthy of full faith because it is self-serving. As observed by the CA, with which the Court is in total agreement, YBC failed to submit credible evidence to prove the actual expenses and amount of work it

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[47] See *rollo*, p. 32.

[48] 283 Phil. 253 (1992).

[49] *Id*. at 260, citing *General Enterprises, Inc. v. Lianga Bay Logging Co., Inc.*, 120 Phil. 702, 717 (1964).

[50] *Id*., citing *General Enterprises, Inc. v. Lianga Bay Logging Co., Inc*., *id*. at 717.

[51] See *Malayan Insurance Co., Inc. v. Philippine Nails and Wires Corporation*, 430 Phil. 162, 168-169 (2002); *Tigno v. Spouses Aquino*, 486 Phil. 254, 274-275 (2004).

[52] *Rollo*, p. 34.

claimed to have accomplished such as receipts, payrolls or other similar documents.[53]

Notably, YBC was pursuing a collection suit worth several millions; it was thus incumbent upon it to present preponderant evidence to substantiate its claims. Unfortunately, it failed to comply with this duty to the detriment of its own cause.

As to YBC's argument that BII adopted the Accomplishment Billing as its own Exhibit 2 and offered the same as BII's evidence and as such, it should be accorded probative value, the exclusion of the Accomplishment Billing as evidence for YBC due to the failure to prove its due execution and authenticity should likewise apply when the Accomplishment Billing is considered as evidence for BII. It will indeed be an absurd situation if a private writing is excluded as evidence for one party on the ground that its due execution and authenticity have not been established and at the same time, it is accorded with some probative value in favor of the opposing party which presupposes that it is admitted as the latter's evidence.

BII's Letter dated May 7, 1998 (Exhibit "F")

YBC claims that the CA erred in holding inadmissible the letter dated May 7, 1998 (Ernesto Letter), allegedly written by Ernesto Dacay, Sr. (Ernesto), who apologized to YBC for BII's inability to fulfill its payment due to financial constraints. YBC reasoned that the CA should have given credence to the Ernesto Letter because it is an admission against BII's interest, admissible under the Rules.

For the Ernesto Letter to be given credence as an admission against BII's interest, it should first be admissible as a documentary evidence. Like the Accomplishment Billing, which is also a private document, the due execution and authenticity of the Ernesto Letter must be proved by YBC. As a prerequisite to the admission in evidence of the Ernesto Letter, which is

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[53] *Id*. at 32.

private document, its identity and authenticity must be properly laid and reasonably established.[54] This is mandated by the aforequoted Section 20, Rule 132 of the Rules.

Here, the records of the case show that the Ernesto Letter was only entered into evidence but was never actually identified in open court by YBC's witness, Yu. The CA thus correctly ruled that the Ernesto Letter is inadmissible in evidence in view of YBC's failure to authenticate the same.[55] No probative value can be accorded to it.

The Certification dated November 15, 1997 (Exhibit "E")

YBC argues that the CA should not have disregarded the Certification dated November 15, 1997 (Mary Certification), allegedly issued by BII's President, Mary Dacay, affirming YBC's successful completion of the subject building even if YBC's witness, Yu, allegedly admitted in his testimony that the subject building was not completed.[56]

The Court notes that Exhibit "E" is a mere photocopy.[57] Pursuant to Section 3, Rule 130 of the Rules or the Best Evidence Rule:

> SEC. 3. *Original document must be produced; exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
>
> (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offer or;

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[54] See Vicente J. Francisco, *THE REVISED RULES OF COURT IN THE PHILIPPINES*, Vol. VII, Part II, 1997 ed., p. 335, citing 2 Jones on Evidence, 4th ed., p. 964 and 32 C.J.S. 476.

[55] *Rollo*, p. 36.

[56] *Id*. at 16.

[57] Records, p. 97.

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

The records show that YBC did not invoke any of the foregoing exceptions to the Best Evidence Rule to justify the admission of a secondary evidence in lieu of the original Mary Certification. Having been admitted in violation of the Best Evidence Rule, Exhibit "E" should have been excluded and not accorded any probative value.

Nonetheless, the Court agrees with the CA's findings that the veracity of the Mary Certification no longer holds much significance since YBC's Yu openly admitted that YBC failed to complete the building, to wit:

"Q: Now, you said that the project was started in 1994, can you tell us the month in 1994 that the project was started?

A: I forgot.

Q: Could you tell us that the project was completed in 1995?

A: No.

Q: How about in 1996, the proj.ect was completed?

A: No.

Q: *And until now it was not yet completed?*

A: *It was not completed,* because they could not pay.

Q: *You are telling us that* even as of this time November 27, 2000, the project is not yet completed?

A: Not yet completed."[58]

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[58] CA Decision dated June 28, 2011, *rollo*, pp. 35-36.

Given the foregoing, YBC being the claimant or plaintiff in this case, has not discharged its burden of proof — the duty to present evidence on the facts in issue necessary to establish its claim by the amount of evidence required by law,[59] which is preponderance of evidence.[60]

Preponderance of evidence is defined as —

> x x x the **weight, credit, and value** of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." [It] is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as it is worthier of belief than that which is offered in opposition thereto.[61]

In addition, according to *United Airlines, Inc. v. Court of Appeals*,[62] the plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant's.

In view of the insufficiency of the evidence adduced by YBC to prove that it is entitled to collect from BII, the Court finds no cogent or compelling reason to deviate from the findings and conclusions reached by the CA.

WHEREFORE, the Petition is hereby **DENIED** for lack of merit.

SO ORDERED.

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

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[59] RULES OF COURT, Rule 131, Sec. 1.

[60] *Id.*, Rule 133, Sec. 1.

[61] *Tan, Jr. v. Hosana*, 780 Phil. 258, 266 (2016), citing *Sps. Ramos v. Obispo*, 705 Phil. 221, 230 (2013).

[62] 409 Phil. 88, 100 (2001).

SECOND DIVISION

[G.R. No. 199308. June 19, 2019]

RIZAL COMMERCIAL BANKING CORPORATION, *petitioner, vs.* **PLAST-PRINT[*] INDUSTRIES, INC., and REYNALDO[**] C. DEQUITO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; RTC; ALL ORDERS AND ISSUANCES ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION (SEC) IN THE EXERCISE OF ITS QUASI-JUDICIAL JURISDICTION MAY NOT BE INTERFERED WITH BY THE RTC. — Presidential Decree No. (P.D.) 902-A defines the jurisdiction of the SEC. x x x Pursuant to the exercise of its quasi-judicial jurisdiction, the SEC stands as a co-equal body of the RTC. Hence, all orders and issuances issued by the SEC in the exercise of such jurisdiction may not be interfered with, let alone overturned, by the RTC. x x x As courts of general jurisdiction, the RTC ordinarily exercise exclusive original jurisdiction over civil actions incapable of pecuniary estimation, such as that of accounting, cancellation of certificates of sale issued in foreclosure proceedings and injunction. Nevertheless, the scope of such general jurisdiction cannot be extended over matters falling under the *special* jurisdiction of another court or quasi-judicial body. x x x To stress, jurisdiction, once acquired is not lost, and continues until the case is terminated. Thus, in cases where, as here, a petition for suspension of payments is filed before the SEC, it acquires jurisdiction over the action and all matters relating thereto to the exclusion of the RTC. x x x It is well-established that jurisdiction over subject matter, like that over the nature of the action, is "conferred by law and not by the consent or acquiescence of any or all of the parties, **or by erroneous belief of the court that it exists**." Hence, the doctrine of the law of the case cannot be applied to serve as a bar against jurisdictional challenges involving the subject matter or nature of the case; it cannot be applied so as to grant jurisdiction which the law itself does *not* confer. x x x Similar

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[*] Also stated as "Plast Print" in some parts of the *rollo*

[**] Also stated as "Renaldo" in some parts of the *rollo*.

to lack of jurisdiction over the subject matter, lack of jurisdiction over the nature of the case may be raised, as an affirmative defense at any time.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF CONTRACTS; NOVATION. — Articles 1291 and 1292 of the Civil Code govern novation. x x x Novation may be *total* or *extinctive*, when there is an absolute extinguishment of the old obligation, or *partial*, when there is merely a modification of the old obligation.

APPEARANCES OF COUNSEL

Cayetano Sebastian ATA Dado & Cruz for petitioner.
Ruperto N. Listana for respondents.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated May 31, 2011 (assailed Decision) and Resolution[3] dated November 9, 2011 (assailed Resolution) in CA-G.R. CV No. 89431 rendered by the Court of Appeals (CA).

The assailed Decision and Resolution stem from an appeal assailing the Decision[4] dated May 17, 2006 rendered by the Regional Trial Court (RTC) of Antipolo City, Branch 74 in Civil Case No. 00-5875:

1. Ordering the Register of Deeds of Rizal Province (RD) to cancel the Certificate of Sale annotated on Transfer

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[1] *Rollo* (Vol. I), pp. 20-74.

[2] *Id*. at 75-84. Penned by Associate Justice Florito S. Macalino, with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. concurring.

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

[4] *Rollo* (Vol. III), pp. 1006-1018. Penned by Presiding Judge Francisco A. Querubin.

Certificate of Title (TCT) Nos. 499643, 617967, 597336, 597337 and 621037; and

2. Directing petitioner Rizal Commercial Banking Corporation (RCBC) to (i) make an accounting and re-computation of all previous payments made by respondent Plast-Print Industries, Inc. (Plast-Print) in connection with its financial accommodations with RCBC; and (ii) pay Plast-Print and its Vice-President for Operations, Reynaldo Dequito (Dequito) ₱200,000.00 as attorney's fees and the costs of suit.

The Facts

The undisputed facts, as narrated by the CA, are as follows:

[Plast-Print] applied for credit facilities with [RCBC] in order to have a bigger working capital and for expansion. The following credit facilities were provided to Plast-Print: a.) Secured (A) Term Loan for [₱]6.65 Million; b.) Secured (C) Loan Line for [₱]4.49 Million; and c.) Import/Domestic [Letters of Credit with Trust Receipts (LC/TR)] Line for [₱]2 Million. **The foregoing credit facilities were secured by, among others, a real estate mortgage over properties covered by TCT Nos. 499643, 617967, 597336, 597337, 621037, 59286 and PT-91458.** Plast-Print availed of the said credit facilities by way of promissory notes [PN] with the following details:

Date	[PN] No.	Amount (in Philippine Pesos)	Due Date (month/day/ year)	Interest % (Per annum)
[January 11, 1995]	153-95	4,490,000.00	[January 11, 2000]	15
[January 16, 1995]	185-95	3,000,000.00	on demand	15
[February 9, 1995]	465-95	1,000,000.00	on demand	15.5
[February 13, 1995]	514-95	4,490,000.00	[February 13, 2000]	13.25
[March 27, 1995]	951-95	2,000,000.00	[March 27, 2000]	13.51
[April 5, 1995]	1058-95	490,000.00	on demand	25

Plast-Print also obtained an additional loan by availing of the LC/TR Line x x x amounting to [₱2 Million]. Plast-Print, thus, had a total principal loan obligation in the amount of [₱]12,980,000.00.

Plast-Print failed to pay its past due obligations and interest under [PN] Nos. 514-95, 951-95, 185-95, 465-95 and the LC/TR. RCBC, therefore, sent a letter dated July 31,1997 to Plast-Print, demanding that the latter settle its account with a warning that the former will be constrained to proceed with the appropriate legal action if the latter fails to fully settle its account. Statements of [account] were sent to Plast-Print, reflecting the outstanding obligations it had.

Plast-Print acknowledged its obligation in a letter dated August 7, 1997, but stated that based on its records, its outstanding balance was [₱]661,564.45 and as such, it was "not certain if there were any previous applications to [its] loans that were not transmitted to [its] office x x x [and would] appreciate any reconciliation to rectify the matter of x x x its payments."

Plast-Print and RCBC met on October 9, 1997 to reconcile all of the former's payments. The parties reconciled their accounts and records and they confirmed that all statements of [account] sent to Plast-Print were correct, except for three applications of payments for: a.) RCBC Check No. 21412 for [₱843.177.78]; b.) RCBC Check No. 21413 for ₱835.733.33]; and c.) OR No. 107556 for [₱335.782.22]. Later, RCBC wrote to Plast-Print, explaining the applications of payment of RCBC Check Nos. 21412 and 21413 and the cash payment evidenced by OR No. 107556. RCBC Check Nos. 21412 and 21413 were returned checks[,] while OR No. 107556 was determined to be a replacement for returned UCPB Check No. 127374. **Plast-Print, however, still failed to settle its obligations.**

Plast-Print offered to restructure its obligations and RCBC agreed on the condition that the former [immediately] pay [₱]4,000,000.00. Two post-dated checks for [₱]2,000,000.00 each was issued by Plast-Print, of which one was dishonored. **A [written] demand**[5] **was, hence, made to Plast-Print for the payment of its obligations which amounted to [₱]13,452,372.85 as of October 10, 1997 [within five days from receipt thereof],**[6] **but no payment was made**.[7] (Emphasis supplied)

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[5] *Rollo* (Vol. I), p. 24.

[6] *Id*. at 26-27.

[7] *Id*. at 76-77.

RCBC's petitions for extra-judicial foreclosure

On May 4, 1998, RCBC filed with the RTC separate petitions for extra-judicial foreclosure of properties mortgaged in its favor.[8]

On November 12, 1998, *some* properties covered by Plast-Print's real estate mortgage (REM) were sold in a public auction,[9] where RCBC emerged as highest bidder. It appears that a second public auction for the remaining properties covered by said REM[10] was subsequently scheduled on November 30, 1998.[11]

Plast-Print's petition for suspension of payments

Unknown to RCBC, Plast-Print had filed before the Securities and Exchange Commission (SEC) a petition for suspension of payments (SEC Petition) on October 5, 1998.[12]

Thus, on November 16, 1998, the SEC ordered a 30-day suspension of all payments due Plast-Print's creditors. Consequently, the second public auction scheduled on November 30, 1998 did not push through.[13]

Following the filing of the SEC Petition, negotiations between and among Plast-Print and its creditors ensued. These negotiations led to the execution of a Restructuring Agreement[14] dated June 25, 1999 (Restructuring Agreement), which was subsequently approved by the SEC in its Order dated July 22, 1999 (SEC Order).[15]

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

[9] Particularly, those properties covered by TCT Nos. 499643 (situated in Taytay, Rizal) and 617967, 597336, 597337 and 621037 (situated in Cainta, Rizal); see *id*. at 92.

[10] Particularly, those properties covered by TCT Nos. 59286 and PT-91458; see *id*.

[11] *Rollo* (Vol. I), pp. 27-28.

[12] *Id*. at 78, 321.

[13] *Id*. at 27-28, 78.

[14] *Id*. at 366-377.

[15] *Id*. at 28, 78.

Under the Restructuring Agreement, Plast-Print acknowledged its indebtedness to RCBC in the amount of ₱11,216,178.22 as of December 31, 1998. In this regard, Plast-Print bound itself to pay said obligation within a term of six years, with grace periods of one year and two years for interest and principal payments, respectively.[16] For this purpose, Plast-Print executed in favor of RCBC a non-negotiable promissory note in the amount of ₱11,216,178.22, due on December 31, 2004. It appears, however, that Plast-Print still failed to settle its obligations with RCBC as agreed. Thus, on August 21, 2000, Plast-Print negotiated for yet another moratorium on its overdue payments, but RCBC no longer acceded.[17]

Plast-Print's RTC Complaint

A day after RCBC denied its plea for another moratorium, Plast-Print and Dequito filed before the RTC a Complaint[18] for accounting, cancellation of bid price and sheriffs Certificate of Sale, injunction and damages (RTC Complaint) against RCBC.

In sum, the RTC Complaint alleged that Plast-Print made several payments in favor of RCBC amounting to ₱5,506,152.00 which were not applied to its Statement of Account, thus prompting it to request for a reconciliation and re-accounting of its outstanding obligations.[19] On this score, Plast-Print claims that it was alarmed when it received a Notice of Sheriff's Sale on May 5, 1998 indicating that its total outstanding obligations with RCBC already reached the sum of ₱9,021,161.24 as of October 10, 1997.[20]

In response, RCBC filed a Motion to Dismiss[21] alleging that: (i) the RTC lacks jurisdiction in view of the pending SEC Petition;

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[16] *Id*. at 28.

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

[18] *Id*. at 87-98.

[19] *Id.* at 91.

[20] *Id*. at 92.

[21] *Id*. at 219-230.

(ii) the RTC Complaint had been supported by a defective certification against forum shopping (iii) Plast-Print and Dequito are guilty of forum shopping; and (iv) the RTC Complaint is barred by a prior judgment, in view of the SEC Order approving the Restructuring Agreement.[22]

The RTC denied said motion in its Order[23] dated April 16, 2001 (RTC Order). RCBC's subsequent motion for reconsideration was also denied.

Aggrieved, RCBC filed a petition for *certiorari* (RCBC's petition for *certiorari*) before the CA praying for the annulment of the RTC Order. This petition, however, was dismissed for lack of merit. RCBC no longer sought reconsideration, rendering the dismissal final.[24]

Meanwhile, in RCBC's Answer *Ad Cautelam*[25] to the RTC Complaint, RCBC reiterated the grounds raised in its Motion to Dismiss, and in addition, argued that the RTC Complaint is barred not only by prior judgment, but also by estoppel and laches.[26]

On May 17, 2006, the RTC issued a Decision in favor of Plast-Print and Dequito. The dispositive portion of said Decision reads:

> WHEREFORE, premises considered, the injunction issued in this case is made permanent and judgment is hereby rendered in favor of [Plast-Print and Dequito] and against [RCBC] ordering x x x:
>
> 1) the Register of Deeds of Rizal Province to cancel the Certificate of Sale annotated [on TCT] Nos. 499643, 617967, 597336, 597337 and 621037 as said sale is hereby declared null and void and of no further force and effect;
>
> 2) [RCBC] to:

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[22] *Id*. at 78 and 227.

[23] *Id*. at 293.

[24] *Id*. at 79.

[25] *Id*. at 313-329.

[26] *Id*. at 79.

a) make an accounting and re-computation of the payments made by [Plast-Print] applying the same on the date and notes applied for[;]

b) to pay [Plast-Print and Dequito] the sum of TWO HUNDRED THOUSAND PESOS ([₱]200,000.00) as for (*sic*) attorney's fees; and

[c)] [to pay] the cost (*sic*) of suit.

SO ORDERED.[27]

In essence, the RTC found that RCBC failed to establish how Plast-Print's previous payments were applied to its outstanding obligations. Since Plast-Print was "kept in the dark", the RTC directed RCBC to render an accounting and re-computation of Plast-Print's outstanding obligations. In this connection, the RTC ruled that the foreclosure of Plast-Print's mortgaged properties should be "deemed premature."[28]

RCBC's Appeal

Aggrieved, RCBC filed its Notice of Appeal before the RTC and paid the required fees.[29] The RTC gave due course to RCBC's appeal, which, in turn, assigned the following errors:

(1)

THE [RTC] ERRED IN FINDING THAT [PLAST-PRINT AND DEQUITO] WERE KEPT IN THE DARK AS TO THE APPLICATION OF PAYMENTS.

(2)

THE [RTC] ERRED IN RULING THAT [PLAST-PRINT AND DEQUITO] ARE NOT GUILTY OF FORUM SHOPPING, NOT BARRED BY PRIOR JUDGMENT AND THAT IT [HAD] JURISDICTION OVER THE SUBJECT-MATTER OF THE CASE.

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[27] *Rollo* (Vol. III), p. 1018.

[28] *Id*. at 1017-1018.

[29] *Rollo* (Vol. I), p. 36.

(3)

THE [RTC] ERRED IN DISMISSING THE COUNTERCLAIMS AND IN ORDERING [RCBC] TO PAY [PLAST-PRINT AND DEQUITO] ATTORNEY'S FEES AND THE COST OF SUIT.[30]

On May 31, 2011, the CA issued the assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the Decision of the [RTC] of Antipolo City, Branch 74, in Civil Case No. 00-5875 is **AFFIRMED**.

SO ORDERED.[31]

With regard to RCBC's first assigned error, the CA held that while RCBC's account officer Ramon Doblado's testimony revealed that Plast-Print was indeed notified of the total amount of its indebtedness, such testimony failed to establish that RCBC had also apprised Plast-Print of how its initial payments had been applied against its outstanding obligations.[32]

Further, the CA held that RCBC is precluded from raising its second assigned error, as it had already been resolved by the CA with finality when it denied RCBC's petition for *certiorari*. In any case, the CA emphasized that the SEC Petition does not preclude the RTC from taking cognizance of the RTC Complaint, since the latter involves an action for annulment of real estate mortgage and foreclosure sale — an ordinary civil suit beyond the jurisdiction of the SEC.[33]

Proceeding therefrom, the CA held that RCBC's claims for damages, attorney's fees and litigation expenses lack basis.[34]

RCBC filed a motion for reconsideration, which was denied by the CA through the assailed Resolution.[35]

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[30] *Id*. at 79-80.

[31] *Id*. at 83.

[32] See *id*.

[33] See *id*. at 81-82.

[34] *Id*. at 83.

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

Based on the records, RCBC received the assailed Resolution on November 17, 2011.[36]

On December 2, 2011, RCBC filed a motion for extension, seeking an additional period of thirty (30) days from December 2, 2011, or until January 1, 2012, within which to file its petition for review on *certiorari*.[37]

RCBC filed the present Petition on January 2, 2012,[38] January 1, 2012 being concurrently a Sunday and a holiday.

Here, RCBC argues that Plast-Print and Dequito are barred from proceeding with the RTC Complaint on the basis of *res judicata*. Owing to the doctrine of judicial stability, RCBC claims that the SEC Order approving the Restructuring Agreement constitutes a prior judgment which cannot be opened, modified or vacated by the RTC, as it assumes the nature of a valid judgment rendered by a co-equal body.[39]

In this connection, RCBC further claims that the CA disregarded the obligatory force of the Restructuring Agreement when it affirmed the RTC Decision ordering it "to make an accounting and re[-]computation of the payments made by [Plast-Print]".[40]

In the Resolution[41] dated January 30, 2012, the Court directed Plast-Print and Dequito to file a comment on the Petition within ten (10) days from notice. Plast-Print and Dequito filed their Comment[42] on April 10, 2012.

RCBC filed its Reply[43] to said Comment on October 9, 2012.

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[36] *Id*. at 3.

[37] *Id*. at 4.

[38] *Id*. at 20, 68, 73.

[39] *Id*. at 60-62.

[40] *Id*. at 39.

[41] *Rollo* (Vol. III), p. 1336.

[42] *Id*. at 1339-1350.

[43] *Id*. at 1356-1367.

The Issues

The following issues are submitted for the Court's resolution:

1. Whether the CA erred when it held that the RTC had jurisdiction to act on the RTC Complaint;
2. Whether the CA erred when it directed RCBC to make an accounting and re-computation of Plast-Print's payments; and
3. Whether the CA erred when it affirmed the nullification of the foreclosure sale and the Certificate of Sale arising therefrom.

The Court's Ruling

The Petition is meritorious.

The RTC did not have jurisdiction to act on the RTC Complaint.

Presidential Decree No. (P.D.) 902-A[44] defines the jurisdiction of the SEC. Section 5[45] thereof, as amended by P.D. 1758,[46] provides:

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[44] REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING THE SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT, March 11, 1976.

[45] Section 5 of P.D. 902-A was later amended by Republic Act No. 8799, which transferred the SEC's jurisdiction over all cases enumerated under said provision to the courts of general jurisdiction, thus:

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of [P.D.] 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. **The Commission shall retain jurisdiction over pending suspension of payments/ rehabilitation cases filed as of 30 June 2000 until finally disposed**. (Emphasis supplied)

SEC. 5. In addition to the regulatory and adjudicative functions of the [SEC] over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving[:]

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission[;]

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations[;]

d) **Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments** in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree. (Emphasis supplied)

Pursuant to the exercise of its quasi-judicial jurisdiction, the SEC stands as a co-equal body of the RTC.[47] Hence, all orders

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The SEC thus retained jurisdiction over the SEC Petition subject of this case, as it was filed on October 5, 1998.

[46] AMENDING FURTHER SECTIONS 2,3,5,6, and 8 of PRESIDENTIAL DECREE NO. 902-A, January 2, 1981.

[47] See *Philippine Pacific Fishing Co., Inc. v. Luna*, 198 Phil. 304, 314 (1982).

and issuances issued by the SEC in the exercise of such jurisdiction may not be interfered with, let alone overturned, by the RTC.

The Court's ruling in *Philippine Pacific Fishing Co., Inc. v. Luna*[48] is clear:

> If any or all of said orders are erroneous, the organic act creating the Commission, Presidential Decree 902-A, provides the appropriate remedy, first within the Commission itself, and ultimately in this Court. **Nowhere does the law empower any Court of First Instance [(now RTC)] to interfere with the orders of the Commission**. Not even on grounds of due process or jurisdiction. **The Commission is**, conceding *arguendo* a possible claim of respondents, **at the very least a co-equal body with the Courts of First Instance**. Even as such co-equal, one would have no power to control the other. But the truth of the matter is that only the Supreme Court can enjoin and correct any actuation of the Commission, x x x[49] (Emphasis supplied; citation omitted)

As courts of general jurisdiction, the RTC ordinarily exercise exclusive original jurisdiction over civil actions incapable of pecuniary estimation, such as that of accounting, cancellation of certificates of sale issued in foreclosure proceedings and injunction.[50] Nevertheless, the scope of such general jurisdiction cannot be extended over matters falling under the *special* jurisdiction of another court or quasi-judicial body.

Plast-Print invoked the special jurisdiction of the SEC when it elected to file the SEC Petition. It cannot be gainsaid that it was Plast-Print who sought the suspension of payments in connection with its outstanding financial accommodations with RCBC. By doing so, Plast-Print necessarily placed the assets securing these financial accommodations under the SEC's special jurisdiction. Considering that the SEC already acquired jurisdiction over the financial accommodations and securities subject of

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[48] *Id.*

[49] *Id.* at 314.

[50] See BATAS PAMBANSA BLG. 129, Sec. 19.

Plast-Print's subsequent RTC Complaint, the RTC erred when it proceeded to act on it while the SEC Petition remained pending.

To stress, jurisdiction, once acquired is not lost, and continues until the case is terminated.[51] Thus, in cases where, as here, a petition for suspension of payments is filed before the SEC, it acquires jurisdiction over the action and all matters relating thereto to the exclusion of the RTC.

Seemingly cognizant of the RTC's lack of jurisdiction, Plast-Print and Dequito alternatively claim that the issue of the RTC's jurisdiction had been settled by the CA with finality when it resolved RCBC's petition for *certiorari* in this wise:

"[The RTC] correctly ruled that [it] had jurisdiction over the questioned case since the principal action before [it] was not the suspension of payments] under the jurisdiction of the [SEC], but that of the annulment and cancellation of the [S]heriff s certificate in the foreclosure proceedings over which [the RTC] had jurisdiction.

x x x x x x x x x

In *Macapalan v. Katalbas-Moscardon*, the High Court ruled that the complaint for annulment of the real estate and foreclosure sale with preliminary injunction is an ordinary civil suit, beyond the jurisdiction of the SEC. It stressed that while it is true that the trend is towards vesting administrative bodies like the SEC with the power to adjudicate matters coming under their particular specialization, x x x it should not deprive courts of justice of their power to decide ordinary [actions] x x x [otherwise, the creeping takeover by the administrative agencies of the judicial power vested in the regular courts of justice would render the judiciary virtually impotent x x x.

x x x x x x x x x

It goes without saying, thus, that private respondent was not guilty of forum shopping when it filed the foreclosure case with the RTC x x x.[52]

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[51] See *Heritage Park Management Corporation v. Construction Industry Arbitration Commission*, 589 Phil. 102, 112 (2008).

[52] As quoted in the assailed Decision, see *rollo* (Vol. I), p. 82.

According to Plast-Print and Dequito, the CA's Decision resolving RCBC's petition for *certiorari* serves as the law of the case between the parties,[53] and precludes RCBC from assailing the RTC's jurisdiction before the Court.

This assertion is erroneous.

At the outset, it is necessary to stress that what is at issue is the RTC's jurisdiction over the **nature of the action** involved (*i.e.*, the RTC Complaint). The Court's unanimous ruling in *La Naval Drug Corporation v. Court of Appeals*[54] is instructive:

> Jurisdiction over the nature of the action, in concept, differs from jurisdiction over the subject matter. Illustrated, **lack of jurisdiction over the nature of the action is the situation that arises when a court, which ordinarily would have the authority and competence to take a case, is rendered without it either because a special law has limited the exercise of its normal jurisdiction on a particular matter or because the type of action has been reposed by law in certain other courts or quasi-judicial agencies for determination**. Nevertheless, it can hardly be questioned that the rules relating to the effects of want of jurisdiction over the subject matter should apply with equal vigor to cases where the court is similarly bereft of jurisdiction over the nature of the action.
>
> x x x x x x x x x
>
> x x x **Where the court itself clearly has no jurisdiction over the subject matter or the nature of the action, the invocation of this defense may be done at any time. <u>It is neither for the courts nor the parties to violate or disregard that rule, let alone to confer that jurisdiction, this matter being legislative in character</u>. Barring highly meritorious and exceptional circumstances x x x neither estoppel nor waiver shall apply**.[55] (Emphasis and underscoring supplied)

Simply stated, there is lack of jurisdiction over the nature of the action where the type of action is reposed by law in certain

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[53] See *rollo* (Vol. III), pp. 1347-1348.

[54] 306 Phil. 84 (1994).

[55] *Id*. at 97.

other courts,[56] or in the present case, in a quasi-judicial body — even as there may be subject matter jurisdiction.

It is well-established that jurisdiction over subject matter, like that over the nature of the action, is "conferred by law and not by the consent or acquiescence of any or all of the parties, **or by erroneous belief of the court that it exists**."[57] Hence, the doctrine of the law of the case cannot be applied to serve as a bar against jurisdictional challenges involving the subject matter or nature of the case; it cannot be applied so as to grant jurisdiction which the law itself does *not* confer.

That RCBC no longer sought reconsideration of the CA's Decision dismissing its petition for *certiorari* is of no moment. To recall, RCBC reiterated its objection against RTC's exercise of jurisdiction by asserting the same as an affirmative defense in its Answer *Ad Cautelam* to the RTC Complaint, the relevant portions of which read:

> x x x With all due respect, this Honorable Court has not acquired jurisdiction over the subject matter of [Plast-Print's and Dequito's] causes of action.
>
> x x x Essentially, the [RTC Complaint] would want [the RTC] to restrain [RCBC] from consolidating its titles over certain properties after [RCBC] had foreclosed said properties on account of alleged overpayments made to [RCBC].
>
> x x x Whether there was an overpayment is a matter within the exclusive jurisdiction of the SEC that already issued an Order approving the Restructuring Agreement.
>
> x x x When Plast-Print filed a petition for suspension of payment with the SEC on [October 5, 1998], the SEC acquired original and exclusive jurisdiction over the case x x x.[58]

Similar to lack of jurisdiction over the subject matter, lack of jurisdiction over the nature of the case may be raised, as an

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[56] See *Loyola v. Court of Appeals*, 315 Phil. 529, 536-537 (1995).

[57] See *Allied Domecq Phil. Inc. v. Villon*, 482 Phil. 894, 900 (2004).

[58] *Rollo* (Vol. I), p. 323.

affirmative defense at any time.[59] By asserting the RTC's lack of jurisdiction as an affirmative defense in its Answer, **RCBC in no way abandoned or waived its objection thereto, but in fact, maintained and pursued said objection in the main case.**

Plast-Print is bound to pay its indebtedness to RCBC in accordance with the computation detailed in the Restructuring Agreement.

The opening clause of the Restructuring Agreement provides:

WHEREAS, [Plast-Print is] indebted to the CREDITORS individually in the aggregate principal amount as set forth in the schedule hereto attached as Annex "A".[60]

In turn, Annex "A"[61] details the outstanding obligations expressly acknowledged by Plast-Print:

Name of Creditors	Outstanding Loan Balance			Total	Percentage (%) Over Aggregate Principal Loan
	Principal	Capitalized Interest	Other Charges		
WESTMONT BANK	31,046,859.90	9,433,711.95	-	40,480,571.85	48.006%
METROBANK	16,931,101.37	3,742,188.74	-	20,673,290.11	26.179%
RCBC	**8,628,188.37**	**1,439,293.18**	**1,148,696.67**	**11,216,178.22**	**13.341%**
MERCATOR FINANCE	4,802,756.30	368,876.22	1,724,515.13	6,896,147.65	7.426%
FIRST MALAYAN	3,264,469.00	-	-	3,264,469.00	5.048%
TOTAL	64,673,374.94	14,984,070.09	2,873,211.80	82,530,656.83	100.000%

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[59] See *Spouses Erorita v. Spouses Dumlao*, 779 Phil. 23, 29 (2016).

[60] *Rollo* (Vol. I), p. 366.

[61] *Id.* at 378.

The provisions of the Restructuring Agreement are clear as they are absolute — Plast-Print acknowledged and bound itself to pay its indebtedness to RCBC in the amount of **₱11,216,178.22.** Hence, it is precluded from insisting on yet *another* re-computation of its indebtedness to RCBC to avert the consequences of its default. To be sure, the Restructuring Agreement does not only stand as a binding contract between the parties;[62] it also serves as a compromise duly approved by the SEC which has the force and effect of a judgment.

Speaking on the effect of a judicially approved compromise agreement, the Court, in *Spouses Martir v. Spouses Verano*,[63] held:

> A compromise agreement is a contract whereby the parties make reciprocal concessions in order to resolve their differences and thus avoid litigation or to put an end to one already commenced. **Once stamped with judicial *imprimatur*, it becomes more than a mere contract binding upon the parties; having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any other judgment. It has the effect and authority of *res judicata*, although no execution may issue until it would have received the corresponding approval of the court where the litigation pends and its compliance with the terms of the agreement is thereupon decreed.**
>
> x x x x x x x x x
>
> **A compromise agreement once approved by final order of the court has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery**. Hence, a decision on a compromise agreement is final and executory; it has the force of law and is conclusive between the parties. It transcends its identity as a mere contract binding only upon the parties thereto, as it becomes a judgment that is subject to execution in accordance with the Rules. x x x[64] (Emphasis supplied)

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[62] Article 1159 of the Civil Code states:

ART. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

[63] 529 Phil. 120 (2006) as cited in *Metropolitan Bank & Trust Co. v. G & P Builders, Inc.*, 773 Phil. 289, 337 (2015).

[64] *Id*. at 125-126.

The foregoing principles apply with equal force to agreements approved by the SEC in the exercise of its quasi-judicial powers, inasmuch as it stands on equal footing with the RTC with respect to matters over which it has jurisdiction.

By taking cognizance of the RTC Complaint and granting Plast-Print's prayer for accounting, the RTC not only permitted the latter to renege on its obligation to pay the outstanding balance explicitly recognized under the Restructuring Agreement, worse, the RTC effectively interfered with the jurisdiction of the SEC by completely negating the SEC Order, contrary to applicable law and jurisprudence.

The Restructuring Agreement did not have the effect of extinguishing the REM constituted in RCBC's favor through extinctive novation.

Articles 1291 and 1292 of the Civil Code govern novation. These provisions state:

> ART. 1291. Obligations may be modified by:
>
> (1) Changing their object or principal conditions;
>
> (2) Substituting the person of the debtor;
>
> (3) Subrogating a third person in the rights of the creditor.
>
> ART. 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

Novation may be *total* or *extinctive*,[65] when there is an absolute extinguishment of the old obligation, or *partial*, when there is merely a modification of the old obligation.[66] Noted civilist Justice Eduardo P. Caguioa elucidates:

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[65] See Edgardo L. Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED*, Vol. IV, 2016 18th Ed., p. 489.

[66] *Id.* at 490.

x x x Novation has been defined as the substitution or alteration of an obligation by a subsequent one that cancels or modifies the preceding one.[67] Unlike other modes of extinction of obligations, novation is a juridical act of dual function, in that at the time it extinguishes an obligation, it creates a new one in lieu of the old.[68] x x x **This is not to say however, that in every case of novation the old obligation is necessarily extinguished. Our Civil Code now admits of the so-called imperfect or modificatory novation where the original obligation is not extinguished but modified or changed in some of the principal conditions of the obligation**. Thus, [A]rticle 1291 provides that obligations may be *modified*.[69] (Emphasis and underscoring supplied)

While the provisions of the Restructuring Agreement had the effect of "superseding" the "existing agreements" as to Plast-Print's outstanding loans, the changes contemplated in said agreement merely modified certain terms relating to these loans, particularly, those pertaining to the waiver of penalties, reduction of interest rates, renewal of payment periods, and fixing of principal amounts payable as of the date of the execution of the Restructuring Agreement. **These modifications, while significant, do not amount to a *total* novation of Plast-Print's outstanding loans so as to extinguish the REM constituted to secure such loans, or nullify the foreclosure of properties conducted before these modifications had taken effect.**

In fact, **by the very terms of the Restructuring Agreement**, Plast-Print and its creditors agreed to (i) maintain the *status quo vis-a-vis* the subsisting "mortgages constituted in favor of its creditors, including RCBC; and (ii) proceed to foreclosure and/or the consolidation of title in case of default.[70]

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[67] Citing 8 Manresa, p. 751.

[68] Citing *Gov't. v. Bautista (CA)*, 37 O.G. 1880; 3 Castan, 8th ed., p. 306.

[69] Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES*, Vol. IV, 1983 Rev. 2nd Ed., pp. 410-411.

[70] See Sections 15 and 20(b) of the Restructuring Agreement; *rollo* (Vol. I), pp. 369, 373-374.

Reference to Sections 2, 15 and 20 of the Restructuring Agreement is accordingly proper:

Section 2. Restructuring commitment/Consequence of Restructuring. The DEBTORS commit to fully pay the Restructured Loans including interests accrued thereon subject to the terms and conditions hereinafter set forth. This [Restructuring] Agreement, once effective as of the Restructuring Date, shall exclusively control and govern the mutual rights and obligations of the DEBTORS and each CREDITOR with respect to the debts owing to the latter. **The [e]xisting [a]greement[s] as to such debts shall be deemed superseded by this [Restructuring] Agreement.**

x x x x x x x x x

Section 15. Security for the Restructured Loans. To secure the prompt and full repayment of the Restructured Loans and the compliance by the DEBTORS with any and all of its obligations under the Credit Documents, the CREDITORS agree to maintain the *status quo vis-a-vis* each of the collaterals of whatever nature presently mortgaged in their favor without any arrangement for consolidation or sharing of such collaterals. Should the DEBTORS, with the conformity of all the CREDITORS pursuant to Section 18 (e) herein be able to sell any of the mortgaged properties, the proceeds thereof shall first be applied to the payment of the total debt to the [CREDITOR] in whose favor the property was mortgaged. The remaining balance in the proceeds of the sale, should there be any, shall be distributed among the rest of the CREDITORS in proportion to the outstanding debts due them x x x.

x x x x x x x x x

SECTION 20. Consequences of an Event of Default x x x

x x x x x x x x x

(b) **The failure of the DEBTORS to pay for three payment dates in any of the scheduled dates of payment shall cause the foreclosure and/or consolidation of title for properties already foreclosed and execution of each CREDITOR'S respective security and the commencement of all necessary actions to collect from the DEBTORS all amounts due under the Credit Documents**.[71] (Emphasis supplied)

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[71] *Rollo* (Vol. I), pp. 368-374.

Absent a total or extinctive novation, the effects of the foreclosure conducted prior to the execution of the Restructuring Agreement must be respected. Hence, the reinstatement of the annotation of the Certificate of Sale on Plast-Print's TCTs of the foreclosed properties is proper.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision and Resolution respectively dated May 31, 2011 and November 9, 2011 rendered by the Court of Appeals in CA-G.R. CV No. 89431 and the Decision dated May 17, 2006 of the Regional Trial Court of Antipolo City, Branch 74, in Civil Case No. 00-5875 are **REVERSED and SET ASIDE**.

The Complaint in Civil Case No. 00-5875 is hereby **DISMISSED** for lack of jurisdiction.

The Register of Deeds of Rizal Province is hereby **DIRECTED** to reinstate the annotation of the Certificate of Sale on Transfer Certificate of Title Nos. 499643, 617967, 597336, 597337 and 621037.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 199644. June 19, 2019]

ANTONIO JOCSON *y* **CRISTOBAL,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; IN ILLEGAL DRUG CASES, THE PROSECUTION IS TASKED TO ESTABLISH THAT THE SUBSTANCE ILLEGALLY POSSESSED BY THE ACCUSED IS THE SAME SUBSTANCE PRESENTED IN COURT; LINKS IN THE CHAIN OF CUSTODY WHICH THE PROSECUTION MUST ACCOUNT TO ENSURE THE INTEGRITY OF THE SEIZED DRUG ITEM, ENUMERATED.— In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court. To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody: ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise. Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases.

2. ID.; ID.; ID.; ID.; STRICT ADHERENCE TO THE CHAIN OF CUSTODY RULE MUST BE OBSERVED, HENCE, THE PRECAUTIONARY MEASURES EMPLOYED IN EVERY TRANSFER OF THE SEIZED DRUG ITEM SHOULD BE PROVED TO A MORAL CERTAINTY; NOT ESTABLISHED IN CASE AT BAR.— PO2 Molina's testimony, on its face, bears how the chain of custody here had been repeatedly breached many times over. ***First***, the drug item was not marked at the place where it was seized. x x x ***Second***, PO2 Molina admitted that the buy-bust team did not prepare an inventory of the seized item. He did not give any reason for the omission. x x x

Third, PO2 Molina also conceded that he did not photograph the seized drug at all. Again, no explanation was offered for this omission. x x x ***Finally***, PO2 Molina testified that the seized drug was turned over to PO1 del Mundo, the investigator of the case who purportedly marked the same. But PO1 del Mundo did not take the stand to testify on how he handled the seized item from the time he received it from PO2 Molina up until it left his custody. It was not proved that the *corpus delicti* had been preserved in his hands. More, it was never established to whom he handed the seized item, who delivered it to the crime laboratory, and in what condition it got into his hands. Indubitably, this is another breach of the chain of custody rule. x x x Indeed, the repeated breach of the chain of custody rule here had cast serious uncertainty on the identity and integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly restrained petitioner's right to liberty. Verily, therefore, a verdict of acquittal is in order. Strict adherence to the chain of custody rule must be observed; the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty. The sheer ease of planting drug evidence *vis-a-vis* the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule.

3. ID.; ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTION CANNOT BE A SUBSTITUTE FOR COMPLIANCE AND MEND THE BROKEN LINKS; CASE AT BAR.— We have clarified, though, that a perfect chain may be impossible to obtain at all times because of varying field conditions. In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. PO2 Molina, however, offered no explanation at all which would have excused the buy-bust team's stark failure to comply with the chain of custody rule. In fine, the condition for the saving clause to become operational was not complied with. For the same reason, the *proviso* "so long as the integrity and evidentiary value of the seized items are properly preserved", too, will not come into play. x x x As heretofore shown, the chain of custody here had been repeatedly breached many times

over; the metaphorical chain, irreparably broken. Consequently, the identity and integrity of the seized drug item were not deemed to have been preserved. Perforce, petitioner must be unshackled, acquitted, and released from restraint. Suffice it to state that the presumption of regularity in the performance of official functions cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary. And here, the presumption was amply overturned, nay, overthrown by compelling evidence on record of the repeated breach of the chain of custody rule.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari*[1] assails the following dispositions of the Court of Appeals in CA-G.R CR No. 32331, *viz.*:

a) Decision[2] dated April 29, 2011 affirming petitioner's conviction for violation of Section 11 of Republic Act No. (RA) 9165;[3] and

b) Resolution[4] dated November 23, 2011 denying petitioner's motion for reconsideration.

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[1] *Rollo*, pp. 9-25.

[2] Penned by Associate Justice Rosmari D. Carandang (now an Associate Justice of the Supreme Court), and concurred in by Associate Justices Ramon R. Garcia and Samuel H. Gaerlan; *Rollo*, pp. 80-93.

[3] Otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

[4] *Rollo*, pp. 102-103.

The Proceedings Before the Trial Court

The Charge

By Information dated June 22, 2004, petitioner was charged with violation of Section 11, Article 11, of RA 9165, thus:

> That on or about the 16th day of June 2004, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully, feloniously, and knowingly have in his possession, custody and control one (1) small heat-sealed transparent plastic sachet containing 0.05 gram of white crystalline substance which was found positive tor Methamphetamine Hydrochloride, commonly known as "*shabu*", a dangerous drug, without the corresponding license and prescription.
>
> Contrary to law.[5]

The case was raffled to the Regional Trial Court (RTC) - Branch 210, Mandaluyong City.

On arraignment, petitioner pleaded *not guilty*.[6]

At the pre-trial, the prosecution and the defense stipulated on the trial court's jurisdiction, the identity of the accused, and the due existence of the prosecution's documentary exhibits.[7]

During the trial, PO2 Robin Rosales Molina testified for the prosecution. On the other hand, petitioner and Annaliza Jocson testified for the defense.

The Prosecution's Version

On June 16, 2004, while PO2 Molina was on duty at the Station Anti- Illegal Drugs-Special Operations Task Force (SAID-SOTF), he received an informant's report that a certain "Tony" was peddling illegal drugs along Daang Bakal Street, Barangay Old Zaniga, Mandaluyong City.[8]

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[5] Record, p. 1.

[6] *Id*. at 17.

[7] *Id*. at 44 and 48.

[8] TSN, October 10, 2006, pp. 4-5.

Acting on the report, he alerted his team and together, they devised a buy-bust operation to apprehend "Tony" *in flagrante delicto*. PO2 Molina was designated as team leader and poseur-buyer; and PO1 Joseph Espinosa, PO1 Salvador Del Mundo, and PO1 Jefferson Gonzales, as back-up. The police submitted a Pre-Operation/Coordination form to the Philippine Drug Enforcement Agency (PDEA).[9]

The team proceeded to Daang Bakal Street around 1 o'clock in the afternoon. The informant accompanied PO2 Molina and introduced him to "Tony" as a friend. They conversed for about an hour but PO2 Molina and the informant were unable to convince "Tony" to sell them Php100.00 worth of *shabu*. Instead, "Tony" pulled out a small plastic sachet containing white crystalline substance from a towel. "Tony" informed the two he would use it for himself since it was his last one. PO2 Molina reacted and disclosed to "Tony" his real identity as police officer.[10]

"Tony" initially thought he was being pranked. But as soon as he realized it was real, he tried to escape but it was too late. PO2 Molina held on to him until the back-up arrived. The team then arrested "Tony" and apprised him of his constitutional rights.[11]

PO2 Molina immediately took custody of the plastic sachet containing white crystalline substance. Together with "Tony", the team headed back to the precinct. There, "Tony" was booked and detained. The seized plastic item was turned over to PO1 del Mundo, a member of the buy-bust team and the designated investigator.[12]

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[9] *Id*. at 5.

[10] *Id*. at 6-10.

[11] *Id*. at 10-11.

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

During the investigation, the police learned that the real name of "Tony" was Antonio Jocson *y* Cristobal, herein petitioner. In the presence of PO2 Molina, the investigating officer marked the seized item with petitioner's initials "ACJ."[13]

SPO3 Rodel M. Castalone formally requested the PNP Eastern Police District Crime Laboratory for clinical analysis of the white crystalline substance contained in the plastic sachet. PSI/ Forensic Chemical Officer Annalee Ramos Forro reported that the white crystalline granules weighing 0.05 gram tested positive for methamphetamine hydrochloride or *shabu*.

On cross, PO2 Molina clarified that the surname of "Tony" was never mentioned in the Pre-Operation/Coordination submitted to the PDEA. He also admitted that the form did not reflect any buy-bust operation, but only a planned surveillance on "Tony."[14] PO2 Molina further admitted that his team did not prepare an inventory of the confiscated item, nor take photographs of the same.[15] He explained though that the seized items were recorded in their logbook and mentioned in their Spot Report.[16]

PSI Porro's testimony was dispensed with since the parties had already stipulated on her expertise and qualifications, the crime laboratory's receipt of the request for laboratory examination and the accompanying specimen to be tested, the fact of examination of the specimen, the existence of the Physical Science Report, the results of the chemical examination, and the weight of the specimen.[17]

The prosecution offered in evidence the *Sinumpaang Salaysay* of PO2 Molina, the Pre-Operation/Coordination form submitted to the PDEA, Spot Report, the Arrest Report, the

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

[14] TSN, November 27, 2006, pp. 4-5.

[15] *Id*. at 14.

[16] *Id*. at 14-16.

[17] March 7, 2006 Order; Record, pp. 71-73.

Request for Laboratory Examination, and the Physical Science Report.[18]

The Defense's Evidence

Petitioner denied the charge and claimed framed-up. He testified that around 5 o'clock in the afternoon, he was on his way home when a Starex van stopped before him. A man alighted from the van and put his arm around his neck. The man and two others forced him into the van. He identified one of them as PO2 Molina.[19]

He was brought to the Drugs Enforcement Unit (DEU) office. He got frisked twice, but nothing illegal was found in his possession.[20] He was detained at the DEU for two days. PO2 Molina and his companions then started extorting money from him in exchange for his liberty. He asked why he was being detained. The police replied he was involved in the illegal drug trade. PO2 Molina took out a small plastic sachet from his drawer and said it came from him. Petitioner was subsequently subjected to inquest.[21]

On cross, petitioner testified that the arresting officers instructed him to call his sister Annaliza to visit him. Annaliza arrived at the DEU and talked to the police officers. He did not hear their conversation.[22]

Annaliza corroborated petitioner's testimony. She testified that she received a call from petitioner asking her to proceed to the DEU. PO2 Molina demanded from her Php20,000.00 for her brother's liberty. She failed to produce the money because she did not have a regular job.[23]

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[18] Record, pp. 127-128; Exhibits "A" to "H-1-A".

[19] TSN, June 5, 2007, pp. 4-6.

[20] *Id*. at 7-8.

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

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

[23] TSN, August 28, 2007, pp. 4-8.

The Trial Court's Ruling

As borne by its Decision[24] dated November 12, 2008, the trial court rendered a verdict of conviction, *viz.*:

> WHEREFORE, finding accused Antonio Jocson *y* Cristobal guilty beyond reasonable doubt of the offense of Violation of Section 11, Art. II of R.A. 9165, he is hereby sentenced to suffer an imprisonment of Twelve (12) Years and One (1) Day, to pay a fine of Three Hundred Thousand Pesos (Php300,000.00) and to pay the cost.
>
> The accused shall be credited with the preventive imprisonment that he has undergone for the period from June 16, 2004 up to the time before he started serving sentence in his other case before Br. 214 docketed as Criminal Case No. MC04-8163-D on November 9, 2006.
>
> The evidence in this case which is one (1) plastic sachet containing Methamphetamine Hydrochloride or commonly known as *shabu*, a dangerous drugs (Exh. "H-1-a") contained in a bigger plastic sachet with marking "ACJ'' (Exh. "H-1") is ordered confiscated in favor of the government.
>
> Upon finality of this decision, the Branch Clerk of Court is directed to turn over the aforesaid evidence to the PDEA to be disposed of in accordance with law, the receipt by the PDEA to be attached to the records of this case.
>
> SO ORDERED.[25]

The trial court ruled that as between the testimony of PO2 Molina, on one hand, and the testimonies of petitioner and his sister, on the other, the former was more worthy of belief. It upheld the entrapment operation on petitioner and rejected the latter's defense of denial.

The Proceedings Before the Court of Appeals

On appeal, petitioner faulted the trial court for rendering a verdict of conviction despite the buy-bust team's alleged

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[24] *Rollo*, pp. 48-56.

[25] *Id*. at 56.

procedural lapses in conducting the entrapment operation and the prosecution's failure to establish the *corpus delicti*.[26]

In refutation, the Office of the Solicitor General (OSG) through Senior State Solicitor Maria Hazel P. Valdez-Acantilado and Associate Solicitor Mercedita L. Flores defended the verdict of conviction. It argued that PO2 Molina's testimony satisfactorily established that petitioner was caught *in flagrante delicto* in possession of *shabu*. The laboratory results supported this conclusion. PO2 Molina was not shown to have been impelled by improper motive to falsely testify against petitioner. The presumption of regularity prevailed over petitioner's self-serving defense of frame-up.[27]

The Court of Appeals' Ruling

The Court of Appeals affirmed through its assailed Decision dated April 29, 2011.[28] It concluded that the operation was not impelled by reasons other than the legitimate desire of the police to curb drug use and abuse in the area. It further credited the officers concerned with the presumption of regularity in the performance of their official duty.[29] Too, it held that the absence of the required inventory and photograph was not fatal to the cause of the prosecution. For despite these procedural deficiencies, the chain of custody appeared to have been uninterrupted. There was no uncertainty that the plastic sachet containing *shabu* marked by PO1 del Mundo and that submitted to and tested at the crime laboratory and finally offered in court was the same item seized from petitioner.[30]

Petitioner's motion for reconsideration was denied through Resolution dated November 23, 2011.

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[26] CA *Rollo*, pp. 39-55.

[27] *Id*. at 80-101.

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

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

[30] *Id*. at 90-92.

The Present Petition

Petitioner now urges the Court to exercise its discretionary appellate jurisdiction to review and reverse the verdict of conviction. He vigorously asserts that the required chain of custody was breached many times. *One*, the marking of the seized item was not done in his presence. *Two*, no photograph and inventory of the item were done in his presence nor in the presence of any elective official and representatives from the media and the Department of Justice. *Three*, the police officer who brought the item to the PNP crime laboratory was not presented as witness.[31]

The OSG, through Assistant Solicitor General Ma. Antonia Edita C. Dizon, and Associate Solicitor Mercedita L. Flores argues that the petition raises factual issues which the Court may no longer review *via* a petition for review on *certiorari*.[32] Although conceding that the chain of custody here was not perfect, the OSG maintains that the identity, integrity, and evidentiary value of the seized drug had been duly preserved.[33]

Issue

Did the Court of Appeals err in affirming the trial court's verdict of conviction despite the attendant procedural deficiencies relative to the marking, inventory, and photograph of the seized item?

Ruling

We acquit.

Petitioner is charged with unauthorized possession of dangerous drugs allegedly committed on June 16, 2004. The applicable law is RA 9165 before its amendment in 2014.

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to

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[31] *Id*. at 16-22.

[32] *Id*. at 121.

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

establish that the substance illegally possessed by the accused is the same substance presented in court.[34]

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody:[35] ***first***, the seizure and marking of the illegal drug recovered from the accused by the apprehending officer; ***second***, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; ***third***, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and ***fourth***, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[36]

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to tampering, alteration, or substitution either by accident or otherwise.[37]

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz*:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous*

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[34] *People v. Barte*, 806 Phil. 533, 544 (2017).

[35] As defined in Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002:

x x x x x x x x x

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

x x x x x x x x x

[36] *People v. Dahil*, 750 Phil. 221, 231 (2015).

[37] *People v. Hementiza*, 807 Phil. 1017, 1026 (2017).

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 added)

x x x x x x x x x

The Implementing Rules and Regulations of RA 9165 further commands:

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

Here, lone prosecution witness PO2 Molina testified:

FISCAL BERDAL:

Q When you took that plastic sachet from the hand of Tony, what did you do with that plastic sachet?

A I took custody of the plastic sachet.

Q And from that place where you arrested this Tony, where did you proceed?

A We boarded him in the STAREX and brought him to our office.

Q What happened when you returned to your office?

A We turned him over to our Investigator and he was investigated.

x x x x x x x x x

Q And how about the plastic sachet which you recovered, what did you do with it?

A I gave it to the Investigator.

Q Before giving it to the Investigator, did you place any identifying mark?

A The Investigator was the one who marked it not 1.

Q And did you see the investigator when he was marking that plastic sachet?

A Yes, ma'am.

Q And did you see the marking he placed on the plastic sachet?

A Yes, ma'am.

Q What marking did he place?

A The initials of Tony.

x x x x x x x x x

Q Who placed this markings "ACJ", Mr. Witness, on Exhibit "H-1" which contained the smaller plastic sachet containing the white crystalline substance marked as Exhibit "H-1-a"

A The one who investigated us.

Q Who?

A PO1 Del Mundo, ma'am, who placed "ACJ" on the smaller plastic sachet.[38] (emphases added)

x x x x x x x x x

THE COURT:

Q When were you assigned at SAID-SOTF?

A I stayed there for about three (3) months.

ATTY. ARRIOLA:

Q And you have read for sure the provisions on the new law on drugs?

A We attended seminars

Q And in those seminars, you even tackled one of the provisions of the new law which is Section 21?

A I couldn't remember.

Q This is with respect to the physical inventory of the confiscated drug. Do you remember having talked that in one of your seminars?

A Yes, ma'am.

Q In this particular case, Mr. Witness, did you conduct physical inventory on the confiscated drugs from the accused?

A No, ma'am.

Q Did you take photographs on the confiscated drugs in the presence of the accused?

A No, ma'am.

Q And when you said there was neither a physical inventory and taking of photographs, there were also no copies of the same given to the accused?

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[38] TSN, October 10, 2006, pp. 12-16.

A Yes, ma'am.[39] (emphases added)

PO2 Molina's testimony, on its face, bears how the chain of custody here had been repeatedly breached many times over.

First, the drug item was not marked at the place where it was seized. A similar circumstance obtained in ***People v. Ramirez***[40] wherein the Court, in acquitting appellant therein, ruled that the marking should be done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they are the same items that enter the chain of custody. The Court noted that the time and distance from the scene of the arrest until the drugs were marked at the barangay hall were too substantial that one could not help but think that the evidence could have been tampered.

Here, petitioner was arrested along Daang Bakal Street, Barangay Old Zaniga, Mandaluyong City. The arresting officers then boarded him into a Starex van to be brought to the SAID-SOTF office. En route, the item seized remained unmarked. It was exposed to switching, planting, and contamination during the entire trip. Investigating officer PO1 del Mundo only marked the drug item after it was turned over to him at the SAID-SOTF office. By that time, it was no longer certain that what was shown to him was the same item seized from petitioner. PO2 Molina did not offer any justification for this procedural lapse.

Second, PO2 Molina admitted that the buy-bust team did not prepare an inventory of the seized item. He did not give any reason for the omission. The very same circumstance was among the Court's considerations in acquitting appellant in ***People v. Alagarme***.[41] The same outcome in the case is warranted here where the arresting officers' failure to observe the chain

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[39] TSN, November 27, 2006, pp. 13-14.

[40] G.R. No. 225690, January 17, 2018, citing *People v. Sanchez,* 590 Phil. 214, 241 (2008).

[41] *Peopl v. Alagarme*, 754 Phil. 449, 461 (2015).

of custody rule was confirmed not only through PO2 Molina's admission that the buy-bust team did not prepare an inventory, but also by the absence of any certificate of inventory formally offered as evidence for the prosecution.

Third, PO2 Molina also conceded that he did not photograph the seized drug at all. Again, no explanation was offered for this omission. In ***People v. Arposeple,***[42] the arresting officers' failure to photograph the drug item weakened the chain of custody and resulted in the acquittal of therein appellant. There, the Court observed that the records and the testimonies of the prosecution witnesses were notably silent on whether photographs were actually taken as required by law.

With more reason should the Court acquit herein petitioner. For PO2 Molina himself readily admitted that the photograph requirement was not complied with at all. In fact, the records do not bear any photograph of the seized drug item.

Finally, PO2 Molina testified that the seized drug was turned over to PO1 del Mundo, the investigator of the case who purportedly marked the same. But PO1 del Mundo did not take the stand to testify on how he handled the seized item from the time he received it from PO2 Molina up until it left his custody. It was not proved that the *corpus delicti* had been preserved in his hands. More, it was never established to whom he handed the seized item, who delivered it to the crime laboratory, and in what condition it got into his hands. Indubitably, this is another breach of the chain of custody rule. As held in the landmark case of *People v. Mallillin*:[43]

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain,** from the moment the item was picked up to the time it is offered into evidence, **in such a way that every person who**

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[42] G.R. No. 205787, November 22, 2017.

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

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.[44] (emphases added)

Indeed, the repeated breach of the chain of custody rule here had cast serious uncertainty on the identity and integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly restrained petitioner's right to liberty. Verily, therefore, a verdict of acquittal is in order.

Strict adherence to the chain of custody rule must be observed;[45] the precautionary measures employed in every transfer of the seized drug item, proved to a moral certainty. The sheer ease of planting drug evidence *vis-a-vis* the severity of the imposable penalties in drugs cases compels strict compliance with the chain of custody rule.

We have clarified, though, that a perfect chain may be impossible to obtain at all times because of varying field conditions.[46] In fact, the Implementing Rules and Regulations of RA 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved.[47] PO2 Molina, however, offered no explanation at all which would have excused the buy-bust team's stark failure to comply with the chain of custody rule. In fine, the condition for the saving clause to become operational was not complied with. For the same reason, the proviso "so long as the integrity and evidentiary value of the seized items are properly preserved", too, will not come into play.

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[44] *Id.*

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

[46] See *People v. Abetong*, 735 Phil. 476,485 (2014).

[47] See Section 21 (a), Article II, of the IRR of RA 9165.

For perspective, at least twelve years and one day of imprisonment is imposed for unauthorized possession of dangerous drugs even for the minutest amount. It, thus, becomes inevitable that safeguards against abuses of power in the conduct of buy-bust operations be strictly implemented. The purpose is to eliminate wrongful arrests and, worse, convictions. The evils of switching, planting or contamination of the *corpus delicti* under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected if the lawful requirements were otherwise lightly brushed aside.[48]

As heretofore shown, the chain of custody here had been repeatedly breached many times over; the metaphorical chain, irreparably broken. Consequently, the identity and integrity of the seized drug item were not deemed to have been preserved. Perforce, petitioner must be unshackled, acquitted, and released from restraint.

Suffice it to state that the presumption of regularity in the performance of official functions[49] cannot substitute for compliance and mend the broken links. For it is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.[50] And here, the presumption was amply overturned, nay, overthrown by compelling evidence on record of the repeated breach of the chain of custody rule.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated April 29, 2011 and Resolution dated November 23, 2011 of the Court of Appeals in CA-G.R. CR No. 32331 are **REVERSED** and **SET ASIDE**. Petitioner **ANTONIO JOCSON *y* CRISTOBAL** is **ACQUITTED.** Let an entry of final judgment be issued immediately.

The Director of the Bureau of Corrections, Muntinlupa City is ordered to a) immediately release petitioner from custody

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[48] *See People v. Luna*, G.R. No. 219164, March 21, 2018.

[49] Section 3(m), Rule 131, Rules of Court.

[50] *People v. Cabilies*, 827 SCRA 89, 97 (2017).

unless he is being held for some other lawful cause; and b) submit his report on the action taken within five days from notice.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 200104. June 19, 2019]

ILUMINADA C. BERNARDO, *petitioner, vs.* **ANA MARIE B. SORIANO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL FROM THE REGIONAL TRIAL COURTS; A PARTY'S APPEAL BY NOTICE OF APPEAL IS DEEMED PERFECTED AS TO HIM UPON THE FILING OF THE NOTICE OF APPEAL IN DUE TIME.— According to Section 1, Rule 41 of the Rules of Court, 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. Further, according to Section 2(a) of the same Rule, the appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. In connection with the foregoing, Section 5 of the same Rule states that the notice of appeal shall indicate the parties to the appeal, specify the judgment or final order or part thereof appealed from, specify the court to which the

appeal is being taken, and state the material dates showing the timeliness of the appeal. With respect to the period for filing the notice of appeal, the appeal shall be taken within 15 days from notice of the judgment or final order appealed from. The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. When a motion for new trial or reconsideration was filed by the party, which was subsequently denied by the court, there is a fresh period of fifteen (15) days within which to file the notice of appeal, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration. **A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.** x x x An appealable judgment or final order refers to one that adjudicates the parties' contention and determines their rights and liabilities as regards each other, disposing the whole subject matter of the case.

2. **ID.; ID.; ID.; JURISPRUDENCE HOLDS THAT EACH PARTY HAS A DIFFERENT PERIOD WITHIN WHICH TO APPEAL, THUS, THE TIMELY FILING OF A MOTION FOR RECONSIDERATION BY ONE PARTY DOES NOT INTERRUPT THE OTHER OR ANOTHER PARTY'S PERIOD OF APPEAL; CASE AT BAR.—** The RTC and CA seem to have confused the right of a party to appeal and the right of another party to file a motion for reconsideration. There is nothing in the Rules which makes a party's right to appeal dependent or contingent on the opposing party's motion for reconsideration. Similarly, a party's undertaking to file a motion for reconsideration of a judgment is not hindered by the other party's filing of a notice of appeal. Jurisprudence holds that "each party has a different period within which to appeal" and that "[s]ince each party has a different period within which to appeal, the *timely* filing of a motion for reconsideration by one party does not interrupt the other or another party's period of appeal." Hence, a party's ability to file his/her own appeal upon receipt of the assailed judgment or the denial of a motion for reconsideration challenging the said judgment within the reglementary period of 15 days is not affected by the other parties' exercise of discretion to file their respective motions for reconsideration. Contrary to the holding of the CA, if the RTC granted due course to Bernardo's Notice of Appeal, the RTC would not have been

divested of jurisdiction to decide Soriano's Motion for Partial Reconsideration and that Soriano's right to file her own Motion for Reconsideration would not have been defeated whatsoever. This is the case because under Section 9, Rule 41 of the Rules of Court, in appeals by notice of appeal, the court loses jurisdiction over the case *only* upon the expiration of the time to appeal of the other parties. Further, the CA's concern that allowing due course Bernardo's Notice of Appeal would have led to a multiplicity of appeals is unfounded, considering that the respective appeals of Bernardo and Soriano could have been consolidated by the appellate court.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE WRIT OF *CERTIORARI* WILL NOT ISSUE WHERE THE REMEDY OF APPEAL IS AVAILABLE TO THE AGGRIEVED PARTY.— First and foremost, the extraordinary writ of *certiorari* will not be issued to cure mere errors in proceedings or erroneous conclusions of law or fact. Further, grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. x x x More importantly, it is elementary that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. The remedies of appeal in the ordinary course of law and that of *certiorari* under Rule 65 of the Rules of Court are mutually exclusive and not alternative or cumulative. A petition for *certiorari* under Rule 65 of the Rules of Court is proper only if the aggrieved party has **no plain, adequate and speedy remedy in the ordinary course of law.** x x x To reiterate, a petition for *certiorari* can be availed of only if the aggrieved party has no plain, adequate and speedy remedy in the ordinary course of law.

APPEARANCES OF COUNSEL

Alquin Bugarin Manguera for petitioner.
Amoroso Amoroso & Associates for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Iluminada C. Bernardo (Bernardo) against respondent Ana Marie B. Soriano (Soriano), assailing the Decision[2] dated August 11, 2011 (assailed Decision) and Resolution[3] dated January 6, 2012 (assailed Resolution) rendered by the Court of Appeals (CA) in CA-G.R. SP No. 118506.

The Facts and Antecedent Proceedings

The facts of the case are simple and straightforward. 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:

> [Bernardo] filed a Petition for *Habeas Corpus*[4] praying that Evangeline Lawas, Head Social Worker of the Department of Social Welfare and Development in Mandaluyong City, be ordered to produce the person of her minor granddaughter, Stephanie Verniese B. Soriano [(Stephanie),] before the [Regional Trial Court of Mandaluyong City, Branch 209 (RTC). The case, entitled "*In the Matter of Petition for Habeas Corpus of Stephanie Verniese Soriano through her Grandmother, Iluminada C. Bernardo v. Evangeline Lawas, In Her Capacity as Head Social Worker, Department of Social Welfare and Development, Nayon ng Kabataan, Acacia Lane, Welfareville Compound, Mandaluyong City*," was docketed as SP Proc. No. MC09-4159]. According to [Bernardo], Stephanie was being deprived and restrained of her liberty while under the custody of the DSWD, and despite demand by [Bernardo], the DSWD refused to release the minor under [Bernardo's] custody and care.

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[1] *Rollo*, pp. 9-27.

[2] *Id*. at 29-43. Penned by CA Associate Justice Rodil V. Zalameda with Associate Justices Amelita G. Tolentino and Normandie B. Pizarro, concurring.

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

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

The [RTC] issued an Order dated 23 October 2009 stating therein that considering [Bernardo's] failure to prove that the DSWD's custody over the minor is illegal, the Petition filed was ordered to be converted into a case for custody.

[Soriano], the surviving parent of Stephanie, for her part, filed a Complaint-in-Intervention[5] seeking to be granted custody of her child, and thus, the battle for the permanent custody of Stephanie between [Bernardo] and [Soriano] ensued.

The [RTC, through Presiding Judge Monique A. Quisumbing-Ignacio (Quisumbing), in its] Decision[6] dated 05 August 2010, [issued a judgment and] upheld [Soriano's] right to parental custody and parental authority but ruled that, in the meantime, it will be for the best interest of the minor to stay with [Bernardo] for the school year 2009-2010 while studying at Notre Dame of Greater Manila. Thus, the [RTC] granted temporary custody of the minor to [Bernardo].

[**Bernardo**] **filed a Motion for Reconsideration**[7] alleging therein that [Soriano] is unfit to take care of her child, who, allegedly, verbally maltreats Stephanie, among others. x x x

On 31 August 2010, the [**RTC issued an Order**[8] **denying**] [**Bernardo's**] **Motion for Reconsideration. [On the very same day, Soriano timely filed through registered mail her Comment (With Motion for Partial Reconsideration)[9] dated August 27, 2010. In sum, Soriano asserted that the custody of Stephanie should be granted in her favor immediately and not only after school year 2009-2010.**]

[**The RTC's denial of Bernardo's Motion for Reconsideration on August 31, 2010**] **prompted** [**Bernardo**] **to file a Notice of Appeal**[10] **on 08 September 2010**. However, the [RTC], through the **first assailed Order**[11] **dated 09 September 2010** ruling therein that the assailed

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[5] *Id*. at 99-111.

[6] *Id*. at 118-121.

[7] *Id*. at 122-129.

[8] *Id*. at 138-140.

[9] *Id*. at 132-137.

[10] *Id*. at 141-142.

[11] *Id*. at 146-147.

05 August 2010 Decision and the 31 August 2010 Order denying the Motion for Reconsideration have not yet attained finality, and thus, may not be the subject of an appeal. [**Hence, the Notice of Appeal of Bernardo was denied due course.**] The [RTC] ratiocinated that [Soriano], who received a copy of the 05 August 2010 Decision on 13 August 2010, timely filed her Comment (with Motion for Partial Reconsideration) [dated] 27 August 2010. The dispositive portion of the said Order states:

> WHEREFORE, premises considered, the Notice of Appeal dated 7 September 2010 is hereby DENIED DUE COURSE.
>
> [Bernardo] is ORDERED to file her comment on the Comment (With Motion for Partial Reconsideration) dated 27 August 2010 within five (5) days from receipt hereof.
>
> SO ORDERED.

Accordingly, the [RTC] rendered the second assailed Order[12] dated 22 October 2010 granting [Soriano's] partial reconsideration and allowing the latter to take custody of her minor child immediately. The dispositive portion reads:

> WHEREFORE, plaintiff-intervenor Ana Marie Bernardo Soriano's Motion for Partial Reconsideration dated 27 August 2010 is hereby GRANTED. Accordingly, Ana Marie Bernardo Soriano is hereby ALLOWED TO TAKE IMMEDIATE CUSTODY of the minor, STEPHANIE VERNIESE SORIANO from her grandmother, ILUMINADA C. BERNARDO.
>
> SO ORDERED.

[Bernardo] filed her Motion for Reconsideration[13] [dated November 22, 2010,] seeking a reconsideration of the [RTC's] 09 September 2010 and 22 October 2010 Orders. However, it was denied through the third assailed Order[14] dated 31 January 2011. [Thus, on March 15, 2011, Bernardo filed a **Petition for *Certiorari***[15] (*Certiorari* Petition) under Rule 65 of the Rules of Court, seeking the annulment and setting

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[12] *Id*. at 144-145.

[13] *Id*. at 148-152.

[14] *Id*. at 153-154.

[15] *Id*. at 155-170.

aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the RTC's Orders denying due course to Bernardo's Notice of Appeal.][16]

The Ruling of the CA

In the assailed Decision, the CA denied Bernardo's *Certiorari* Petition.

In sum, the CA held that because Soriano seasonably filed her own Motion for Partial Reconsideration of the RTC's Decision dated August 5, 2010, the said Decision of the RTC is not an appealable judgment despite the denial of Bernardo's Motion for Reconsideration. The CA believed that Bernardo's Notice of Appeal was premature owing to the pendency of Soriano's Motion for Partial Reconsideration:

> At a quick glance, it will seem that the Order dated 31 August 2010 denying [Bernardo's] Motion for Reconsideration, on the issue of permanent custody, left nothing else for the court to do. However, it must be emphasized that the said Order was issued before the court *a quo* received [Soriano's] Comment (With Motion for Partial Reconsideration) which was filed via registered mail on the very same day, 31 August 2010. As with [Bernardo], [Soriano] had an equal right to file a motion for reconsideration of the [RTC's] Decision within the proper reglementary period. x x x [17]

The RTC's Decision cannot yet be considered a judgment that may be appealed due to the filing of Soriano's Motion for Partial Reconsideration because, as explained by the CA:

> x x x **Unlike a '*final* judgment or order, which is appealable, as above pointed out, an 'interlocutory order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.** x x x
>
> Simply stated a final order contemplates one in which there is nothing more for the court to do in order to resolve the case.

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[16] *Id*. at 30-33; emphasis and underscoring supplied.

[17] *Id*. at 38.

x x x Thus, when the said Comment (With Motion for Partial Reconsideration) was filed, there remains something left for the court to do; to thresh out the issue of whether or not to reverse the temporary custody given to [Bernardo].[18]

In other words, the CA held that despite the RTC's Decision being a judgment on the merits of the case and despite the RTC having already disposed Bernardo's Motion for Reconsideration of such Decision, the pendency of Soriano's Motion for Partial Reconsideration warranted the treatment of the RTC's Decision as an interlocutory order and not a final judgment that can be appealed, as there was still something left for the RTC to do, which was to decide the Motion for Partial Reconsideration.

On September 2, 2011, Bernardo filed a Motion for Reconsideration[19] dated August 31, 2011. The CA denied the same in the assailed Resolution.

Hence, the instant appeal.

Soriano filed her Comment[20] dated June 6, 2012, to which Bernardo responded to with her Reply[21] dated October 22, 2012.

Issue

Stripped to its core, the sole issue to be decided by the Court in the instant case is whether the CA erred in denying Bernardo's *Certiorari* Petition, holding that the RTC did not commit grave abuse of discretion when the latter denied Bernardo's Notice of Appeal due course due to the pendency of Soriano's Motion for Partial Reconsideration.

The Court's Ruling

The Court resolves to deny the instant Petition.

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

[19] *Id*. at 171-177.

[20] *Id*. at 190-211.

[21] *Id*. at 265-270.

According to Section 1, Rule 41 of the Rules of Court, 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.

Further, according to Section 2(a) of the same Rule, the appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.

In connection with the foregoing, Section 5 of the same Rule states that the notice of appeal shall indicate the parties to the appeal, specify the judgment or final order or part thereof appealed from, specify the court to which the appeal is being taken, and state the material dates showing the timeliness of the appeal.

With respect to the period for filing the notice of appeal, the appeal shall be taken within 15 days from notice of the judgment or final order appealed from. The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.[22] When a motion for new trial or reconsideration was filed by the party, which was subsequently denied by the court, there is a fresh period of fifteen (15) days within which to file the notice of appeal, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.[23]

A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.[24]

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[22] RULES OF COURT, Rule 41, Sec. 3.

[23] *Neypes v. Court of Appeals*, 506 Phil. 613, 626 (2005).

[24] RULES OF COURT, Rule 41, Sec. 9.

Applying the foregoing to the instant case, it is not disputed that the RTC rendered its Decision dated August 5, 2010, which resolved the merits of the Custody case, upholding Soriano's right to parental custody and parental authority, albeit ruling that it will be for the best interest of the child to stay with Bernardo first for the school year 2009-2010 while studying at Notre Dame of Greater Manila.

An appealable judgment or final order refers to one that adjudicates the parties' contention and determines their rights and liabilities as regards each other,[25] disposing the whole subject matter of the case.[26]

The subject RTC Decision, having delved into the merits of the Custody case and having fully disposed of the respective issues and causes of action raised by the parties, was undoubtedly a *judgment on the merits* and not a mere interlocutory order. The RTC's Decision did not merely rule on incidental matters; it decided on the subject matter of the case, *i.e.*, the custody of Stephanie.

Being an appealable judgment on the merits, Bernardo had the right to appeal under Rule 41 of the Rules of Court the RTC's Decision by filing a notice of appeal within 15 days from receipt of the RTC's Order dated August 31, 2010 denying Bernardo's timely-filed Motion for Reconsideration. This was exactly what Bernardo did. She timely filed a Notice of Appeal, containing all the required contents of a notice of appeal under Section 5, Rule 41 of the Rules of Court and paid the corresponding appeal fees on September 8, 2010.

Assuming of course that the notice of appeal satisfies the content requirements set under Section 5, Rule 41 of the Rules of Court, the approval of a notice of appeal becomes the ministerial duty of the lower court, provided the appeal is filed on time.[27]

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[25] *Denso (Phils.), Inc. v. Intermediate Appellate Court*, 232 Phil. 256, 264 (1987).

[26] *Marcelo v. Hon. De Guzman*, 200 Phil. 137, 143 (1982).

[27] *Oro v. Judge Diaz*, 413 Phil. 416, 426 (2001).

Hence, the RTC's Order dated September 9, 2010 denying due course to Bernardo's seasonably-filed Notice of Appeal was a departure from the provisions of Rule 41 of the Rules of Court. In accordance with the Rules, Bernardo's Notice of Appeal should have been deemed perfected as to her.

In denying due course to Bernardo's Notice of Appeal, it was the RTC's contention, as affirmed by the CA, that the pendency of the Motion for Partial Consideration of Soriano precluded Bernardo from filing her own Notice of Appeal. The CA ratiocinated that the RTC's Decision dated August 5, 2010, despite being a judgment on the merits, was not appealable at that time by Bernardo, asserting that "a final order contemplates one in which there is nothing more for the court to do in order to resolve the case."[28] The RTC believed that Bernardo could more appropriately file her Notice of Appeal only after Soriano's Motion for Partial Consideration had been decided upon.

In other words, following the line of thinking of the RTC and CA, in so far as Bernardo was concerned, the RTC's Decision dated August 5, 2010, notwithstanding the fact that it is a judgment on the merits, was to be treated as a mere interlocutory order not subject to appeal owing to the pendency of Soriano's Motion for Partial Reconsideration. Hence, despite already having her own Motion for Reconsideration denied by the RTC, Bernardo's right to appeal was made contingent and dependent on Soriano's Motion for Partial Reconsideration.

The RTC and CA's positions are erroneous.

With respect to Bernardo, the RTC's Decision did not cease to be an appealable judgment, transforming into a mere interlocutory order, for the sole reason that the opposing party, Soriano, filed her own Motion for Partial Reconsideration. With Bernardo's own Motion for Reconsideration having been denied by the RTC, according to Rule 41 of the Rules of Court, Bernardo already had 15 days

[28] *Rollo*, p. 38.

to file a Notice of Appeal regardless of Soriano filing her own Motion for Reconsideration.

The RTC and CA seem to have confused the right of a party to appeal and the right of another party to file a motion for reconsideration. There is nothing in the Rules which makes a party's right to appeal dependent or contingent on the opposing party's motion for reconsideration. Similarly, a party's undertaking to file a motion for reconsideration of a judgment is not hindered by the other party's filing of a notice of appeal. Jurisprudence holds that "each party has a different period within which to appeal"[29] and that "[s]ince each party has a different period within which to appeal, the *timely* filing of a motion for reconsideration by one party does not interrupt the other or another party's period of appeal."[30]

Hence, a party's ability to file his/her own appeal upon receipt of the assailed judgment or the denial of a motion for reconsideration challenging the said judgment within the reglementary period of 15 days is not affected by the other parties' exercise of discretion to file their respective motions for reconsideration.

Contrary to the holding of the CA, if the RTC granted due course to Bernardo's Notice of Appeal, the RTC would not have been divested of jurisdiction to decide Soriano's Motion for Partial Reconsideration and that Soriano's right to file her own Motion for Reconsideration would not have been defeated whatsoever. This is the case because under Section 9, Rule 41 of the Rules of Court, in appeals by notice of appeal, the court loses jurisdiction over the case *only* upon the expiration of the time to appeal of the other parties.

Further, the CA's concern that allowing due course Bernardo's Notice of Appeal would have led to a multiplicity of appeals is unfounded, considering that the respective appeals of Bernardo and Soriano could have been consolidated by the appellate court.

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[29] *BPI v. Far East Molasses Corporation*, 275 Phil. 756, 774 (1991).

[30] *Franco-Cruz v. Court of Appeals*, 587 Phil. 307, 318 (2008).

Nevertheless, despite the foregoing, even with the RTC having committed an error in procedure when it denied due course Bernardo's Notice of Appeal, the CA was not in error to deny Bernardo's *Certiorari* Petition.

First and foremost, the extraordinary writ of *certiorari* will not be issued to cure mere errors in proceedings or erroneous conclusions of law or fact.[31]

Further, grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[32]

The RTC's act of denying due course Bernardo's Notice of Appeal was not borne out of a capricious, whimsical, and arbitrary exercise of judgment. The records reveal that the RTC was motivated, albeit erroneously, by practicality, wanting to first decide Soriano's Motion for Partial Reconsideration and avoid a multiplicity of appeals before the CA.

More importantly, it is elementary that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. The remedies of appeal in the ordinary course of law and that of *certiorari* under Rule 65 of the Rules of Court are mutually exclusive and not alternative or cumulative.[33]A petition for *certiorari* under Rule 65 of the Rules of Court is proper only if the aggrieved party has **no plain, adequate and speedy remedy in the ordinary course of law**.[34]

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[31] *Leviste v. Court of Appeals*, 629 Phil. 587, 599 (2010).

[32] *Cathay Pacific Steel Corp. v. Court of Appeals*, 531 Phil. 620, 630-631 (2006).

[33] *Id.* at 631.

[34] *Belonio v. Rodriguez*, 504 Phil. 126, 143 (2005).

As seen in the RTC's Order dated September 9, 2010 denying due course Bernardo's Notice of Appeal, the RTC did not completely preclude Bernardo from appealing the RTC's Decision dated August 5, 2010. What the RTC merely did was to deny due course the Notice of Appeal in the meantime and order Bernardo to file her comment on Soriano's Comment (With Motion for Partial Reconsideration), so that upon the RTC's eventual disposition of the said Motion for Partial Reconsideration, Bernardo and/or Soriano could henceforth file their respective notices of appeal.

Subsequently, the RTC issued its Order dated October 22, 2010 granting Soriano's Motion for Partial Reconsideration, modifying the RTC's Decision dated August 5, 2010. Hence, Bernardo could have, at that time, appealed yet again by filing another notice of appeal assailing the RTC's Decision. In fact, as a clear indication that Bernardo had an adequate and available remedy, Bernardo was able to question the modification of the RTC's Decision and file a Motion for Reconsideration on November 22, 2010, which was prior to the filing of the *Certiorari* Petition on March 15, 2011. When such Motion for Reconsideration was denied by the RTC in its Order dated January 31, 2011, Bernardo had 15 days from the receipt of the said Order to appeal the RTC's Decision dated August 5, 2010 before the CA.

Simply stated, despite the earlier denial of due course by the RTC of Bernardo's Notice of Appeal, Bernardo still had the available remedy of filing another Notice of Appeal after the RTC eventually modified its Decision dated August 5, 2010 when it granted Soriano's Motion for Partial Reconsideration.

However, despite the remedy of assailing the RTC's judgment on the merits *via* an ordinary appeal being readily available to Bernardo prior to the filing of her *Certiorari* Petition, the latter chose to instead focus her sight on ascribing grave abuse of discretion on the RTC's Order denying due course Bernardo's Notice of Appeal. Instead of fixating on the denial on due course of her earlier Notice of Appeal, Bernardo could have appealed the modified RTC Decision before the CA by filing anew another

Notice of Appeal. To reiterate, a petition for *certiorari* can be availed of only if the aggrieved party has no plain, adequate and speedy remedy in the ordinary course of law.

WHEREFORE, the instant Petition is **DENIED**. The Decision dated August 11, 2011 and Resolution dated January 6, 2012 rendered by the Court of Appeals in CA-G.R. SP No. 118506 are **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 200811. June 19, 2019]

JULITA M. ALDOVINO, JOAN B. LAGRIMAS, WINNIE B. LINGAT, CHITA A. SALES, SHERLY L. GUINTO, REVILLA S. DE JESUS, and LAILA V. ORPILLA, *petitioners, vs.* **GOLD AND GREEN MANPOWER MANAGEMENT AND DEVELOPMENT SERVICES, INC., SAGE INTERNATIONAL DEVELOPMENT COMPANY, LTD., and ALBERTO C. ALVINA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; FILIPINO WORKER IN A DIFFERENT JURISDICTION IS NOT STRIPPED OFF THE GUARANTEE OF SECURITY OF TENURE; RATIONALE.— It must be noted that this case is governed by Philippine laws. Both the Constitution and the Labor Code guarantee the security of tenure.

It is not stripped off when Filipinos work in a different jurisdiction. We follow the *lex loci contractus* principle, which means that the law of the place where the contract is executed governs the contract. In *Triple Eight Integrated Services, Inc. v. National Labor Relations Commission*: First, established is the rule that *lex loci contractus* (the law of the place where the contract is made) governs in this jurisdiction. There is no question that the contract of employment in this case was perfected here in the Philippines. Therefore, the Labor Code, its implementing rules and regulations, and other laws affecting labor apply in this case. Furthermore, settled is the rule that the courts of the forum will not enforce any foreign claim obnoxious to the forum's public policy. Here in the Philippines, employment agreements are more than contractual in nature. The Constitution itself, in Article XIII, Section 3, guarantees the special protection of workers. . . . x x x Indeed, because petitioners' employment contracts were executed in the Philippines, Philippine laws govern them. Respondents, then, must answer and be held liable under our laws.

2. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; WAIVERS AND QUITCLAIMS EXECUTED BY EMPLOYEES; QUITCLAIMS DO NOT BAR EMPLOYEES FROM FILING LABOR COMPLAINTS AND DEMANDING BENEFITS TO WHICH THEY ARE LEGALLY ENTITLED.— Waivers and quitclaims executed by employees are generally frowned upon for being contrary to public policy. This is based on the recognition that employers and employees do not stand on equal footing. In *Land and Housing Development Corporation v. Esquillo*: x x x Along this line, we have more trenchantly declared that quitclaims and/or complete releases executed by the employees do not estop them from pursuing their claims arising from unfair labor practices of the employer. The basic reason for this is that such quitclaims and/or complete releases are against public policy and, therefore, null and void. The acceptance of termination does not divest a laborer of the right to prosecute his employer for unfair labor practice acts. Quitclaims do not bar employees from filing labor complaints and demanding benefits to which they are legally entitled. They are "ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does

not amount to estoppel." The law does not recognize agreements that result in compensation less than what is mandated by law. These quitclaims do not prevent employees from subsequently claiming benefits to which they are legally entitled. In *Am-Phil Food Concepts, Inc. v. Padilla*, this Court held that quitclaims do not negate charges for illegal dismissal: x x x Blanket waivers exonerating employers from liability on the claims of their employees are ineffective.

3. **ID.; ID.; ID.; UNDER THE LABOR CODE; EMPLOYERS MAY ONLY TERMINATE EMPLOYMENT FOR A JUST OR AUTHORIZED CAUSE AND AFTER COMPLYING WITH PROCEDURAL DUE PROCESS; VIOLATION IN CASE AT BAR.—** Under the Labor Code, employers may only terminate employment for a just or authorized cause and after complying with procedural due process requirements. Articles 297 and 300 of the Labor Code enumerate the causes of employment termination either by employers or employees: x x x In illegal dismissal cases, the burden of proof that employees were validly dismissed rests on the employers. Failure to discharge this burden means that the dismissal is illegal. A review of the records here shows that the termination of petitioners' employment was effected merely because respondents no longer wanted their services. This is not an authorized or just cause for dismissal under the Labor Code. Employment contracts cannot be terminated on a whim. x x x A valid dismissal must comply with substantive and procedural due process: there must be a valid cause and a valid procedure. The employer must comply with the two (2)-notice requirement, while the employee must be given an opportunity to be heard. Here, petitioners were only verbally dismissed, without any notice given or having been informed of any just cause for their dismissal. This Court cannot rest easy on respondents' insistence that petitioners voluntarily terminated their employment. Contrary to their assertion, petitioners were left with no choice but to accept the Compromise Agreement and to go back to the Philippines.

4. **ID.; ID.; ID.; ILLEGAL DISMISSAL; WHEN THE RIGHT TO SUBSTANTIVE AND PROCEDURAL DUE PROCESS IS DENIED, IT IS CLEAR THAT THE WORKER, WHETHER EMPLOYED LOCALLY OR ABROAD, IS ILLEGALLY DISMISSED; AS A CONSEQUENCE OF ILLEGAL DISMISSAL, THE WORKER IS ALSO**

ENTITLED TO MORAL DAMAGES, EXEMPLARY DAMAGES, AND ATTORNEY'S FEES; CASE AT BAR.— Our laws afford protection to our workers, whether employed locally or abroad. It is this Court's bounden duty to uphold these laws and dispense justice for petitioners. With their right to substantive and procedural due process denied, it is clear that petitioners were illegally dismissed from service. As a consequence of the illegal dismissal, petitioners are also entitled to moral damages, exemplary damages, and attorney's fees. x x x Being deprived of their hard-earned salaries and, eventually, of their employment, caused petitioners mental anguish, wounded feelings, and serious anxiety. The award of moral damages is but appropriate. Consequently, the award of exemplary damages is necessary to deter future employers from committing the same acts. Additionally, petitioners are also entitled to the award of attorney's fees under Article 2208 of the Civil Code: x x x The award of attorney's fees is proper because: (1) exemplary damages is also awarded; (2) respondents acted in gross bad faith in refusing to pay petitioners their hard-earned salaries in form of overtime premiums; and (3) this case is also a complaint for recovery of wages.

5. **ID.; MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED (REPUBLIC ACT NO. 8042, AS AMENDED BY REPUBLIC ACT NO. 10022); LIMITING WAGES THAT SHOULD BE RECOVERED BY AN ILLEGALLY DISMISSED OVERSEAS WORKER TO THREE MONTHS IS BOTH A VIOLATION OF DUE PROCESS AND THE EQUAL PROTECTION CLAUSES OF THE CONSTITUTION; INCORPORATING A SIMILARLY WORDED PROVISION IN A SUBSEQUENT LEGISLATION DOES NOT CURE ITS UNCONSTITUTIONALITY; CASE AT BAR.—** In *Serrano*, this Court ruled that the clause "or for three (3) months for every year of the unexpired term, whichever is less" under Section 10 of the Migrant Workers and Overseas Filipinos Act is unconstitutional for violating the equal protection and substantive due process clauses. Later, however, this clause was kept when the law was amended by Republic Act No. 10022 in 2010. Section 7 of the new law mirrors the same clause: x x x In *Sameer Overseas Placement Agency, Inc. v. Cabiles*, this Court was confronted with the question of the constitutionality of the reinstated clause in

Republic Act No. 10022. Reiterating our finding in *Serrano*, we ruled that "limiting wages that should be recovered by an illegally dismissed overseas worker to three months is both a violation of due process and the equal protection clauses of the Constitution." x x x This case should be no different from *Serrano* and *Sameer*. A statute declared unconstitutional "confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all." Incorporating a similarly worded provision in a subsequent legislation does not cure its unconstitutionality. Without any discernable change in the circumstances warranting a reversal, this Court will not hesitate to strike down the same provision. As such, we reiterate our ruling in *Sameer* that the reinstated clause in Section 7 of Republic Act No. 10022 has no force and effect of law. It is unconstitutional. Hence, petitioners are entitled to the award of salaries based on the actual unexpired portion of their employment contracts. The award of petitioners' salaries, in relation to the three (3)-month cap, must be modified accordingly.

APPEARANCES OF COUNSEL

Dela Cruz Entero and Associates for petitioners.
David F. Daclag for respondents.

D E C I S I O N

LEONEN, *J.*:

The clause "or for three (3) months for every year of the unexpired term, whichever is less" as reinstated in Section 7 of Republic Act No. 10022 is unconstitutional, and has no force and effect of law. It violates due process as it deprives overseas workers of their monetary claims without any discernable valid purpose.[1]

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[1] *Sameer Overseas Placement Agency v. Cabiles*, 740 Phil. 403 (2014) [Per *J.* Leonen, *En Banc*].

This Court resolves a Petition for Review on *Certiorari*[2] assailing the September 29, 2011 Decision[3] and January 26, 2012 Resolution[4] of the Court of Appeals. The Court of Appeals ruled that Julita M. Aldovino (Aldovino), Joan B. Lagrimas, Winnie B. Lingat, Chita A. Sales, Sherly L. Guinto, Revilla S. De Jesus (De Jesus), and Laila V. Orpilla were all illegally dismissed from service.

Aldovino and her co-applicants applied for work at Gold and Green Manpower Management and Development Services, Inc. (Gold and Green Manpower), a local manning agency whose foreign principal is Sage International Development Company, Ltd. (Sage International).[5]

Eventually, they were hired as sewers for Dipper Semi-Conductor Company, Ltd. (Dipper Semi-Conductor), a Taiwan-based company. Their respective employment contracts provided an eight (8)-hour working day, a fixed monthly salary, and entitlement to overtime pay, among others.[6]

Before they could be deployed for work, Gold and Green Manpower required each applicant to pay a ₱72,000.00 placement fee. But since the applicants were unable to produce the amount on their own, Gold and Green Manpower referred them to E-Cash Paylite and Financing, Inc. (E-Cash Paylite), where they loaned their placement fees.[7]

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[2] *Rollo*, pp. 2-26. Filed under Rule 45 of the Rules of Court.

[3] *Id.* at 50-61. The Decision was penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino of the Fifth Division, Court of Appeals, Manila.

[4] *Id.* at 69-71. The Resolution was penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino of the Former Fifth Division, Court of Appeals, Manila.

[5] *Id.* at 8.

[6] *Id.* at 9.

[7] *Id.*

Once Aldovino and her co-workers arrived in Taiwan, Gold and Green Manpower took all their travel documents, including their passports. They were then made to sign another contract that provides that they would be paid on a piece-rate basis instead of a fixed monthly salary.[8]

During their employment, Aldovino and her co-workers toiled from 8:00 a.m. to 9:00 p.m. for six (6) days a week. At times, they were forced to work on Sundays without any overtime premium.[9] Because they were paid on a piece-rate basis, they received less than the fixed monthly salary stipulated in their original contract. When Aldovino and her co-workers inquired, Dipper Semi-Conductor refused to disclose the schedule of payment on a piece-rate basis. Eventually, they defaulted on their loan obligations with E-Cash Paylite.[10]

On January 19, 2009, Aldovino and her co-workers, except De Jesus, filed before a local court in Taiwan a Complaint against their employers, Dipper Semi-Conductor and Sage International.[11]

On March 26, 2009, the parties met before the Bureau of Labor Affairs for a dialogue. There, Dipper Semi-Conductor ordered Aldovino and her co-workers to return to the Philippines as it was no longer interested in their services. They were then made to immediately pack their belongings, after which they were dropped off at a train station in Taipei. After a few hours, a friend brought them to the Manila Economic and Cultural Office, where they stayed for a week. They were then transferred to Hope Shelter, where they remained for four (4) months while the case was pending.[12]

Eventually, the parties entered into a Compromise Agreement,[13] which read:

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[8] *Id*.

[9] *Id*.

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

[11] *Id*. at 10 and 39-40.

[12] *Id*. at 10-11.

[13] *Id*. at 40 and 57-58.

1. Event:

   A. Reconciliation Part:
   This issue is pertaining to the labor Case No. 86 of 2009 at Ban Qiao District Court, wherein Party A is asking for the payment of salary, *etc*. from party B. This was caused by the differences in interpreting the basic salary and the method in calculation of piece work salary. Both parties is hereby reach (*sic*) a reconciliation.

   B. Compensation Part:
   With regard to the damages and fees incurred in the process of this controversy, Party B shall voluntarily give monetary compensation to Party A.

2. Amount of Payment:

   A. Amount of Reconciliation: NT$500,000.00
   B. Amount of Compensation: On top of the fees incurred by Party A during the period Party A left the company of Party B and waiting for going back to their home country, including board and lodging, livelihood cost, the loss of Recruitment Agency's commission borne by Party A, airplane ticket, *etc*. Party B shall pay another compensation of NT$1 Million.
   C. Aside from this, Party A can't ask for compensation of any kind, and all the civil cases involved shall be cancelled.

3. Mode of Payment

   A. When this case reach (*sic*) reconciliation, Party B will pay to the appointed lawyer of Party A an amount of NT$500,000 in cash in one transaction. This will be witness (*sic*) by the Philippine Labor Center.

   B. Both parties will present the following civil and criminal case requests and affidavit of waiver to the related agencies, lawyers of both will change the documents, and Party B will secure a RECEIPT AND RELEASE/QUITCLAIM (as in attachment A) signed by TORZAR SIONY TARROZA, after which, Party B will pay to the appointed lawyer of Party A an amount of NT$1 Million in cash in one transaction. This will be witness (*sic*) by the Philippine Labor Center.

. . . . . .

6. After the effectivity of this reconciliation agreement, Party A shall withdraw the case from the civil court of the Taiwan Banqiao Local court, Party A shall bear the cost of civil proceeding.

7. After the effectivity of this reconciliation agreement, Party A shall give up all other rights of compensation. They shall not ask for any compensation based on any other causes.[14]

Based on the Compromise Agreement, Aldovino and her co-workers, except De Jesus, executed an Affidavit of Quitclaim and Release.[15] On July 28, 2009, all of them returned to the Philippines.[16] They eventually filed before the Labor Arbiter a case for illegal termination, underpayment of salaries, human trafficking, illegal signing of papers,[17] and other money claims such as overtime pay, return of placement fees, and moral and exemplary damages.[18]

In its April 8, 2010 Decision,[19] the Labor Arbiter dismissed the Complaint for illegal dismissal but ordered Gold and Green Manpower and Sage International to pay each of the workers ₱20,000.00 as financial assistance.

On appeal, the National Labor Relations Commission, in its July 29, 2010 Decision,[20] affirmed the Labor Arbiter's Decision. It found that Aldovino and her co-workers were not illegally dismissed and that they voluntarily returned to the Philippines.

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[14] *Id*. at 32-33 and 58-59.

[15] *Id*. at 33.

[16] *Id*. at 41.

[17] *Id*. at 42.

[18] *Id*. at 29.

[19] *Id*. at 27-36. The Decision was penned by Labor Arbiter Marita V. Padolina of the National Labor Relations Commission, Quezon City.

[20] *Id*. at 37-46. The Decision was penned by Presiding Commissioner Alex A. Lopez, and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr. of the Third Division, National Labor Relations Commission, Quezon City.

Moreover, the Compromise Agreement barred any further claims arising from their employment.[21]

Additionally, the National Labor Relations Commission deleted the award of financial assistance for lack of factual and legal bases.[22]

Aldovino and her co-workers moved for reconsideration, but their Motion was denied for lack of merit in the National Labor Relations Commission August 31, 2010 Resolution.[23] Hence, they filed before the Court of Appeals a Petition for *Certiorari*.[24]

In its September 29,2011 Decision,[25] the Court of Appeals reversed the labor tribunals' rulings. It not only ruled that Aldovino and her co-workers had been illegally dismissed from service, but also declared that the Compromise Agreement did not bar them from filing an illegal dismissal case.[26]

Accordingly, the Court of Appeals ordered Gold and Green Manpower and Sage International to pay the workers their salaries "for the unexpired portion of their contract in accordance with Section 7 of [Republic Act No.] 10022[27] and pursuant to *Serrano v. Gallant Maritime Services, Inc.*,"[28] among others. The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, premises considered, the petition is hereby GRANTED. The Decision dated July 29, 2010 and Order dated August 31, 2010 of the NLRC in NLRC LAC (OFW-L) 05-000409-10, are

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[21] *Id*. at 45.

[22] *Id*. at 45.

[23] *Id*. at 47-49.

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

[25] *Id.*

[26] *Id*. at 59-60.

[27] Otherwise known as the amended Migrant Workers and Overseas Filipinos Act of 1995.

[28] *Rollo*, p. 60 *citing Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 205 (2009) [Per *J.* Austria-Martinez, *En Banc*].

hereby REVERSED and SET ASIDE. Respondents Gold and Green Manpower Management and Development Services, Inc. and Sage International Development Co., Ltd. are hereby ordered to reimburse petitioners their placement fee with interest at twelve percent (12%) per annum, and to pay the salaries of petitioners for the unexpired portion of their respective employment contracts or for three (3) months for every year of the unexpired term, whichever is less.

SO ORDERED.[29]

Aldovino and her co-workers moved for partial reconsideration,[30] praying that the three (3)-month cap stated in the Decision's dispositive portion be annulled, pursuant to *Serrano*.[31] However, their Motion was denied in the Court of Appeals' January 26, 2012 Resolution.[32]

Thus, Aldovino and her co-workers filed a Petition for Review on *Certiorari*.[33]

On June 15, 2012, respondents filed their Comment,[34] to which petitioners filed a Reply on September 5, 2016.[35]

Petitioners again question the three (3)-month salary cap stated in the dispositive portion of the Court of Appeals Decision. Citing *Serrano*, they assert that the three (3)-month cap in Section 10 of Republic Act No. 8042, or the Migrant Workers and Overseas Filipinos Act of 1995, as reenacted in Republic Act No. 10022, has already been declared unconstitutional.[36]

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[29] *Id.*

[30] *Id*. at 62-68.

[31] *Id.*

[32] *Id*. at 69-71.

[33] *Id*. at 2-26. Later on, in its June 26, 2013 Resolution (*rollo*, pp. 125-125-A), this Court granted petitioners' Motion to remove Seapower Shipping Enterprises, Inc. from the case title. Petitioners have inadvertently included the company as a party to this case.

[34] *Id*. at 106-117.

[35] *Id*. at 134-146.

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

Petitioners thus assert that they are entitled to the payment of their salaries for the unexpired portion of their employment contracts.[37]

On the other hand, respondents question the legality of the monetary damages awarded to petitioners. They assert that the Court of Appeals erred in nullifying the parities' Compromise Agreement, pointing out that the labor tribunals had already rendered it valid.[38] The agreement, they further argue, released them from liability on petitioners' other claims.[39]

The chief issue for this Court's resolution is whether or not petitioners Julita M. Aldovino, Joan B. Lagrimas, Winnie B. Lingat, Chita A. Sales, Sherly L. Guinto, Revilla S. De Jesus, and Laila V. Orpilla are entitled to the payment of their salaries for the unexpired portion of their employment contract. Subsumed under this is the issue of whether or not Section 7 of Republic Act No. 10022, which reinstated the three (3)-month cap, has the force and effect of law.

To pass upon this issue, this Court must resolve the following:

First, whether or not the Compromise Agreement barred all other claims against respondents Gold and Green Manpower Management and Development Services, Inc. and Sage International Development Company, Ltd., and Alberto C. Alvina; and

Second, whether or not petitioners were illegally dismissed and, consequently, entitled to the reimbursement of their placement fees and payment of moral and exemplary damages and attorney's fees.

The Petition is meritorious.

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[37] *Id.*

[38] *Id*. at 107-109.

[39] *Id*. at 109-110.

It must be noted that this case is governed by Philippine laws. Both the Constitution[40] and the Labor Code[41] guarantee the security of tenure. It is not stripped off when Filipinos work in a different jurisdiction.[42] We follow the *lex loci contractus* principle, which means that the law of the place where the contract is executed governs the contract.

In *Triple Eight Integrated Services, Inc. v National Labor Relations Commission*:[43]

First, established is the rule that *lex loci contractus* (the law of the place where the contract is made) governs in this jurisdiction.

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[40] CONST., Art. XIII, Sec. 3 provides:

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

[41] LABOR CODE, Art. 294 provides:

ARTICLE 294. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[42] *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403, 421 (2014) [Per *J.* Leonen, *En Banc*].

[43] 359 Phil. 955 (1998) [Per *J.* Romero, Third Division].

There is no question that the contract of employment in this case was perfected here in the Philippines. Therefore, the Labor Code, its implementing rules and regulations, and other laws affecting labor apply in this case. Furthermore, settled is the rule that the courts of the forum will not enforce any foreign claim obnoxious to the forum's public policy. Here in the Philippines, employment agreements are more than contractual in nature. The Constitution itself, in Article XIII, Section 3, guarantees the special protection of workers. . . .

. . . . . .

This public policy should be borne in mind in this case because to allow foreign employers to determine for and by themselves whether an overseas contract worker may be dismissed on the ground of illness would encourage illegal or arbitrary pre-termination of employment contracts.[44] (Citation omitted)

Indeed, because petitioners' employment contracts were executed in the Philippines, Philippine laws govern them. Respondents, then, must answer and be held liable under our laws.

I

Respondents claim that the Compromise Agreement barred petitioners from holding them liable for claims. This is outright erroneous.

Waivers and quitclaims executed by employees are generally frowned upon for being contrary to public policy. This is based on the recognition that employers and employees do not stand on equal footing.[45]

In *Land and Housing Development Corporation v. Esquillo*:[46]

We have heretofore explained that the reason why quitclaims are commonly frowned upon as contrary to public policy, and why they

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[44] *Id*. at 968-969.

[45] *Sicangco v. National Labor Relations Commission*, 305 Phil. 102, 108 (1994) [Per *J*. Cruz, First Division].

[46] 508 Phil. 478 (2005) [Per *J*. Panganiban, Third Division].

are held to be ineffective to bar claims for the full measure of the workers' legal rights, is the fact that the employer and the employee obviously do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of a job, he had to face the harsh necessities of life. He thus found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent on their claim. They pressed it. They are deemed not [to] have waived any of their rights. *Renuntiatio non praesumitur*.

Along this line, we have more trenchantly declared that quitclaims and/or complete releases executed by the employees do not estop them from pursuing their claims arising from unfair labor practices of the employer. The basic reason for this is that such quitclaims and/or complete releases are against public policy and, therefore, null and void. The acceptance of termination does not divest a laborer of the right to prosecute his employer for unfair labor practice acts.[47] (Emphasis in the original)

Quitclaims do not bar employees from filing labor complaints and demanding benefits to which they are legally entitled.[48] They are "ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel."[49] The law does not recognize agreements that result in compensation less than what is mandated by law. These quitclaims do not prevent employees from subsequently claiming benefits to which they are legally entitled.[50]

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[47] *Id*. at 487 *citing Marcos v. National Labor Relations Commission*, 318 Phil. 172 (1995) [Per J. Regalado, Second Division].

[48] *Goodyear Philippines, Inc. v. Angus*, 746 Phil. 668 (2014) [Per J. Del Castillo, Second Division] *citing Solgus Corporation v. Court of Appeals*, 543 Phil. 483 (2007) [Per J. Chico-Nazario, Third Division].

[49] *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.*, G.R. No. 217345, July 12, 2017, 831 SCRA 129, 150 [Per J. Mendoza, Second Division].

[50] *Fuentes v. National Labor Relations Commission*, 249 Phil. 712 (1988) [Per J. Paras, *En Banc*].

In *Am-Phil Food Concepts, Inc. v. Padilla*,[51] this Court held that quitclaims do not negate charges for illegal dismissal:

> The law looks with disfavor upon quitclaims and releases by employees pressured into signing by unscrupulous employers minded to evade legal responsibilities. As a rule, deeds of release or quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel. The amounts already received by the retrenched employees as consideration for signing the quitclaims should, however, be deducted from their respective monetary awards.[52]

Here, the parties entered into the Compromise Agreement to terminate the case for underpayment of wages, which petitioners had previously filed against respondents in Taiwan. The object and foundation of the Compromise Agreement was to settle the payment of salaries and overtime premiums to which petitioners were legally entitled. Hence, it should not be construed as a restriction on petitioners' right to prosecute other legitimate claims they may have against respondents.

Paragraph 7 of the Compromise Agreement, which stipulates that petitioners "shall give up other rights of compensation . . . [and] shall not ask for any compensation based on any other causes[,]"[53] cannot bar petitioners from filing this case and from being indemnified should respondents be adjudged liable. Blanket waivers exonerating employers from liability on the claims of their employees are ineffective.[54]

Besides, at the time the parties' Compromise Agreement was executed, respondents had just terminated petitioners from employment. Petitioners, therefore, had no other choice but to

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[51] 744 Phil. 674 (2014) [Per J. Leonen, Second Division].

[52] *Id*. at 692 *citing F. F. Marine Corporation v. National Labor Relations Commission*, 495 Phil. 140 (2005) [Per J. Tinga, Second Division].

[53] *Rollo*, pp. 58-59.

[54] *Dela Rosa Liner, Inc. v. Borela*, 765 Phil. 251 (2015) [Per J. Brion, Second Division].

accede to the terms and conditions of the agreement to recover the difference in their salaries and overtime pay. With no means of livelihood, they signed the Compromise Agreement out of dire necessity.

II

Respondents further justify the dismissal by arguing that petitioners voluntarily severed their employment when they signed the Compromise Agreement.

This argument is also untenable.

Under the Labor Code, employers may only terminate employment for a just or authorized cause and after complying with procedural due process requirements. Articles 297 and 300 of the Labor Code enumerate the causes of employment termination either by employers or employees:

ARTICLE 297. [282] *Termination by employer*. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
(e) Other causes analogous to the foregoing.

. . . . . .

ARTICLE 300. [285] *Termination by employee*. — (a) An employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one (1) month in advance. The employer upon whom no such notice was served may hold the employee liable for damages.

(b) An employee may put an end to the relationship without serving any notice on the employer for any of the following just causes:

1. Serious insult by the employer or his representative on the honor and person of the employee;
2. Inhuman and unbearable treatment accorded the employee by the employer or his representative;
3. Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and
4. Other causes analogous to any of the foregoing.

In illegal dismissal cases, the burden of proof that employees were validly dismissed rests on the employers. Failure to discharge this burden means that the dismissal is illegal.[55]

A review of the records here shows that the termination of petitioners' employment was effected merely because respondents no longer wanted their services. This is not an authorized or just cause for dismissal under the Labor Code. Employment contracts cannot be terminated on a whim.

Moreover, petitioners did not voluntarily sever their employment when they signed the Compromise Agreement, which, again, cannot be used to justify a dismissal.

Furthermore, petitioners were not accorded due process. A valid dismissal must comply with substantive and procedural due process: there must be a valid cause and a valid procedure. The employer must comply with the two (2)-notice requirement, while the employee must be given an opportunity to be heard.[56] Here, petitioners were only verbally dismissed, without any notice given or having been informed of any just cause for their dismissal.

This Court cannot rest easy on respondents' insistence that petitioners voluntarily terminated their employment. Contrary to their assertion, petitioners were left with no choice but to accept the Compromise Agreement and to go back to the Philippines.

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[55] *Industrial Personnel & Management Services, Inc. v. De Vera*, 782 Phil. 230, 252 (2016) [Per J. Mendoza, Second Division].

[56] *Skippers United Pacific, Inc. v. Doza*, 681 Phil. 427 (2012) [Per J. Carpio, Second Division].

After accumulating a huge amount of debt to work abroad, petitioners were burdened to continue working for respondents that they were constrained to sign the piece-rate-based contract upon arriving in Taiwan. As a result, they were paid less than if they were paid on a monthly basis and, worse, they were deprived of their overtime premium. Petitioners inevitably defaulted on their loan obligations. To make matters worse, they were terminated from employment on a whim and were left homeless.

One can only imagine how all these compounded a heavy burden upon petitioners. Overseas Filipino workers venture out into unfamiliar lands in the hope of providing a better future for their families. They endure years of being away from their loved ones while bearing a life of toil abroad. Our laws afford protection to our workers, whether employed locally or abroad. It is this Court's bounden duty to uphold these laws and dispense justice for petitioners. With their right to substantive and procedural due process denied, it is clear that petitioners were illegally dismissed from service.

As a consequence of the illegal dismissal, petitioners are also entitled to moral damages, exemplary damages, and attorney's fees. In *Torreda v. Investment and Capital Corporation of the Philippines*:[57]

> Moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, are recoverable when the dismissal was done in a wanton, oppressive, or malevolent manner.[58]

Petitioners have sufficiently shown how bad faith attended respondents' actions. They were made to sign a new employment contract on a piece-rate basis, which violates the Migrant Workers

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[57] G.R. No. 229881, September 5, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64603> [Per *J.* Gesmundo, Third Division].

[58] *Id.*

and Overseas Filipinos Act. Under that contract, petitioners were underpaid and deprived of their overtime premium.

Moreover, petitioners' employment contracts were unilaterally terminated. After their meeting before the Bureau of Labor, respondents told petitioners that they were no longer employed. As the Court of Appeals noted, respondents did not refute petitioners' narration that they were immediately escorted back to the factory, ordered to pack their possessions, and were left at a train station.[59] Petitioners were forced to stay in shelters for months without any means of livelihood. Worse, they were deprived of due process when they were terminated without any notice or opportunity to be heard.

Being deprived of their hard-earned salaries and, eventually, of their employment, caused petitioners mental anguish, wounded feelings, and serious anxiety. The award of moral damages is but appropriate.

Consequently, the award of exemplary damages is necessary to deter future employers from committing the same acts.

Additionally, petitioners are also entitled to the award of attorney's fees under Article 2208 of the Civil Code:

> ARTICLE. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> (1) When exemplary damages are awarded;
>
> . . . .
>
> (5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
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> . . . .
>
> (7) In actions for the recovery of wages of household helpers, laborers and skilled workers[.]

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[59] *Rollo*, p. 60.

The award of attorney's fees is proper because: (1) exemplary damages is also awarded; (2) respondents acted in gross bad faith in refusing to pay petitioners their hard-earned salaries in form of overtime premiums; and (3) this case is also a complaint for recovery of wages.

In addition, we further sustain the Court of Appeals' ruling in having ordered the reimbursement of petitioners' placement fees. As they were terminated without just, valid, or authorized cause, petitioners are entitled to the full reimbursement of their placement fees with interest at 12% per annum in accordance with Section 7 of Republic Act No. 10022.[60]

III

In *Serrano*, this Court ruled that the clause "or for three (3) months for every year of the unexpired term, whichever is less" under Section 10[61] of the Migrant Workers and Overseas Filipinos

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[60] Republic Act No. 10022 (2010), Sec. 7 provides:

SECTION 7. . . .

. . . . . .

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contact, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum[.]

[61] Republic Act No. 8042 (1995), Sec. 10 provides:

SECTION 10. *Monetary Claims*. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall

Act is unconstitutional for violating the equal protection and substantive due process clauses.

Later, however, this clause was kept when the law was amended by Republic Act No. 10022 in 2010. Section 7 of the new law mirrors the same clause:

SECTION 7. Section 10 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

"SEC. 10. *Money Claims*. — Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its

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be answerable for all monetary claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

Any compromise/amicable settlement or voluntary agreement on monetary claims inclusive of damages under this section shall be paid within four (4) months from the approval of the settlement by the appropriate authority.

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the worker shall be entitled to the full reimbursement of his placement fee with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less.

approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

Such liabilities shall continue during the entire period or duration of the employment contract and shall not be affected by any substitution, amendment or modification made locally or in a foreign country of the said contract.

Any compromise/amicable settlement or voluntary agreement on money claims inclusive of damages under this section shall be paid within thirty (30) days from the approval of the settlement by the appropriate authority.

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract ***or for three (3) months for every year of the unexpired term, whichever is less.***

In case of a final and executory judgment against a foreign employer/principal, it shall be automatically disqualified, without further proceedings, from participating in the Philippine Overseas Employment Program and from recruiting and hiring Filipino workers until and unless it fully satisfies the judgment award.

Noncompliance with the mandatory periods for resolutions of cases provided under this section shall subject the responsible officials to any or all of the following penalties:

(a) The salary of any such official who fails to render his decision or resolution within the prescribed period shall be, or caused to be, withheld until the said official complies therewith;

(b) Suspension for not more than ninety (90) days; or

(c) Dismissal from the service with disqualification to hold any appointive public office for five (5) years.

Provided, however, That the penalties herein provided shall be without prejudice to any liability which any such official may have incurred under other existing laws or rules and regulations as a consequence of violating the provisions of this paragraph. (Emphasis supplied)

In *Sameer Overseas Placement Agency, Inc. v. Cabiles*[62] this Court was confronted with the question of the constitutionality of the reinstated clause in Republic Act No. 10022. Reiterating our finding in *Serrano*, we ruled that "limiting wages that should be recovered by an illegally dismissed overseas worker to three months is both a violation of due process and the equal protection clauses of the Constitution."[63] In striking down the clause, we ruled:

Putting a cap on the money claims of certain overseas workers does not increase the standard of protection afforded to them. On the other hand, foreign employers are more incentivized by the reinstated clause to enter into contracts of at least a year because it gives them more flexibility to violate our overseas workers' rights. Their liability for arbitrarily terminating overseas workers is decreased at the expense of the workers whose rights they violated. Meanwhile, these overseas workers who are impressed with an expectation of a stable job overseas for the longer contract period disregard other opportunities only to be terminated earlier. They are left with claims that are less than what others in the same situation would receive. The reinstated clause, therefore, creates a situation where the law meant to protect them makes violation of rights easier and simply benign to the violator.[64]

This case should be no different from *Serrano* and *Sameer*.

A statute declared unconstitutional "confers no rights; it imposes no duties; it affords no protection; it creates no office;

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[62] 740 Phil. 403 (2014) [Per *J*. Leonen, *En Banc*].

[63] *Id*. at 434.

[64] *Id*. at 439.

it is inoperative as if it has not been passed at all."[65] Incorporating a similarly worded provision in a subsequent legislation does not cure its unconstitutionality. Without any discernable change in the circumstances warranting a reversal, this Court will not hesitate to strike down the same provision.

As such, we reiterate our ruling in *Sameer* that the reinstated clause in Section 7 of Republic Act No. 10022 has no force and effect of law. It is unconstitutional.[66]

Hence, petitioners are entitled to the award of salaries based on the actual unexpired portion of their employment contracts. The award of petitioners' salaries, in relation to the three (3)-month cap, must be modified accordingly.

WHEREFORE, the Petition is **GRANTED**. The September 29, 2011 Decision of the Court of Appeals in CA-G.R. SP No. 116953 is **AFFIRMED** with **MODIFICATION**. Respondents Gold and Green Manpower Management and Development Services, Inc., Sage International Development Company, Ltd., and Alberto C. Alvina are **ORDERED** to pay petitioners Julita M. Aldovino, Joan B. Lagrimas, Winnie B. Lingat, Chita A. Sales, Sherly L. Guinto, Revilla S. De Jesus, and Laila V. Orpilla the following:

(a) the amount equivalent to their salary for the unexpired portion of their employment contract;

(b) the amount equivalent to their placement fee with an interest of twelve percent (12%) per annum;

(c) moral damages in the amount of Fifty Thousand Pesos (₱50,000.00) each;

(d) exemplary damages in the amount of Twenty-Five Thousand Pesos (₱25,000.00) each;

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[65] *Yap v. Thenamaris Ship's Management*, 664 Phil. 614, 627 (2011) [Per J. Nachura, Second Division].

[66] *Sameer Overseas Placement Agency, Inc. v. Cabiles*, 740 Phil. 403 (2014) [Per J. Leonen, *En Banc*].

(e) attorney's fees equivalent to ten percent (10%) of their respective monetary awards; and

(f) legal interest of six percent (6%) per annum of the total monetary awards, except for the reimbursement of placement fee, which has an interest of 12% per annum, computed from the finality of this Decision until its full satisfaction.[67]

SO ORDERED.

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

Peralta (*Chairperson*) *and Hernando, JJ.*, on official leave.

FIRST DIVISION

[G.R. Nos. 200934-35. June 19, 2019]

LA SAVOIE DEVELOPMENT CORPORATION, *petitioner, vs.* **BUENAVISTA PROPERTIES, INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; REPUBLIC ACT NO. 10142 (FINANCIAL REHABILITATION AND INSOLVENCY ACT [FRIA] OF 2010); REHABILITATION, DEFINED.— Republic Act No. 10142 or the Financial Rehabilitation and Insolvency Act of 2010 (FRIA) defines "rehabilitation" as the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if

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

the debtor continues as a going concern than if it is immediately liquidated. We explained the essence of corporate rehabilitation in *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc.*, *viz.*: [C]orporate rehabilitation contemplates a continuance of corporate life and activities in an effort **to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings**.

2. ID.; PRESIDENTIAL DECREE 902-A, AS AMENDED (SEC REORGANIZATION ACT); CORPORATE REHABILITATION; APPOINTMENT OF A MANAGEMENT COMMITTEE, REHABILITATION RECEIVER, BOARD OR BODY; SUSPENSION OF CLAIMS AGAINST A CORPORATION; THE PURPOSE OF SUSPENSION IS TO PREVENT A CREDITOR FROM OBTAINING AN ADVANTAGE OR PREFERENCE OVER ANOTHER AND TO PROTECT AND PRESERVE THE RIGHTS OF PARTY LITIGANTS AS WELL AS THE INTEREST OF THE INVESTING PUBLIC OR CREDITORS.— Corporate rehabilitation traces its roots to Act No. 1956 or the Insolvency Law of 1909. The amendatory provisions of PD 902-A, clothed the Securities and Exchange Commission (SEC) with jurisdiction to hear petitions of corporations for declaration of state of suspension of payments. Such jurisdiction was, however, transferred to the Regional Trial Court in 2000. Presently, the FRIA is the prevailing law on corporate rehabilitation. In this case, since the petition for rehabilitation was filed on April 25, 2003, the provisions of PD 902-A, as amended, and the Interim Rules apply. Section 6(c) of PD 902-A, as amended, provides that "upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly." Similarly, Section 6, Rule 4 of the Interim Rules states that if the court finds the petition for rehabilitation to be sufficient in form and substance, it shall, not later than five days from the filing of the petition, issue an order which, *inter alia*, stays the enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the debtor. The purpose of the suspension is to

prevent a creditor from obtaining an advantage or preference over another and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors. Such suspension is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora.

3. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A VOID JUDGMENT IS IN EFFECT NO JUDGMENT AT ALL, BEING WORTHLESS IN ITSELF, ALL PROCEEDINGS UPON WHICH THE JUDGMENT IS FOUNDED ARE EQUALLY WORTHLESS; APPLICATION IN CASE AT BAR.— Here, the Rehabilitation Court issued a Stay Order on June 4, 2003 or during the pendency of Civil Case No. Q-98-33682 before the QC RTC. The effect of the Stay Order is to *ipso jure* suspend the proceedings in the QC RTC at whatever stage the action may be. The Stay Order notwithstanding, the QC RTC proceeded with the case and rendered judgment. The judgment became final and executory on July 31, 2007. Respondent relies on this alleged finality to prevent us from looking into the effect of the Stay Order on the QC RTC Decision. Respondent's attempt fails. In *Lingkod Manggagawa sa Rubberworld Adidas-Anglo v. Rubberworld (Phils.) Inc. (Lingkod)*, we ruled that proceedings and orders undertaken and issued in violation of the SEC suspension order are null and void; as such, they could not have achieved a final and executory status. x x x On appeal, the CA found that the Labor Arbiter committed grave abuse of discretion when it proceeded with the case despite the SEC suspension order. We affirmed the CA in this wise: x x x **Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. The Labor Arbiter's decision in this case is void *ab initio*, and therefore, non-existent.** A void judgment is in effect no judgment at all. No rights are divested by it nor obtained from it. Being worthless in itself, all proceedings upon which the judgment is founded are equally worthless. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It accordingly leaves the party-litigants in the same position

they were in before the trial. x x x We see no reason not to apply the rule in *Lingkod* in case of violation of a stay order under the Interim Rules. Having been executed against the provisions of a mandatory law, the QC RTC Decision did not attain finality. x x x Necessarily, we reject respondent's contention that the Rehabilitation Court cannot exercise its cram-down power to approve a rehabilitation plan over the opposition of a creditor. Since the QC RTC Decision did not attain finality, there is no legal impediment to reduce the penalties under the ARRP.

4. MERCANTILE LAW; REPUBLIC ACT NO. 10142 (FINANCIAL REHABILITATION AND INSOLVENCY ACT [FRIA] OF 2010); COURT APPROVED REHABILITATION PLAN MAY INCLUDE A REDUCTION OF LIABILITY, WHICH DOES NOT VIOLATE THE NON-IMPAIRMENT OF CONTRACTS' CLAUSE OF THE CONSTITUTION; RATIONALE.— [W]e have already held that a court-approved rehabilitation plan may include a reduction of liability. In *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*, we held that there is nothing unreasonable or onerous about the 50% reduction of the principal amount owing to the creditor. Restructuring the debts of the corporation under financial distress is part and parcel of its rehabilitation. In the same case, we stressed that reduction of the amount due to creditors does not violate the non-impairment of contracts' clause of the Constitution. x x x **This case does not involve a law or an executive issuance declaring the modification of the contract among debtor PALI, its creditors and its accommodation mortgagors. Thus, the non-impairment clause may not be invoked.** Furthermore, as held in *Oposa v. Factoran, Jr.* even assuming that the same may be invoked, the non-impairment clause must yield to the police power of the State. Property rights and contractual rights are not absolute. The constitutional guaranty of non-impairment of obligations is limited by the exercise of the police power of the State for the common good of the general public. The prevailing principle is that the order or judgment of the courts, not being a law, is not within the ambit of the non-impairment clause. Further, it is more in keeping with the spirit of rehabilitation that courts are given the leeway to decide how distressed corporations can best and fairly address their financial issues. Necessarily, a business in the red and about to incur

tremendous loses may not be able to pay all its creditors. Rather than leave it to the strongest most rresourceful amongst all of them, the satate steps in the equitably distribute the corporation's limited resources.

5. ID.; ID.; NO LAW CONFERS UPON THE REHABILITATION COURT THE AUTHORITY TO INTERFERE WITH THE ORDER OF A CO-EQUAL COURT; CASE AT BAR.— The QC RTC and the Rehabilitation Court are co-equal and coordinate courts. The doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court is an elementary principle in the administration of justice: no court can interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by the injunction. Petitioner cannot argue that the Rehabilitation Court, in issuing the injunction, merely aims to enforce the Stay Order that it earlier issued. No law confers upon the Rehabilitation Court the authority to interfere with the order of a co-equal court. Only the CA or this Court, in a petition appropriately filed for the purpose, may halt the execution of the judgment of a regional trial court. x x x the Order of the Rehabilitation Court preventing the implementation of the QC RTC Decision is invalid for being issued with grave abuse of discretion amounting to lack of jurisdiction.

APPEARANCES OF COUNSEL

Gorosin Garcia & Associates for petitioner.
Balgos Gumaru Tan & Javier for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] assailing the November 4, 2011 Decision[2] and February 24, 2012 Resolution[3]

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[1] *Rollo* (G.R. Nos. 200934-35), pp. 10-62.

[2] *Id.* at 64-81. Penned by Associate Justice Florito S. Macalino with Associate Justices Ramon M. Bato, Jr. and Elihu A. Ybañez, concurring.

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

of the Court of Appeals (CA) in the consolidated cases of CA-G.R. SP Nos. 102114 and 104413. The assailed Decision and Resolution: (1) annulled the Resolution[4] of the Regional Trial Court of Makati-Branch 149 (Rehabilitation Court) reducing the penalty imposed against petitioner; and (2) annulled the Order[5] of the Rehabilitation Court preventing the implementation of the Decision of the Regional Trial Court of Quezon City-Branch 217 (QC RTC).

We partly modify the Decision of the CA and restate that a court-approved rehabilitation plan may provide for a reduction in the liability for contractual penalties incurred by the distressed corporation.

On May 7, 1992, Spouses Frisco and Amelia San Juan, and Spouses Felipe and Blesilda Buencamino (collectively, the landowners), through their attorney-in-fact Delfin Cruz, Jr., entered into a Joint Venture Agreement (JVA) with La Savoie Development Corporation (petitioner) over three parcels of land (the properties) located at San Rafael, Bulacan. Under the JVA, petitioner undertook to completely develop the properties into a commercial and residential subdivision (project) on or before May 5, 1995. If petitioner fails to do so within the schedule, it shall pay the landowners a penalty of ₱10,000.00 a day until completion of the project.[6] On May 26, 1994, the landowners sold the properties to Josephine Conde, who later assigned all her rights and interest therein to Buenavista Properties, Inc. (respondent).[7] Unfortunately, petitioner did not finish the project on time. Thus, it executed an Addendum to the JVA with respondent, extending the completion of the project until May 5, 1997.[8] However, petitioner still failed to meet the deadline.

On February 28, 1998, respondent filed a complaint for termination of contract and recovery of property with damages

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[4] *Id.* at 180-189. Penned by Presiding Judge Cesar O. Untalan.

[5] *Id.* at 1184-1186.

[6] *Id.* at 190-193.

[7] *Id.* at 193.

[8] *Id.* at 65, 193.

against petitioner before the QC RTC. The case was docketed as Civil Case No. Q-98-33682.[9] Petitioner failed to appear during pre-trial, and was declared in default.[10] Respondent presented its evidence *ex-parte*.[11]

Meanwhile, due to the 1997 Asian financial crisis, petitioner anticipated its inability to pay its obligations as they fall due; thus, on April 25, 2003, it filed a petition for rehabilitation before the Regional Trial Court of Makati (Makati RTC).[12] On June 4, 2003, the Makati RTC issued an Order (Stay Order),[13] staying the enforcement of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against petitioner. It appointed Rito C. Manzana as rehabilitation receiver.

Subsequently, petitioner filed a manifestation[14] dated June 21, 2003 before the QC RTC. It informed the court that a Stay Order was issued by the Makati RTC, and that respondent was included as one of the creditors in the petition for rehabilitation. It accordingly asked the QC RTC to suspend its proceedings.

It appears, however, that the QC RTC already rendered a Decision[15] on June 12, 2003 (QC RTC Decision), the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff [herein respondent] and against the defendant [herein petitioner]:

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[9] *Id.* at 65.

[10] Petitioner assailed the judgment by default but the CA sustained the QC RTC Decision. It elevated the case to us, and we affirmed the CA. *Id.* at 67.

[11] *Rollo* (G.R. No. 175615), pp. 14-15.

[12] *Rollo* (G.R. Nos. 200934-35), pp. 65-66. The case was raffled to Branch 142 and docketed as SP. Proc No. M-5664.

[13] *Id.* at 611-612. The Stay Order was issued by then Judge Estela Perlas-Bernabe (now a Member of this Court).

[14] *Id.* at 1258-1259.

[15] *Id.* at 190-196.

1. Terminating the Joint Venture Agreement and the Addendum to [the] Joint Venture Agreement x x x;
2. Ordering the defendant to deliver to the plaintiff possession of the Buenavista Park Subdivision together with all improvements thereon;
3. Ordering the defendant to pay the plaintiff the amount of Ten Thousand Pesos (₱10,000.00) a day representing the penalty for each day of delay computed from March 3, 1998 (when this case was filed) and until paid.
4. Ordering the defendant to pay plaintiff the amount of One Hundred Thousand Pesos (₱100,000.00) as and for attorney's fees.

Costs against the defendant.

SO ORDERED.[16]

Meantime, in its Order dated October 1, 2003, the Makati RTC lifted the Stay Order and dismissed the petition for rehabilitation. However, on appeal, the CA, in its Decision dated June 21, 2005, reversed the Makati RTC.[17] It remanded the case to the trial court for further proceedings.

Subsequently however, the rehabilitation receiver resigned, and petitioner filed an omnibus motion for appointment of a new receiver. Before the Makati RTC could act on the omnibus motion, the position of the Presiding Judge became vacant; thus, the Presiding Judge of Branch 61 heard the case. Thereafter, the case was transferred to the Rehabilitation Court. On September 21, 2006, the Rehabilitation Court appointed Anna Liza M. Ang-Co as petitioner's new rehabilitation receiver.[18]

Meanwhile, respondent moved for the execution of the QC RTC Decision.[19] On November 21, 2007, the QC RTC issued a writ of execution to Deputy Sheriff Reynaldo Madolaria (Sheriff Madolaria). In turn, petitioner filed before the Rehabilitation

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[16] *Id.* at 196.

[17] *Id.* at 66.

[18] *Id.* at 67.

[19] *Id.* at 67-68.

Court an extremely urgent motion for the issuance of an order to prohibit deputy Sheriff Madolaria of the QC RTC from enforcing the writ of execution.[20]

In its December 28, 2007 Order,[21] the Rehabilitation Court directed Sheriff Madolaria to: (a) stop the execution of the QC RTC Decision; (b) return and restore the ejected residents of the subject property; and (c) lift the notices of garnishment and notices of levy upon personal as well as real properties of petitioner.[22] Respondent challenged this Order in its petition for *certiorari* before the CA docketed as CA-G.R. SP No. 102114.[23]

In the interim, petitioner entered into separate Compromise Agreements with two of its creditors - Home Guaranty Corporation (HGC) and Planters Development Bank. The Rehabilitation Court approved the agreements over the opposition of respondent. Petitioner filed an Amended Revised Rehabilitation Plan (ARRP), proposing the condonation of all past due interest, penalties and other surcharge, *dacion en pago* arrangement to settle obligation with HGC, including respondent's claim against petitioner. The rehabilitation receiver filed her recommendation with the Rehabilitation Court.[24]

On June 30, 2008, the Rehabilitation Court issued a Resolution[25] approving the ARRP with modifications. Among others, it reduced into half the amount of penalty stated in the QC RTC Decision, *viz*.:

> 4. x x x
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> d. **It appears that the impose** (*sic*) **penalty of ₱10,000.00 for each day of delay, from the time this petition was**

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[20] *Id.* at 1133-1144.

[21] *Id.* at 1184-1186.

[22] *Id.* at 1186.

[23] *Id.* at 68.

[24] *Id.* at 68-69.

[25] *Supra* note 4.

> **filed on April 25, 2003 up to the conclusion of this rehabilitation plan is quite unconscionable and unreasonable considering that petitioner is under rehabilitation, hence the same shall not be considered for payment under this rehabilitation plan**. Moreover, under the wisdom of the Supreme Court in the case of Filinvest Land, Inc. *vs.* Court of Appeals, (G.R. No. 138980, September 20,2005), it reduced the penalty from ₱3.99 million to ₱1.881 million. (Also in the case of Domel Trading Corporation *vs.* Court of Appeals, G.R. No. 84848, September 22, 1999; and Antonio Lo *vs.* Court of Appeals, G.R. No. 141434, February 9, 1998). **Thus, the penalty for payment under this plan for Buenavista Properties is ₱5,000.00 per day of delay from March 3, 1998 up to June 4, 2003 only (date of Stay Order)**.[26] (Emphasis supplied.)

Respondent questioned the June 30, 2008 Resolution of the Rehabilitation Court in its petition for review before the CA, docketed as CA-G.R. SP No. 104413. The CA consolidated CA-G.R. SP Nos. 102114 and 104413 in a Resolution dated August 12, 2008.[27]

The CA granted respondent's petition under CA-G.R. SP No. 102114. It annulled the December 28, 2007 Order of the Rehabilitation Court, which enjoined Sheriff Madolaria from implementing the writ of execution issued by the QC RTC. The CA ruled that the Rehabilitation Court does not have the power to restrain or order a co-equal court to desist from executing its final and executory judgment because that power lies with the higher courts. It, however, noted that the QC RTC should have exercised prudence in issuing the writ of execution since there is a standing Stay Order on all claims against petitioner, and the judgment in Civil Case No. Q-98-33682 falls within the term "claim" as provided under Section 6(c) of

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[26] *Rollo* (G.R. Nos. 200934-35), p. 188.

[27] *Id.* at 7.

Presidential Decree No. (PD) 902-A.[28] The writ of execution was thus issued in violation of the Stay Order.[29]

On the other hand, the CA partly granted respondent's petition under CA-G.R. SP No. 104413. The CA rejected respondent's claim that the Rehabilitation Court lost jurisdiction when it did not act upon the petition for rehabilitation within the time provided in the 2000 Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules).[30] It stated that Rule 4, Section 11 of the Interim Rules allows for extensions of time in resolving petitions for rehabilitations. In fact, the Office of the Court Administrator favorably acted upon the extensions of time sought by the Rehabilitation Court.[31]

The CA, however, agreed with respondent that the Rehabilitation Court cannot modify the final judgment of the QC RTC with respect to the amount of penalty to be paid by petitioner. It ruled that the Rehabilitation Court could suspend the payment of the claim or provide an extended period of payment. Further, the CA observed that respondent's claim for penalties is based on the JVA. It held that the Rehabilitation Court cannot change the rate of penalty without impairing the stipulation between the parties. Accordingly, the CA annulled the ARRP insofar as it reduced the amount of penalty.[32] Petitioner sought partial reconsideration, which the CA denied.

In this petition, we resolve: (1) whether CA erred in annulling the June 30, 2008 Resolution of the Rehabilitation Court insofar as it reduced by half the amount of penalty adjudged in the QC RTC Decision; and (2) whether the CA erred in annulling the

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[28] *Id.* at 75; Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency under the Administrative Supervision of the Office of the President (1976).

[29] *Id.* at 76.

[30] A.M. No. 00-8-10-SC, November 21, 2000.

[31] *Rollo* (G.R. Nos. 200934-95), pp. 77-78.

[32] *Id.* at 80-81.

December 28, 2007 Order of the Rehabilitation Court preventing Sheriff Madolaria from implementing the QC RTC Decision.

Inextricably related with the first issue is the nature of the QC RTC Decision. Respondent submits that the QC RTC Decision had already attained finality, thus the Rehabilitation Court cannot reduce the penalty imposed. It insists that the cram down power of the Rehabilitation Court is irrelevant and inapplicable.[33] A preliminary question, upon which the resolution of the first issues depends on, therefore arises—whether the QC RTC Decision attained finality.[34]

On the second issue, petitioner contends that the Rehabilitation Court had the right to assert itself and enjoin the execution of the QC RTC Decision because it was rendered in violation of the Stay Order. According to petitioner, respondent pursued the case in the QC RTC to gain illicit advantage over the other creditors of petitioner. Petitioner avers that the CA should have instead nullified the writ of execution, or the improper levies made by Sheriff Madolaria pursuant to the writ.[35]

For its part, respondent relies on our Resolution[36] in *La Savoie Development Corporation v. Buenavista Properties, Inc.* In that case, petitioner raised the issue of whether the Stay Order binds respondent. Respondent alleges that we sustained the jurisdiction of the QC RTC and upheld the decision of that

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[33] *Id.* at 1465.

[34] While this is not raised as an error before us, we deem it necessary to rule upon it because the resolution of the first issue is dependent upon it. *Demafelis v. Court of Appeals* teaches that an appellate court has an inherent authority to review unassigned errors: *e.g.* (1) which are closely related to an error properly raised; (2) upon which the determination of the error properly assigned is dependent; or (3) where the Court finds that consideration of them is necessary in arriving at a just decision of the case. [G.R. No. 152164 (Resolution), November 23, 2007, 538 SCRA 305, 311, citing *Sesbreño v. Central Board of Assessment Appeals*, G.R. No. 106588, March 24, 1997, 270 SCRA 360.]

[35] *Rollo* (G.R. Nos. 200934-35), pp. 47-52.

[36] *Rollo* (G.R. No. 175615), p. 584.

court in Civil Case No. Q-98-33682.[37] Hence, petitioner is precluded from raising for adjudication any issue relative to the Stay Order and its effects, because our February 19, 2007 Resolution has become the law of the case.[38]

We find the petition partly meritorious.

I

Republic Act No. 10142 or the Financial Rehabilitation and Insolvency Act of 2010 (FRIA) defines "rehabilitation" as the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated.[39] We explained the essence of corporate rehabilitation in *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc.*,[40] *viz.*:

> [C]orporate rehabilitation contemplates a continuance of corporate life and activities in an effort **to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings**. Thus, the basic issues in rehabilitation proceedings concern the viability and desirability of continuing the business operations of the distressed corporation, all with a view of effectively restoring it to a state of solvency or to its former healthy financial condition through the adoption of a rehabilitation plan.[41] (Emphasis in the original; citations omitted.)

Corporate rehabilitation traces its roots to Act No. 1956 or the Insolvency Law of 1909. The amendatory provisions of

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[37] *Rollo* (G.R. Nos. 200934-35), pp. 1458-1459.

[38] *Id.* at 1462.

[39] See Section 4(gg) of the FRIA.

[40] G.R. No. 206528, June 28, 2016, 794 SCRA 625.

[41] *Id.* at 639-640.

PD 902-A, clothed the Securities and Exchange Commission (SEC) with jurisdiction to hear petitions of corporations for declaration of state of suspension of payments. Such jurisdiction was, however, transferred to the Regional Trial Court in 2000. Presently, the FRIA is the prevailing law on corporate rehabilitation.[42] In this case, since the petition for rehabilitation was filed on April 25, 2003, the provisions of PD 902-A, as amended, and the Interim Rules apply.

Section 6(c) of PD 902-A, as amended, provides that "upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly." Similarly, Section 6, Rule 4 of the Interim Rules states that if the court finds the petition for rehabilitation to be sufficient in form and substance, it shall, not later than five days from the filing of the petition, issue an order which, *inter alia*, stays the enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the debtor. The purpose of the suspension is to prevent a creditor from obtaining an advantage or preference over another and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors. Such suspension is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora.[43]

Here, the Rehabilitation Court issued a Stay Order on June 4, 2003 or during the pendency of Civil Case No. Q-98-33682 before the QC RTC. The effect of the Stay Order is to *ipso jure* suspend the proceedings in the QC RTC at whatever stage

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[42] *Viva Shipping Lines, Inc. v. Keppel Philippines Mining, Inc.*, G.R. No. 177382, February 17, 2016, 784 SCRA 173, 197-199.

[43] *Metropolitan Bank and Trust Company v. Liberty Corrugated Boxes Manufacturing Corporation*, G.R. No. 184317, January 25, 2017, 815 SCRA 458, 472-473, citing *Sobrejuanite v. ASB Development Corporation*, G.R. No. 165675, September 30, 2005, 471 SCRA 763, 770.

the action may be.[44] The Stay Order notwithstanding, the QC RTC proceeded with the case and rendered judgment. The judgment became final and executory on July 31, 2007.[45] Respondent relies on this alleged finality to prevent us from looking into the effect of the Stay Order on the QC RTC Decision. Respondent's attempt fails.

In *Lingkod Manggagawa sa Rubberworld Adidas-Anglo v. Rubberworld (Phils.) Inc. (Lingkod)*,[46] we ruled that proceedings and orders undertaken and issued in violation of the SEC suspension order are null and void; as such, they could not have achieved a final and executory status. In *Lingkod*, the petitioner filed an unfair labor practice case against the respondent. While the case was pending, respondent filed a petition for declaration of state of suspension of payments with proposed rehabilitation plan before the SEC. Thereafter, the SEC issued a suspension order, which respondent presented to the Labor Arbiter. However, the Labor Arbiter still proceeded to render a decision against respondent, which the National Labor Relations Commission affirmed. On appeal, the CA found that the Labor Arbiter committed grave abuse of discretion when it proceeded with the case despite the SEC suspension order. We affirmed the CA in this wise:

> Given the factual milieu obtaining in this case, it cannot be said that the decision of the Labor Arbiter, or the decision/dismissal order and writ of execution issued by the NLRC, could ever attain final and executory status. **The Labor Arbiter completely disregarded and violated Section 6(c) of Presidential Decree 902-A, as amended, which categorically mandates the suspension of all actions for claims against a corporation placed under a management committee by the SEC. Thus, the proceedings before the Labor Arbiter and the order and writ subsequently issued by the NLRC are all null and void for having been undertaken or issued in violation of the SEC suspension**

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[44] *See Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 150592, January 20, 2009, 576 SCRA 471, 475-476.

[45] *Rollo* (G.R. No. 175615), p. 725.

[46] G.R. No. 153882, January 29, 2007, 513 SCRA 208.

Order dated December 28, 1994. As such, the Labor Arbiter's decision, including the dismissal by the NLRC of Rubberworld's appeal, could not have achieved a final and executory status.

Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. The Labor Arbiter's decision in this case is void *ab initio*, and therefore, non-existent. A void judgment is in effect no judgment at all. No rights are divested by it nor obtained from it. Being worthless in itself, all proceedings upon which the judgment is founded are equally worthless. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It accordingly leaves the party-litigants in the same position they were in before the trial.[47] (Emphasis supplied; citations omitted.)

We see no reason not to apply the rule in *Lingkod* in case of violation of a stay order under the Interim Rules. Having been executed against the provisions of a mandatory law, the QC RTC Decision did not attain finality.

We further clarify that our February 19, 2007 Resolution in G.R. No. 175615 did not resolve the issue of the effect of the Stay Order on Civil Case No. Q-98-33682. Neither did we hold that the QC RTC has jurisdiction to render a judgment while a Stay Order was subsisting. Our minute Resolution stated only that the CA committed no reversible error in issuing the challenged Decision. In effect, we affirmed the decision of the CA, which we stress did not rule upon any issue concerning the Stay Order of the Rehabilitation Court. The Decision[48] of the CA in CA-G.R. CV. No. 79318, in fact, did not mention anything about the Stay Order. It only dealt with the issue of whether the QC RTC erred in declaring petitioner as in default for failure to appear at the pre-trial. Hence, respondent has no factual and legal basis to claim that the law of the case doctrine applies.

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[47] *Id.* at 218-219.

[48] *Rollo* (G.R. No. 175615), pp. 12-25.

Necessarily, we reject respondent's contention that the Rehabilitation Court cannot exercise its cram-down power to approve a rehabilitation plan over the opposition of a creditor. Since the QC RTC Decision did not attain finality, there is no legal impediment to reduce the penalties under the ARRP.

Further, we have already held that a court-approved rehabilitation plan may include a reduction of liability. In *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*,[49] we held that there is nothing unreasonable or onerous about the 50% reduction of the principal amount owing to the creditor. Restructuring the debts of the corporation under financial distress is part and parcel of its rehabilitation.[50] In the same case, we stressed that reduction of the amount due to creditors does not violate the non-impairment of contracts' clause of the Constitution. We explained, thus:

> We also find no merit in PWRDC's [Pacific Wide Realty and Development Corporation] contention that there is a violation of the [non-]impairment clause. Section 10, Article III of the Constitution mandates that no law impairing the obligations of contract shall be passed. **This case does not involve a law or an executive issuance declaring the modification of the contract among debtor PALI, its creditors and its accommodation mortgagors. Thus, the non-impairment clause may not be invoked.** Furthermore, as held in *Oposa v. Factoran, Jr.* even assuming that the same may be invoked, the non-impairment clause must yield to the police power of the State. Property rights and contractual rights are not absolute. The constitutional guaranty of non-impairment of obligations is limited by the exercise of the police power of the State for the common good of the general public.[51] (Emphasis supplied; citation omitted.)

The prevailing principle is that the order or judgment of the courts, not being a law, is not within the ambit of the non-impairment clause. Further, it is more in keeping with the spirit

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[49] G.R. No. 178768, November 25, 2009, 605 SCRA 502.

[50] *Id.* at 516.

[51] *Id.* at 516-517.

of rehabilitation that courts are given the leeway to decide how distressed corporations can best and fairly address their financial issues. Necessarily, a business in the red and about to incur tremendous losses may not be able to pay all its creditors. Rather than leave it to the strongest or most resourceful amongst all of them, the state steps in to equitably distribute the corporation's limited resources.[52]

Here, *sans* the QC RTC Decision, the basis for the penalty award of ₱10,000.00 per day of delay is the JVA between petitioner and respondent. The Rehabilitation Court after hearing all of the evidence on the financial status of petitioner, reduced it to ₱5,000.00 per day, finding the ₱10,000.00 per day penalty unreasonable and unconscionable. We see nothing in the record that persuades us to depart from their factual finding of the Rehabilitation Court. We also concur with the Rehabilitation Court that the penalty must be computed from the time of judicial demand or filing of the suit before the QC RTC on March 3, 1998 up to the date of the issuance of the Stay Order on June 4, 2003.

II

On the second issue, we rule that the Rehabilitation Court cannot issue an order preventing the QC RTC from enforcing its Decision. The QC RTC and the Rehabilitation Court are co-equal and coordinate courts. The doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court is an elementary principle in the administration of justice: no court can interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by the injunction.[53]

Petitioner cannot argue that the Rehabilitation Court, in issuing the injunction, merely aims to enforce the Stay Order that it

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[52] *Pryce Corporation v. China Banking Corporation*, G.R. No. 172302, February 18, 2014, 716 SCRA 207, 233.

[53] *Cabili v. Balindong*, A.M. No. RTJ-10-2225, September 6, 2011, 656 SCRA 747, 753. Citation omitted.

earlier issued. No law confers upon the Rehabilitation Court the authority to interfere with the order of a co-equal court. Only the CA or this Court, in a petition appropriately filed for the purpose, may halt the execution of the judgment of a regional trial court. Thus, we quote with approval the ruling of the CA, *viz*.:

> The rehabilitation court in issuing the said [December 28, 2007] order arrogated upon itself the function of a higher court and issued the same even if it does not have any jurisdiction to do so. Therefore, we accept the view that the rehabilitation court indeed gravely abused its discretion in issuing the assailed order, the annulment of said order is warranted in the foregoing circumstances.[54]

To recapitulate, we rule that the Order of the Rehabilitation Court reducing the penalties awarded to respondent is valid; and that the Order of the Rehabilitation Court preventing the implementation of the QC RTC Decision is invalid for being issued with grave abuse of discretion amounting to lack of jurisdiction.

WHEREFORE, the petition is **PARTLY GRANTED**. The November 4, 2011 Decision and February 24, 2012 Resolution of the Court of Appeals in the consolidated cases of CA-G.R. SP Nos. 102114 and 104413 are hereby **AFFIRMED** with **MODIFICATION** only insofar as the provision in the approved Amended Revised Rehabilitation Plan reducing the amount of penalty awarded to respondent is declared **VALID and BINDING**.

SO ORDERED.

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

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[54] *Rollo* (G.R. Nos. 200934-35), p. 75.

SECOND DIVISION

[G.R. No. 201293. June 19, 2019]

JOEL A. LARGO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST; A WARRANTLESS ARREST IS NOT A JURISDICTIONAL DEFECT AND ANY OBJECTION THERETO IS DEEMED WAIVED WHEN THE PERSON ARRESTED SUBMITS TO ARRAIGNMENT WITHOUT RAISING THIS OBJECTION THROUGH AN APPROPRIATE MOTION TO QUASH; CASE AT BAR.— A warrantless arrest is not a jurisdictional defect and any objection thereto is deemed waived when the person arrested submits to arraignment without raising this objection through an appropriate motion to quash. Here, petitioner voluntarily submitted to the jurisdiction of the trial court, underwent arraignment and actively participated during the trial. Before arraignment and even during the entire proceedings before, petitioner never objected to the manner by which he got arrested. His belated objection for the first time on appeal may no longer be entertained.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; IN DRUG RELATED CASES, THE STATE BEARS THE BURDEN NOT ONLY OF PROVING THE ELEMENTS OF THE OFFENSE BUT ALSO THE *CORPUS DELICTI* ITSELF.— In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself. The dangerous drug seized from the accused constitutes such *corpus delicti*. It is thus of utmost imperative that the prosecution be able to establish that the identity and integrity of the seized drug be duly preserved in order to support a verdict of conviction. Verily, not only should the prosecution prove the fact of possession. It must also prove that the substance subject of illegal possession is truly the substance

offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt.

3. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; CHAIN OF CUSTODY, DEFINED; FOUR LINKS COMPRISING THE CHAIN OF CUSTODY, ENUMERATED.—** The chain of custody is the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and their presentation in court for identification and destruction. This record of movements and custody shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when the transfer of custody was made in the course of the item's safekeeping and use in court as evidence, and its final disposition. ***People v. Gayoso*** enumerated the four links comprising the chain of custody: **First,** the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer; **Second,** the turnover of the dangerous drug seized by the apprehending officer to the investigating officer; **Third,** the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and **Fourth,** the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.

4. **ID.; ID.; ID.; ID.; THE FIRST LINK REFERS TO SEIZURE AND MARKING WHICH INCLUDES COMPLIANCE WITH PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED DANGEROUS DRUG; IN THE ABSENCE OF COMPETENT PROOF THAT THE REQUIRED INVENTORY AND PHOTOGRAPHY WERE COMPLIED WITH, WITHOUT ANY JUSTIFICATION, THE CHAIN OF CUSTODY IS CONSIDERED TO HAVE BEEN BREACHED.—** The first link refers to seizure and marking. "Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. Marking though should be done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they

are the same items which enter the chain of custody. x x x The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence. x x x The first link also includes compliance with physical inventory and photograph of the seized dangerous drug. This is done before the dangerous drug is sent to the crime laboratory for testing. x x x Hence, in the absence of competent proof that the required inventory and photography were complied with, sans any justification therefor, the chain of custody is considered to have been breached.

5. ID.; ID.; ID.; ID.; IN DRUG RELATED CASES, IT IS OF PARAMOUNT NECESSITY THAT THE FORENSIC CHEMIST TESTIFIES AS TO THE DETAILS PERTINENT TO THE HANDLING AND ANALYSIS OF THE DANGEROUS DRUG SUBMITTED FOR EXAMINATION; NOT ESTABLISHED IN CASE AT BAR.— The **third link** refers to the transfer of the dangerous drug from the investigating officer to the forensic chemist of the crime laboratory. x x x Finally, the **fourth link** refers to the turnover and submission of the dangerous drug from the forensic chemist to the court. In drug related cases, it is of paramount necessity that the forensic chemist testifies as to details pertinent to the handling and analysis of the dangerous drug submitted for examination *i.e.* when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in, as the case may be. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen. Here, forensic chemist P/Sr. Insp. Patriana did not testify on how he supposedly received, handled, examined and preserved the integrity of the dangerous drug from the time he received it until it left his custody. There was no evidence either showing who turned over the dangerous drug for the purpose of presenting it to the court as evidence. In ***People v. Dahil and Castro***, the Court acquitted the accused in view of the absence of the testimony of the forensic chemist on how she handled the dangerous drug submitted to her for laboratory examination, x x x Hence, like the first and the third links, the

final link in this case is considered to have been breached. Surely, the repeated lapses in the chain of custody rule here had cast serious doubts on the identity and the integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly deprived petitioner of his right to liberty.

6. ID.; ID.; ID.; ID.; THE IMPLEMENTING RULES AND REGULATIONS OF RA 9165 BEARS A SAVING CLAUSE ALLOWING LENIENCY WHENEVER COMPELLING REASONS EXIST THAT WOULD OTHERWISE WARRANT DEVIATION FROM THE ESTABLISHED PROTOCOL SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; NOT PRESENT IN CASE AT BAR.— In another vein, while the chain of custody should ideally be perfect and unbroken, it is almost always impossible to obtain such perfect and unbroken chain. In this light, the Implementing Rules and Regulations of RA 9165 bears a saving clause allowing leniency whenever compelling reasons exist that would otherwise warrant deviation from the established protocol so long as the integrity and evidentiary value of the seized items are properly preserved. Here, the arresting *barangay tanods* did not at all offer any explanation which would have excused their failure to comply with the chain of custody rule. They did not even acknowledge that they omitted the required marking, inventory and photograph. In sum, the condition for the saving clause to become operational was not fulfilled. For this reason, there is no occasion for the *proviso* "as long as the integrity and the evidentiary value of the seized items are properly preserved," to even come into play.

7. ID.; ID.; ID.; IN DANGEROUS DRUGS CASES, THE PROSECUTION CANNOT RELY ON THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY WHEN THERE IS A CLEAR SHOWING THAT THE APPREHENDING OFFICERS FAILED TO COMPLY MANY TIMES OVER THE REQUIREMENTS LAID DOWN IN SEC. 21 OF RA 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS; CASE AT BAR.— Be that as it may, the presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when

there is a clear showing that the apprehending officers failed to comply many times over with the requirements laid down in Section 21 of RA 6195 and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused. Taken together, the lapses in the procedure laid out in Section 21 of RA 9165 and the Implementing Rules and Regulations and the suspicious handling of the seized drug here had impeached its integrity and evidentiary value. As the dangerous drug presented before the court constitutes the *corpus delicti* of the offense charged, it must be proven with moral certainty that it is the same item seized from Largo during the roving patrol conducted by the *barangay tanods* at the Carbon Public Market. Since the prosecution miserably failed to discharge this burden, petitioner is entitled to a verdict of acquittal on ground of reasonable doubt.

APPEARANCES OF COUNSEL

P.B. Labrado Quinto & Partners Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

THE CASE

This petition assails the following dispositions of the Court of Appeals in CA-G.R. CEB-CR No. 00940[1] entitled "*People of the Philippines v. Joel A. Largo*":

1. Decision[2] dated November 30, 2010 affirming petitioner's conviction in Criminal Case No. CBU-75585 for violation of Section 11, Article II of Republic Act 9165; and

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[1] Penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justice Edgardo L. Delos Santos and Associate Justice Eduardo B. Peralta, Jr.

[2] *Rollo*, pp. 39-47.

2. Resolution[3] dated February 29, 2012 denying petitioner's motion for reconsideration.

THE PROCEEDINGS BEFORE THE TRIAL COURT

The Charge

In Criminal Case No. CBU-75585, petitioner Joel A. Largo was charged with violation of Section 11, Article II of Republic Act 9165 (RA 9165) under the following Information, *viz*:

> That on or about the 28th day of November 2005, at 1:00 o'clock in the afternoon in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, without authority of law, with deliberate intent, did then and there have in his possession, use and control one (1) heat-sealed transparent plastic packet containing 0.05 gram of white crystalline substance locally known as "*Shabu*" containing methamphetamine hydrochloride, a dangerous drug.
> CONTRARY TO LAW.[4]

On arraignment, petitioner pleaded "not guilty". Trial ensued.

Barangay Tanods Vicente Bosque and Venancio Catalan of Brgy. Ermita, Cebu City testified for the prosecution. On the other hand, appellant Joel Largo and Celia Dalugdog[*] testified for the defense.

The Prosecution's Evidence

On November 28, 2005, around 1 o'clock in the afternoon, *Barangay Tanods* Bosque, Catalan, and three other *barangay tanods* were patrolling the Carbon Public Market in Cebu City when a cargo handler informed them that people at the second floor of Unit 3 were engaged in a pot session.[5] When they

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[3] *Id*. at 63-64. Penned by Associate Justice Edgardo L. Delos Santos and concurred in by Associate Justice Eduardo B. Peralta, Jr. and Associate Justice Nina G. Antonio Valenzuela.

[4] Record, p. 1.

[*] "Dalogdog" in some parts of *Rollo* and Records.

[5] Joint-Affidavit of Arresting Officers, Original Record, p. 11.

arrived in the area, people who saw them scampered away. One of them ran toward Barangay Tanod Bosque. It was petitioner Joel A. Largo. When the latter realized he was heading toward a barangay tanod, he backed off. Then he flicked away a plastic sachet containing white crystalline substance. Barangay Tanod Bosque arrested him and retrieved the plastic sachet from the ground. He held on to the plastic sachet until they reached the police station.[6] There, he turned it over to Police Investigator SPO1 Romeo Abellana who marked it "JLA".

Barangay Tanod Catalan brought the plastic sachet to the PNP Crime Laboratory for examination. P/Sr. Insp. David Alexander Patriana who examined the contents of the plastic sachet confirmed that they tested positive for methamphetamine hydrochloride or "*shabu*", a dangerous drug.[7]

The prosecution presented in evidence the letter request for laboratory examination[8] and Chemistry Report No. D-1806-2005.[9]

The Defense's Evidence

Petitioner testified that on November 27, 2005 he was waiting for a jeepney ride in front of the University of San Jose Recolletos Bldg. when barangay tanods of Ermita, Cebu City accosted and picked him up. When he asked why he was being accosted, the barangay tanods replied that Barangay Captain Imok Rupinta of Ermita, Cebu City wanted to talk to him. They brought him to the barangay hall where he got detained. He was neither investigated nor informed of his constitutional rights. Worse, the supposed Barangay Captain Rupinta never arrived.

Around 8 o'clock in the evening of the same day, a certain Erik Larrubis *y* Ripe was also brought in and detained in the same cell. Like him, Erik did not know why the *barangay tanods* arrested and jailed him.

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[6] TSN of Vicente Bosque, December 5, 2006, pp. 8-14.

[7] Chemistry Report, November 29, 2005. Original Record, p. 102.

[8] Record, p. 101.

[9] *Id*. at 102.

On the following day, Virgilio Cartilla *y* Carteciano of Mantalongon, Dalaguete, Cebu was also brought in and detained. All three of them were clueless why they were being detained in the same cell.

On November 28, 2005, around 2:30 in the afternoon, they were brought to the Police Station 5, M.C. Briones St., Cebu City supposedly for further investigation but the same did not take place.

In the afternoon of November 29, 2005, they were taken to the Office of the City Prosecutor of Capitol, Cebu City for inquest proceedings. Through a blotter report,[10] he came to know that they had been separately charged with violation of Section 11 of R.A. 9165 or illegal possession of dangerous drugs.[11]

Celia Dalugdog, the mother-in-law of petitioner's brother, testified that on November 27, 2005, petitioner asked permission to go home to Basak, Cebu City. He wanted to bring home milk for his child. On the following day, she learned of petitioner's arrest so she visited him in his detention cell.[12]

The defense presented the following documentary evidence: Resolution of Prosecutor Agan recommending the dismissal of the case;[13] Affidavit of Celia Dalugdog;[14] Certification of Police Blotter regarding the arrest of Joel Largo;[15] and Counter-Affidavit of Joel Largo.[16]

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[10] *Id*. at 18.

[11] Counter-Affidavit of Joel A. Largo, Original Record, pp. 124-127.

[12] Affidavit of Cecilia Dalugdog, Original Record, p. 123.

[13] Record, pp. 4-9.

[14] *Id.* at 123.

[15] *Id*. at 18.

[16] *Id.* at 124-127.

The Trial Court's Decision

By *Judgment* dated April 4, 2008,[17] the trial court found petitioner guilty as charged and sentenced him to twelve years and one day to fifteen years and fine of ₱350,000.00, *viz*:

> WHEREFORE, the guilt of the accused duly proven beyond reasonable doubt, the Court sentences the accused to suffer an imprisonment ranging from twelve (12) years and one (1) day to fifteen (15) years and to pay Php 350,000.00 as fine.

The trial court gave full credence to the testimonies of Barangay Tanods Vicente Bosque and Venancio Catalan and held that although the chain-of-custody rule was not strictly observed, the integrity of the confiscated sachet of *shabu* was duly preserved, and its evidentiary value, remained intact.

Petitioner moved for reconsideration which the trial court denied.

The Appeal

On appeal, petitioner faulted the trial court for finding him guilty of the offense charged despite the following alleged infirmities: (1) the prosecution dismally failed to establish the identity and chain of custody of the *corpus delicti*; (2) his warrantless arrest was invalid because it was not proved that he was caught *in flagrante delicto*; and (3) the testimony of Brgy. Tanod Bosque that on the same day petitioner was arrested, the former has altogether three successive warrantless arrests in Carbon Public Market with exactly 30-minute intervals.

On the other hand, the Office of the Solicitor General (OSG) through Assistant Solicitor General Roman G. Del Rosario and Associate Solicitor Ma. Felina C.B. Yu countered petitioner's warrantless arrest was valid in view of the urgent need for the arresting officers to promptly apprehend people engaged in illegal drug trade and illegal drug use. Consequently, the plastic sachet of dangerous drugs obtained in the course of the arrest was also admissible in evidence. More so considering that the defense

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[17] *Rollo*, pp. 66-69.

did not present any evidence to show that the law enforcers were impelled by any ill motive to falsely implicate petitioner of illegal possession of dangerous drug.

The Court of Appeals' Ruling

By Decision dated November 30, 2010, the Court of Appeals affirmed. It also denied petitioner's motion for reconsideration through Resolution dated February 29, 2012.

The Present Petition

Petitioner now implores the Court to exercise its discretionary appellate jurisdiction to review and reverse the assailed dispositions of the Court of Appeals.

He faults the Court of Appeals for ***first***, admitting in evidence the confiscated dangerous drug despite the fact that it was obtained incidental to his invalid warrantless arrest and ***second***, for disregarding the blatant breach of the chain of custody rule.

In refutation, the OSG essentially reiterate its arguments before the Court of Appeals.

Issues

1. Was petitioner's warrantless arrest valid?
2. Was the chain of custody rule duly complied with?

Ruling

On the first issue, we cannot sustain petitioner's challenge against his warrantless arrest and the consequent seizure of the dangerous drug. A warrantless arrest is not a jurisdictional defect and any objection thereto is deemed waived when the person arrested submits to arraignment without raising this objection through an appropriate motion to quash.[18]

Here, petitioner voluntarily submitted to the jurisdiction of the trial court, underwent arraignment and actively participated during the trial. Before arraignment and even during the entire

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[18] *Zalameda v. People*, 614 Phil. 710, 729 (2009).

proceedings before, petitioner never objected to the manner by which he got arrested. His belated objection for the first time on appeal may no longer be entertained.

We now proceed to the second issue: was the chain of custody rule complied with?

In drug related cases, the State bears the burden not only of proving the elements of the offense but also the *corpus delicti* itself.[19] The dangerous drug seized from the accused constitutes such *corpus delicti*. It is thus of utmost imperative that the prosecution be able to establish that the identity and integrity of the seized drug be duly preserved in order to support a verdict of conviction.[20] Verily, not only should the prosecution prove the fact of possession. It must also prove that the substance subject of illegal possession is truly the substance offered in court as *corpus delicti* with the same unshakeable accuracy as that required to sustain a finding of guilt.

The Information here alleged that the offense was committed on November 28, 2005. The governing law, therefore, is RA 9165, Section 21 (1), *viz*:

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

Section 21 (a) of the Implementing Rules and Regulations of RA 9165 complements the foregoing provision, *viz*:

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[19] *People v. Bautista*, 682 Phil. 487, 499-500 (2012).

[20] *Calahi v. People*, G.R. No. 195043, November 20, 2017, *citing People v. Casacop*, 778 Phil. 369, 376 (2016) and *Zafra v. People*, 686 Phil. 1095, 1105-1106 (2012).

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

x x x x x x x x x

The chain of custody is the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage from the time of seizure/confiscation to receipt in the forensic laboratory, to safekeeping and their presentation in court for identification and destruction. This record of movements and custody shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when the transfer of custody was made in the course of the item's safekeeping and use in court as evidence, and its final disposition.[21]

People v. Gayoso[22] enumerated the four links comprising the chain of custody:

> **First,** the seizure and marking, if practicable, of the dangerous drug recovered from the accused by the apprehending officer;

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[21] *People v. Diputado*, G.R. No. 213922, July 5, 2017, 830 SCRA 172, 184 (2017).

[22] G.R. No. 206590, March 27, 2017, 821 SCRA 516, 529 (2017).

Second, the turnover of the dangerous drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the dangerous drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked dangerous drug seized from the forensic chemist to the court.[23]

We focus on the first, third and fourth links.

The first link refers to seizure and marking. "Marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item. Marking after seizure is the starting point in the custodial link. It is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference.[24] Marking though should be done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody.[25]

Here, Barangay Tanod Bosque admitted he did not mark the dangerous drug which he retrieved from the second floor of the Carbon Market, thus:

Q: Since you stated earlier that you were the one who picked up that plastic pack containing white substance after it was flicked by that person who was in possession of that plastic pack of white substance from the scene up to the police station?
A: Me, ma'am.

Q: Upon arrival at the police station, Mr. Witness, what did you do with the plastic pack which you have picked up from the ground?

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[23] *People v. Hementiza*, 807 Phil. 1017, 1030 (2017).

[24] *People v. Ismael*, 806 Phil. 21, 31 (2017).

[25] *People v. Ramirez and Lachica*, G.R. No. 225690, January 17, 2018, citing *People v. Sanchez*, and 590 Phil. 214, 241 (2008).

A: I turned over the evidence to the Police Investigator at the Carbon Police Station.

Q: After you turned over the item to the Investigator, do you know what the Investigator did to the plastic pack of white substance?
A: A letter request was prepared.

Q: After that letter request was prepared, what happened?
A: The same, together with the evidence was brought to the PNP Crime Laboratory at Gorordo Avenue.[26]

x x x x x x x x x

Q: When you picked up the white substance, you did not do the marking right there at the second floor of Unit 3 Carbon Market?
A: No, sir.[27]

The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.[28]

Here, the failure of Barangay Tanod Bosque to mark the dangerous drug engendered serious doubts on whether the sachet of *shabu* which petitioner allegedly flicked in the air and which Barangay Tanod Bosque retrieved from the ground was indeed the very same item indicated in the Chemistry Report.

In ***People v. Diputado***,[29] the Court acquitted the accused when the prosecution failed to establish an unbroken chain of custody because the seized drug and buy bust money were not marked at the place where the accused was arrested. The Court noted that from the time of seizure up until the dangerous drug was brought to the office of the arresting officers, alteration,

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[26] TSN, December 5, 2006, pp. 11-12.

[27] TSN, March 20, 2007, p. 13.

[28] *Supra* note 21, pp. 184-185.

[29] G.R. No. 213922, July 5, 2017, 830 SCRA 172, 188.

substitution or contamination of the seized item could have happened.

The first link also includes compliance with physical inventory and photograph of the seized dangerous drug. This is done before the dangerous drug is sent to the crime laboratory for testing.

Here, the testimonies of Barangay Tanods Bosque and Catalan did not at all mention that the required inventory and photograph were complied with. Also, the prosecution's offer of documentary evidence did not bear these twin documents.

Hence, in the absence of competent proof that the required inventory and photography were complied with, sans any justification therefor, the chain of custody is considered to have been breached.

In ***People v. Alagarme***[30] and ***People v. Arposeple***[31] the Court ruled that the failure of the arresting officers to prepare the required inventory and photograph of the seized dangerous drug militated against the guilt of an accused. For then the integrity and evidentiary value of the *corpus delicti* cannot be deemed to have been preserved.

In fine, the **first link** had been incipiently broken not once but thrice in view of the omission to comply with ***first,*** the required marking, ***second,*** the inventory and ***third,*** the photograph of the confiscated dangerous drug.

The **third link** refers to the transfer of the dangerous drug from the investigating officer to the forensic chemist of the crime laboratory. Here, Barangay Tanod Catalan testified that he was the one who brought the dangerous drug to the crime laboratory after SPO1 Abellana, the investigating officer prepared the letter request for examination of the specimen.[32] SPO1 Abellana, on the other hand, was not presented to testify how

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[30] 754 Phil. 449, 457 (2015).

[31] G.R. No. 205787, November 22, 2017.

[32] *Id.*

he handled the dangerous drug from the time it was turned over to him by the arresting officers up to the time he endorsed the same for chemical examination.

In ***People v. Carlit,***[33] the Court acquitted the accused when the investigating officer who was in custody of the dangerous drug before the same was sent to the crime laboratory for examination failed to testify on how he handled the drug after it was placed in his custody until it was brought to the forensic chemist. It was emphasized that "for during the interim time - from when the specimen was placed under his custody until the time it was brought to court - the threat of tampering, alteration, or substitution of the *corpus delicti* still existed."

In sum, the third link here appears to have been as broken as the first link.

Finally, the **fourth link** refers to the turnover and submission of the dangerous drug from the forensic chemist to the court.[34] In drug related cases, it is of paramount necessity that the forensic chemist testifies as to details pertinent to the handling and analysis of the dangerous drug submitted for examination *i.e.* when and from whom the dangerous drug was received; what identifying labels or other things accompanied it; description of the specimen; and the container it was in, as the case may be. Further, the forensic chemist must also identify the name and method of analysis used in determining the chemical composition of the subject specimen.[35]

Here, forensic chemist P/Sr. Insp. Patriana did not testify on how he supposedly received, handled, examined and preserved the integrity of the dangerous drug from the time he received it until it left his custody. There was no evidence either showing

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[33] G.R. No. 227309, August 16, 2017.

[34] *Supra* note 23.

[35] Board Regulation No. 1, Series of 2002: Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment.

who turned over the dangerous drug for the purpose of presenting it to the court as evidence.[36]

In ***People v. Dahil and Castro***,[37] the Court acquitted the accused in view of the absence of the testimony of the forensic chemist on how she handled the dangerous drug submitted to her for laboratory examination, *viz*:

> The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. The forensic chemist should have personally testified on the safekeeping of the drugs but the parties resorted to a general stipulation of her testimony. Although several subpoena were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.

Hence, like the first and the third links, the final link in this case is considered to have been breached.

Surely, the repeated lapses in the chain of custody rule here had cast serious doubts on the identity and the integrity of the *corpus delicti*. The metaphorical chain did not link at all, albeit it unjustly deprived petitioner of his right to liberty.

In another vein, while the chain of custody should ideally be perfect and unbroken, it is almost always impossible to obtain such perfect and unbroken chain.[38] In this light, the Implementing Rules and Regulations of RA 9165 bears a saving clause allowing leniency whenever compelling reasons exist that would otherwise warrant deviation from the established protocol so long as the

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[36] Record, p. 50.

[37] 750 Phil. 212, 237 (2015).

[38] *People v. Adrid*, 705 Phil. 654, 672 (2013).

integrity and evidentiary value of the seized items are properly preserved.[39]

Here, the arresting *barangay tanods* did not at all offer any explanation which would have excused their failure to comply with the chain of custody rule. They did not even acknowledge that they omitted the required marking, inventory and photograph. In sum, the condition for the saving clause to become operational was not fulfilled. For this reason, there is no occasion for the proviso "as long as the integrity and the evidentiary value of the seized items are properly preserved," to even come into play.

For perspective, in cases involving illegal possession of dangerous drug, even for the most miniscule amount, imprisonment of at least twelve years and one day awaits violators. It is thus of utmost importance that the safeguards against abuses of power in the conduct of drug-related arrests be strictly implemented. The purpose is to eradicate wrongful arrests and, worse, convictions. The pernicious practice of switching, planting or contamination of the *corpus delicti* under the regime of RA 6425, otherwise known as the "Dangerous Drugs Act of 1972," could again be resurrected if the lawful requirements were otherwise lightly brushed aside.[40]

Be that as it may, the presumption of regularity in the performance of official duty arises only when the records do not indicate any irregularity or flaw in the performance of official duty. Applied to dangerous drugs cases, the prosecution cannot rely on the presumption when there is a clear showing that the apprehending officers failed to comply many times over with the requirements laid down in Section 21 of RA 6195 and its Implementing Rules and Regulations. In any case, the presumption of regularity cannot be stronger than the presumption of innocence in favor of the accused.[41]

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[39] See Section 21 (a), Article II of the IRR of RA 9165.

[40] *People v. Luna*, G.R. No. 219164, March 21, 2018.

[41] *Id.*

Taken together, the lapses in the procedure laid out in Section 21 of RA 9165 and the Implementing Rules and Regulations and the suspicious handling of the seized drug here had impeached its integrity and evidentiary value. As the dangerous drug presented before the court constitutes the *corpus delicti* of the offense charged, it must be proven with moral certainty that it is the same item seized from Largo during the roving patrol conducted by the *barangay tanods* at the Carbon Public Market. Since the prosecution miserably failed to discharge this burden, petitioner is entitled to a verdict of acquittal on ground of reasonable doubt.

ACCORDINGLY, the petition is **GRANTED** and the Decision dated November 30, 2010 in CA-G.R. CEB-CR No. 00940, **REVERSED** and **SET ASIDE**.

Joel A. Largo is **ACQUITTED** of violation of Section 11, Article II of Republic Act 9165. Let an entry of final judgment be issued immediately.

The Court **DIRECTS** the Director of the Bureau of Corrections, Muntinlupa City to cause the immediate release of Joel A. Largo from custody unless he is being held for some other lawful cause, and to submit his report on the action taken within five days from notice.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 205286. June 19, 2019]

BDO LEASING & FINANCE, INC. (formerly PCI Leasing & Finance, Inc.), *petitioner, vs.* **GREAT DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES, INC., and SPOUSES KIDDY LIM CHAO and EMILY ROSE GO KO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PLEADINGS; CERTIFICATION AGAINST FORUM SHOPPING; AN OMISSION IN THE CERTIFICATE OF NON-FORUM SHOPPING ABOUT ANY EVENT THAT WOULD NOT CONSTITUTE *RES JUDICATA* AND *LITIS PENDENTIA* IS NOT FATAL AS TO MERIT THE DISMISSAL AND NULLIFICATION OF THE ENTIRE PROCEEDINGS.— According to Section 5, Rule 7 of the Rules of Court, the plaintiff or principal party shall certify in a sworn certification: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. x x x As correctly invoked by petitioner BDO, jurisprudence holds that "an omission in the certificate of non-forum shopping about any event that would not constitute *res judicata* and *litis pendencia* is not fatal as to merit the dismissal and nullification of the entire proceedings, given that the evils sought to be prevented by the said certification are not present."

2. MERCANTILE LAW; CORPORATIONS; A CHANGE IN THE CORPORATE NAME DOES NOT MAKE A NEW CORPORATION, AND WHETHER AFFECTED BY SPECIAL

ACT OR UNDER A GENERAL LAW, HAS NO EFFECT ON THE IDENTITY OF THE CORPORATION, OR ON ITS PROPERTY, RIGHTS, OR LIABILITIES; APPLICATION IN CASE AT BAR.— The Court has held that [t]he corporation, upon such change in its name, **is in no sense a new corporation**, nor the successor of the original corporation. **It is the same corporation with a different name, and its character is in no respect changed. A change in the corporate name does not make a new corporation**, and whether effected by special act or under a general law, **has no effect on the identity of the corporation, or on its property, rights, or *liabilities***. The corporation continues, as before, responsible in its new name for all debts or other liabilities which it had previously contracted or incurred. Hence, with petitioner BDO's change of name from "PCI Leasing and Finance, Inc." to "BDO Leasing and Finance, Inc." having no effect on the identity of the corporation, on its property, rights, or liabilities, with its character remaining very much intact, the Board Resolution and Special Power of Attorney authorizing Rallos to institute the *Certiorari* Petition did not lose any binding effect whatsoever.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A PETITION FOR *CERTIORARI* MUST BE ACCOMPANIED WITH COPIES OF ALL PLEADINGS AND DOCUMENTS RELEVANT AND PERTINENT THERETO; AS THE EXACT NATURE OF THE PLEADINGS AND PARTS OF THE CASE RECORD WHICH MUST ACCOMPANY A PETITION IS NOT SPECIFIED, MUCH DISCRETION IS LEFT TO THE APPELLATE COURT TO DETERMINE THE NECESSITY FOR COPIES OF PLEADING AND OTHER DOCUMENTS; GUIDEPOSTS TO FOLLOW, CITED.— Section 1, Rule 65 of the Rules of Court states that a petition for *certiorari* must be accompanied with copies of all pleadings and documents relevant and pertinent thereto. x x x As held by the court in *Air Philippines Corp. v. Zamora*, while it is a general rule that a petition lacking copies of essential pleadings and portions of the case record may be dismissed, such rule, however, is not petrified. As the exact nature of the pleadings and parts of the case record which must accompany a petition is not specified, much discretion is left to the appellate court to determine the necessity for copies of pleading and other documents. There are, however, guideposts it must follow.

> According to the aforementioned case, x x x not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition. x x x *Air Philippines Corp. v. Zamora* likewise holds that x x x even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also [be] found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioner.

Ana Marie V. Pagsibigan for respondent Great Domestic Insurance Corporation.

Felino C. Torrente, Jr. for Sps. Kiddy Lim Chao and Emily Rose Go Ko Lim Chao.

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 filed by petitioner BDO Leasing & Finance, Inc. (petitioner BDO), formerly known as PCI Leasing and Finance, Inc., assailing the Resolution[2] dated February 10, 2011 (first assailed Resolution) and Resolution[3] dated December 13, 2012 (second assailed

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[1] *Rollo*, pp. 7-45, including attachments.

[2] *Id.* at 46-50. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Pampio A. Abarintos and Socorro B. Inting concurring.

[3] *Id.* at 51. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Gabriel T. Ingles and Socorro B. Inting concurring.

Resolution) (collectively, the assailed Resolutions) of the Court of Appeals - Cebu City Special 18th Division (CA Special 18th Division) in CA-G.R. SP. No. 04753.

The Facts and Antecedent Proceedings

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

On November 27, 1998, respondents spouses Kiddy Lim Chao and Emily Rose Go Ko (respondents Sps. Chao) obtained from petitioner BDO loans evidenced by two promissory notes for the amounts of ₱5,900,000.00 and ₱3,288,570.00. Both loans were payable starting in December 1998 in 60 equal monthly amortization payments with an interest rate of 22.5% per annum. As security for the payment of these loans, respondents Sps. Chao executed in favor of petitioner BDO a Chattel Mortgage covering 40 motor vehicles and personal properties.

Starting August 1999 until December 1999, respondents Sps. Chao failed to fully pay their monthly amortization payments. As shown in a Statement of Account as of January 2000, respondents Sps. Chao's account amounted to ₱10,565,165.70. Despite demands made, respondents Sps. Chao failed to settle their obligation. Hence, on January 18, 2000, a Complaint for Recovery of Possession of Personal Property, with an application for the issuance of a writ of *replevin* (Complaint) was filed by petitioner BDO before the Regional Trial Court of Cebu City, Branch 21 (RTC) against respondents Sps. Chao. The case was docketed as Civil Case No. CEB-24769.

On November 13, 2000, the RTC issued an Order allowing the issuance of a writ of *replevin* on the properties of respondents Sps. Chao upon the posting of a bond by petitioner BDO in the amount of ₱10,000,000.00. On November 27, 2000, petitioner BDO posted the said bond and the writ of *replevin* was issued against respondents Sps. Chao. On November 29, 2000, respondents Sps. Chao posted a counter-*replevin* bond (counter-bond) also in the amount of ₱10,000,000.00 issued by respondent Great Domestic Insurance Company of the Philippines, Inc. (respondent Great Domestic).

On January 9, 2004, petitioner BDO filed a motion to declare respondents Sps. Chao in default for failing to file an answer within the allowable period. The RTC granted this motion and declared respondents Sps. Chao in default, allowing the *ex parte* presentation of petitioner BDO's evidence.

Trial then ensued. On October 18, 2004, the RTC rendered its Decision[4] granting the Complaint. The dispositive portion of the said Decision reads:

> Foregoing considered, judgment is hereby rendered ordering the defendants to deliver to plaintiff the properties subject of the Chattel Mortgage as enumerated in paragraph 4 of the Complaint or in the alternative, to pay jointly and severally the latter the sum of Php10,565,165.70 representing the principal amount due if delivery cannot be made.
>
> Defendants are further ordered to pay plaintiff, attorney's fees equivalent to 10% of the amount due and cost of suit.
>
> SO ORDERED.[5]

On appeal before the CA Special 20th Division, the latter rendered its Decision[6] dated December 21, 2006 denying respondents Sps. Chao's appeal for lack of merit. The appeal was docketed as CA-G.R. CV No. 00551.

The case was further appealed before the Court's First Division in G.R. No. 178005. The appeal was denied by the Court in its Resolution[7] dated September 3, 2007. Acting on respondents Sps. Chao's Motion for Reconsideration, the Court denied the latter in its Resolution[8] dated October 10, 2007. In

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[4] *Id*. at 53-58. Penned by Acting Presiding Judge Gabriel T. Ingles.

[5] *Id*. at 58.

[6] *Id*. at 59-68. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Isaias P. Dicdican and Agustin S. Dizon concurring.

[7] *Id.* at 70-71. Issued by Enriqueta Esguerra-Vidal, Clerk of Court of the Court's First Division.

[8] *Id*. at 72. Issued by Enriqueta Esguerra-Vidal, Clerk of Court of the Court's First Division.

an Entry of Judgment dated May 6, 2008, it was indicated that on February 4, 2008, the Court's Resolution[9] dated September 3, 2007 in G.R. No. 178005 has attained finality.

Hence, on July 16, 2008, petitioner BDO filed a Motion for Writ of Execution before the RTC, which was granted by the latter in its Order dated July 18, 2008. Pursuant to the said Order, the Clerk of Court and Ex-Officio Sheriff of the RTC issued a writ of execution[10] on August 5, 2008. The Sheriff's Progress Report[11] dated March 2, 2009 indicated that the writ of execution was not satisfied.

Hence, on April 20, 2009, petitioner BDO filed a Motion to Order Sheriff to Serve Writ of Execution on the Counter Bond.[12] This Motion was opposed by respondent Great Domestic in its Opposition[13] dated May 6, 2009.

In its Order[14] dated June 24, 2009, the RTC granted petitioner BDO's Motion and ordered the serving of the writ of execution. Respondent Great Domestic filed a Motion for Reconsideration of the said Order.

On August 26, 2009, the RTC rendered an Order[15] denying respondent Great Domestic's Motion for Reconsideration. However, the RTC clarified its earlier Order and stated that the liability of respondent Great Domestic is only ₱5,000,000.00. Citing Section 20, Rule 57 of the Rules of Court, the RTC held that the amount of the counter-bond is set at double the value of the property stated in the affidavit as the excess or difference will have to answer for claims for damages. In the instant case,

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[9] *Id.* at 73-75.

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

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

[12] *Id*. at 94-102.

[13] *Id.* at 103-113.

[14] *Id.* at 114-115. Issued by Presiding Judge Eric F. Menchavez.

[15] *Id*. at 116.

the RTC found that the damages could not be recovered by petitioner BDO as the same was never proven. Thus, the award of damages was not included in the judgment of the RTC.

Petitioner BDO filed its Motion for Reconsideration of the RTC's Order dated August 26, 2009, which was denied by the RTC in its Order[16] dated October 27, 2009.

Feeling aggrieved, on January 7, 2010, petitioner BDO, still as PCI Leasing & Finance, Inc., filed a Petition for *Certiorari*[17] under Rule 65 of the Rules of Court (*Certiorari* Petition) before the CA Special 18th Division, arguing that the RTC committed grave abuse of discretion in finding that respondent Great Domestic's liability on the counter-bond is only ₱5,000,000.00. The case was docketed as CA-G.R. SP. No. 04753.

After the CA Special 18th Division issued its Resolution[18] dated February 4, 2010 requiring respondents Great Domestic and Sps. Chao to submit their respective Comments to the *Certiorari* Petition, petitioner BDO was then ordered to file its Reply to the aforesaid Comments.

Respondent Great Domestic filed its Comment[19] dated February 26, 2010, while respondents Sps. Chao filed their Comment with Motion to Dismiss[20] dated February 23, 2010. Subsequently, on March 15, 2010, respondent Great Domestic filed a Motion for Leave of Court to Admit Attached Motion to Dismiss[21] dated March 11, 2010. Petitioner BDO failed to file any Reply.

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[16] *Id*. at 117.

[17] *Id*. at 118-144.

[18] *Id*. at 221. Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Edgardo L. delos Santos and Socorro B. Inting concurring.

[19] *Id.* at 234-243.

[20] *Id.* at 222-233.

[21] *Id*. at 244-258.

The Ruling of the CA Special 18th Division

In the first assailed Resolution, the CA Special 18th Division dismissed the *Certiorari* Petition outright solely on procedural grounds.

First, in dismissing the *Certiorari* Petition outright, the CA Special 18th Division held that petitioner BDO failed to satisfy the rule on filing the proper certification against forum shopping, as the latter failed to disclose and mention the pendency of another case involving petitioner BDO and respondents Sps. Chao, *i.e.*, Civil Case No. CEB-24675 pending before the RTC, Branch 51 for nullification of chattel mortgage with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction.

Second, the CA Special 18th Division found that petitioner BDO failed to attach vital pleadings and documents needed in deciding whether to grant the *Certiorari* Petition. Important pleadings and documents such as the Complaint, writ of *replevin*, writ of execution, and other issuances and orders of the RTC were not attached to the *Certiorari* Petition. This was in violation of Rule 65, Section 1, Paragraph 2 of the Rules of Court.

Lastly, the CA Special 18th Division held that petitioner BDO had no legal capacity to file the *Certiorari* Petition, considering that when PCI Leasing and Finance, Inc. changed its name to BDO Leasing and Finance, Inc. on June 13, 2008, petitioner BDO should have sued under its new name "in order to avoid confusion and open door to frauds and evasions and difficulties of administration and supervision."[22] The CA Special 18th Division further held that:

> the change of corporate name x x x renders ineffective the Board Resolution and Special Power of Attorney it issued long before the change of name took place authorizing its First Vice-President Mr. Vicente C. Rallos to initiate appropriate court action in its behalf, thus, the verification and certification against forum shopping Mr. Rallos has signed in connection with the instant case has no binding

[22] *Id*. at 49.

and legal effect. After June 13, 2008, the said documents can no longer vest or confer any authority upon Mr. Rallos to verify and certify any pleading of PCI [L]easing and [F]inance, Inc. After said date, the board of directors of [petitioner] BDO [L]easing and Finance, Inc. should have issued a new resolution and the instant petition filed in the name of [petitioner] BDO [L]easing and Finance, Incorporated.[23]

Petitioner BDO filed its Motion for Reconsideration[24] dated March 3, 2011, which was denied by the CA Special 18th Division in the second assailed Resolution.

Hence, the instant Petition.

Respondent Great Domestic filed its Comment[25] to the Petition on September 6, 2013, while respondents Sps. Chao filed their Comment[26] on September 16, 2013. Petitioner BDO filed its Consolidated Reply[27] on November 14, 2014.

Issues

The instant Petition identifies three issues for the Court's disposition: (1) petitioner BDO's failure to disclose Civil Case No. CEB-24675 in the Verification/Certification accompanying the *Certiorari* Petition does not merit the outright dismissal of the said Petition; (2) the change of name of petitioner BDO from PCI Leasing and Finance, Inc. to BDO Leasing and Finance, Inc. did not affect its capacity to sue and be sued, and the authority of its authorized signatory, Vicente C. Rallos (Rallos), to file the *Certiorari* Petition; and (3) the *Certiorari* Petition cannot be dismissed outright because of the failure of petitioner BDO to attach certain documents which are not even specifically required by the Rules of Court.

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[23] *Id*.

[24] *Id*. at 260-278.

[25] *Id*. at 298-305.

[26] *Id*. at 312-319.

[27] *Id*. at 343-353.

Petitioner BDO's sole prayer is for the Court to reverse and set aside the CA Special 18th Division's assailed Resolutions and that the case be remanded back to the CA Special 18th Division for decision on the merits.

The Court's Ruling

I. Defect in petitioner BDO's Verification/Certification

According to Section 5, Rule 7 of the Rules of Court, the plaintiff or principal party shall certify in a sworn certification: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

While it is not disputed that petitioner BDO failed to disclose the status of Civil Case No. CEB-24675 in its Verification/ Certification, it must be stressed that, despite involving the same parties, the aforesaid case and the instant case involve two completely different issues. On the one hand, in Civil Case No. CEB-24675, the issue was on the validity of the chattel mortgage executed by petitioner BDO and respondents Sps. Chao that accompanied the loan transactions entered into by the parties. On the other hand, in the *Certiorari* Petition, the matter in focus is the execution upon the counter-bond filed in lieu of the final and executory Decision of the RTC in Civil Case No. CEB-24769. Either decision will not have any bearing as to the other.

In fact, in the CA Special 20th Division's Decision in CA-G.R. CV No. 00551, which was affirmed by the Court's First Division in G.R. No. 178005, it was unequivocally held by the CA Special 20th Division that the RTC was correct when it

stated that there was an "absence of identity of causes of action and reliefs being sought between this case [referring to the instant case] and Civil Case [N]o. CEB-24675."[28]

As correctly invoked by petitioner BDO, jurisprudence holds that "an omission in the certificate of non-forum shopping about any event that would not constitute *res judicata* and *litis pendencia* is not fatal as to merit the dismissal and nullification of the entire proceedings, given that the evils sought to be prevented by the said certification are not present."[29]

Therefore, on this issue, the CA Special 18th Division committed an error.

II. Petitioner BDO's change of name from "PCI Leasing and Finance, Inc." to "BDO Leasing and Finance, Inc."

Another reason invoked by the CA Special 18th Division for dismissing outright the *Certiorari* Petition was petitioner BDO's lack of any "legal capacity to initiate or file the instant petition"[30] on account of the change of name of petitioner BDO from "PCI Leasing and Finance, Inc." to "BDO Leasing and Finance, Inc." The CA Special 18th Division opined that since the Board Resolution and Special Power of Attorney issued by petitioner BDO authorizing Rallos to initiate the appropriate court action on behalf of the company was still under the name of "PCI Leasing and Finance, Inc.," and considering that petitioner BDO has already changed its name, the aforesaid Board Resolution and Special Power of Attorney have no more binding effect.

The CA Special 18th Division's position is again incorrect.

The Court has held that

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[28] *Id*. at 67.

[29] *Bondagjy v. Artadi*, 583 Phil. 629, 643 (2008); underscoring supplied.

[30] *Rollo*, p. 49.

[t]he corporation, upon such change in its name, **is in no sense a new corporation**, nor the successor of the original corporation. **It is the same corporation with a different name, and its character is in no respect changed. A change in the corporate name does not make a new corporation**, and whether effected by special act or under a general law, **has no effect on the identity of the corporation, or on its property, rights, or *liabilities***. The corporation continues, as before, responsible in its new name for all debts or other liabilities which it had previously contracted or incurred.[31]

Hence, with petitioner BDO's change of name from "PCI Leasing and Finance, Inc." to "BDO Leasing and Finance, Inc." having no effect on the identity of the corporation, on its property, rights, or liabilities, with its character remaining very much intact, the Board Resolution and Special Power of Attorney authorizing Rallos to institute the *Certiorari* Petition did not lose any binding effect whatsoever.

III. Petitioner BDO's failure to attach the pertinent records of the case

In dismissing outright the *Certiorari* Petition, the CA Special 18th Division also cited petitioner BDO's failure to attach copies of the Complaint, the writ of *replevin*, the writ of execution, and other issuances and orders of the RTC, which the CA Special 18th Division believed were crucial in making a determination as to the merits of the *Certiorari* Petition.

Section 1, Rule 65 of the Rules of Court states that a petition for *certiorari* must be accompanied with copies of all pleadings and documents relevant and pertinent thereto. Petitioner BDO argues that "[t]he above-quoted provision does not specify the precise documents, pleadings or parts of the records that should be appended to a petition for *certiorari* other than the judgment, final order, or resolution being assailed."[32]

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[31] *Republic Planters Bank v. Court of Appeals,* 290-A Phil. 534, 542-543 (1992); emphasis and underscoring supplied.

[32] *Rollo*, p. 31.

As held by the court in *Air Philippines Corp. v. Zamora*,[33] while it is a general rule that a petition lacking copies of essential pleadings and portions of the case record may be dismissed, such rule, however, is not petrified. As the exact nature of the pleadings and parts of the case record which must accompany a petition is not specified, much discretion is left to the appellate court to determine the necessity for copies of pleading and other documents. There are, however, guideposts it must follow.

According to the aforementioned case,

> x x x not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.[34]

Applying the foregoing in the instant case, the documents that petitioner BOO failed to attach in its *Certiorari* Petition, *i.e.*, the Complaint, the writ of *replevin*, and the writ of execution, are not documents that will make out a *prima facie* case of grave abuse of discretion. To stress, the instant case is centered solely on the alleged grave abuse of discretion committed by the RTC when it issued its Order dated August 26, 2009, which stated that the liability of respondent Great Domestic is only ₱5,000,000.00 citing Section 20, Rule 57 of the Rules of Court. Statements or details found in the Complaint, the writ of *replevin*, and the writ of execution will not determine whether grave abuse of discretion was attendant in the RTC's issuance of its Order dated August 26, 2009.

Air Philippines Corp. v. Zamora likewise holds that

> x x x even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also [be] found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized

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[33] 529 Phil. 718, 727-728 (2006).

[34] *Id.* at 728.

in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.[35]

In the instant case, the Court notes that the relevant portions of the Complaint, the writ of *replevin*, the writ of execution, and other issuances of the RTC have been summarized and sufficiently detailed in the various pleadings filed by both parties in the RTC, in the CA Special 18th Division, as well as in the CA Special 20th Division. In fact, important details of the Complaint, the writ of *replevin*, and the writ of execution may also be found in the Decision[36] dated December 21, 2006 issued by the CA Special 20th Division in CA-G.R. CV No. 00551.

Therefore, the CA Special 18th Division was in error when it dismissed outright petitioner BDO's *Certiorari* Petition without holding any discussion as to the substantive merits of the said Petition.

WHEREFORE, the instant appeal is hereby **GRANTED**. The Resolutions dated February 10, 2011 and December 13, 2012 rendered by the Court of Appeals - Cebu City Special 18th Division in CA-G.R. SP. No. 04753 are hereby **REVERSED AND SET ASIDE**.

The instant case is remanded back to the Court of Appeals-Cebu City Special 18th Division for decision on the merits.

SO ORDERED.

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

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[35] *Id*.

[36] *Id*. at 59-68. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Isaias P. Dicdican and Agustin S. Dizon concurring.

SECOND DIVISION

[G.R. No. 208283. June 19, 2019]

PRIME SAVINGS BANK, represented by its Statutory Liquidator, THE PHILIPPINE DEPOSIT INSURANCE CORPORATION, *petitioner, vs.* **SPOUSES ROBERTO and HEIDI L. SANTOS,** *respondents.*

SYLLABUS

REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AN INTERLOCUTORY ORDER CANNOT BE THE SUBJECT OF APPEAL UNTIL FINAL JUDGMENT IS RENDERED FOR ONE PARTY OR THE OTHER.— It is a hornbook principle that Rule 45 of the Rules of Court governs appeals from judgments or final orders, not interlocutory orders. An interlocutory order cannot be the subject of appeal until final judgment is rendered for one party or the other. Further, the Court has previously distinguished *certiorari*, as a mode of appeal under Rule 45, as a remedy that involves the review of the judgment, award, or final order on the merits, as compared to the original action for *certiorari* under Rule 65, which refers to a remedy that may be directed against an interlocutory order. No appeal may be taken from an interlocutory order. Instead, the proper remedy to assail such an order is to file a petition for *certiorari* under Rule 65.

APPEARANCES OF COUNSEL

PDIC Office of the General Counsel for petitioner.
Vencer Lacap and Associates for respondents.

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 filed by petitioner Prime Savings Bank (Prime Savings Bank), represented by its Statutory Liquidator, the Philippine Deposit Insurance Corporation (PDIC), against respondents Spouses Roberto and Heidi L. Santos (Sps. Santos), assailing the Resolution[2] dated February 16, 2012 (first assailed Resolution) and Resolution[3] dated July 2, 2013 (second assailed Resolution) (collectively, the assailed Resolutions) rendered by the Court of Appeals, Cagayan de Oro City (CA) in CA-G.R. SP No. 03348-MIN.

The Facts and Antecedent Proceedings

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

On January 20, 1999, the Sps. Santos filed a Complaint for Rescission of Sale and Real Estate Mortgage with Prayer for Injunction (Complaint) with the Regional Trial Court of General Santos City, Branch 36 (RTC) against one Engr. Edgardo Torcende (Torcende) and Prime Savings Bank. The case was docketed as Civil Case No. 6492.

On January 7, 2000, or during the pendency of Civil Case No. 6492, the Monetary Board of the Bangko Sentral ng Pilipinas (BSP) issued Resolution No. 22[4] which prohibited Prime Savings Bank from doing business and placed it under receivership, with PDIC as the designated receiver. On April 27, 2000, and

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[1] *Rollo*, pp. 16-33.

[2] *Id.* at 38-39. Penned by Associate Justice Edgardo A. Camello with Associate Justices Carmelita Salandanan Manahan and Pedro B. Corales, concurring.

[3] *Id*. at 35-36. Penned by Associate Justice Edgardo A. Camello with Associate Justices Jhosep Y. Lopez and Henri Jean Paul B. Inting (now a member of this Court), concurring.

[4] *Id*. at 53.

by virtue of Resolution No. 664,[5] the Monetary Board placed Prime Savings Bank under liquidation with PDIC as the designated Liquidator.

On July 19, 2000, pursuant to Section 30 of Republic Act No. (RA) 7653, also known as the New Central Bank Act, PDIC filed a Petition for Assistance in the Liquidation (PAL) of Prime Savings Bank, Inc. The case was docketed as Special Proceeding Case No. 11097 before the Regional Trial Court of Pasig City (Liquidation Court).

Meanwhile, on September 1, 2006, in Civil Case No. 6492, the RTC rendered a Decision in favor of the Sps. Santos and against Engr. Torcende and Prime Savings Bank. On March 21, 2007, Prime Savings Bank received a Notice of Garnishment[6] dated March 7, 2007. Attached to the Notice of Garnishment were the Entry of Final Judgment[7] dated February 13, 2007 and Writ of Execution[8] dated February 14, 2007.

Prime Savings Bank filed with the RTC a Motion to Lift (re: February 14, 2007 Writ of Execution and March 7, 2007 Notice of Garnishment)[9] with additional prayer that the Sps. Santos be directed to file a judgment claim in the Liquidation Court.

On August 16, 2007, finding merit in the position of Prime Savings Bank, the RTC issued an Order[10] lifting the Writ of Execution and Notice of Garnishment. The RTC cited Section 30 of RA 7653, which states that the assets of an institution under receivership or liquidation shall be deemed in *custodia legis* in the hands of the receiver and shall be exempt from any order of garnishment, levy, attachment, or execution.[11] The

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[5] *Id*. at 54.

[6] *Id*. at 56.

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

[8] *Id*. at 59-61.

[9] *Id*. at 62-74.

[10] *Id*. at 77-80. Penned by Judge Isaac Alvero V. Moran.

[11] *Id*. at 78.

RTC further explained that the stay of the execution of the judgment is warranted due to the fact that Prime Savings Bank was placed under receivership. To execute the judgment would unduly deplete the assets of Prime Savings Bank to the prejudice of the other depositors and credits.[12]

The Sps. Santos filed a Motion for Reconsideration[13] dated August 30, 2007 assailing the aforesaid Order of the RTC.

In its Order[14] dated September 29, 2009, the RTC reversed itself and granted the Motion for Reconsideration. The RTC ordered the enforcement of the Writ of Execution and Notice of Garnishment against Prime Savings Bank. Hence, on November 3, 2009, Prime Savings Bank received another Notice of Garnishment[15] dated October 26, 2009 from the Sheriff of the RTC, Alfredo T. Pallanan.

Hence, on December 19, 2009, Prime Savings Bank filed a Petition for *Certiorari* under Rule 65 with Prayer for the Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI) (*Certiorari* Petition) before the CA. The matter was docketed as CA-G.R. SP No. 03348-MIN.

The *Certiorari* Petition sought the reversal of the RTC's Order allowing the execution and garnishment of Prime Savings Bank's assets, and that the RTC be enjoined from further acting on the Notices of Garnishment dated March 7, 2007 and October 26, 2009, in implementation of the Writ of Execution dated February 14, 2007.

The Ruling of the CA on the Application for the Issuance of a TRO/WPI

On February 16, 2012, the CA issued the first assailed Resolution denying Prime Savings Bank's application for TRO and/or WPI. The first assailed Resolution reads:

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[12] *Id*. at 79.

[13] *Id*. at 81-86.

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

[15] *Id*. at 91.

Acting on the petitioner's application for the issuance of a temporary restraining order (TRO) and/or writ or (*sic*) preliminary injunction (WPI), and the Comment filed by respondents, the Court resolves to **DENY** the petitioner's application for the issuance of a TRO and/or a WPI for failure to demonstrate sufficiently that a clear legal right or an urgent necessity exists to justify the issuance of an injunctive relief.

SO ORDERED.[16]

Prime Savings Bank filed a Motion for Reconsideration[17] dated March 9, 2012, which was denied by the CA in its second assailed Resolution.

Hence, the instant Petition filed by Prime Savings Bank on September 11, 2013.

On August 1, 2014, the Sps. Santos filed their Comment,[18] while Prime Savings Bank filed its Reply[19] on July 13, 2015.

Issue

The sole issue for the Court's consideration is whether the CA was correct in denying Prime Savings Bank's application for TRO and/or WPI, which was ancillary to its *Certiorari* Petition.

The Court's Ruling

The instant Petition is denied.

First and foremost, the instant Petition, filed under Rule 45 of the Rules of Court, merits outright dismissal for having utilized the wrong remedy.

It is beyond argument that the assailed Resolutions rendered by the CA being questioned before the Court are mere interlocutory orders, dealing with Prime Savings Bank's

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

[17] *Id*. at 40-52.

[18] *Id*. at 141-147.

[19] *Id*. at 162-173.

application for the issuance of a TRO and/or WPI, which is a mere ancillary prayer attached to the main case of the *Certiorari* Petition, which seeks the reversal of the RTC's Order allowing the execution and garnishment of Prime Savings Bank's assets.

It is a hornbook principle that Rule 45 of the Rules of Court governs appeals from judgments or final orders, not interlocutory orders.[20] An interlocutory order cannot be the subject of appeal until final judgment is rendered for one party or the other.[21] Further, the Court has previously distinguished *certiorari*, as a mode of appeal under Rule 45, as a remedy that involves the review of the judgment, award, or final order on the merits, as compared to the original action for *certiorari* under Rule 65, which refers to a remedy that may be directed against an interlocutory order. No appeal may be taken from an interlocutory order. Instead, the proper remedy to assail such an order is to file a petition for *certiorari* under Rule 65.[22]

Hence, Prime Savings Bank erred in resorting to this Rule 45 Petition in seeking the reversal of the CA's assailed Resolutions, which are mere interlocutory orders denying Prime Savings Bank's ancillary application for TRO and/or WPI.

In any case, even if the Court exercises liberality and treats the instant Petition as a Rule 65 Petition, the instant Petition still merits outright dismissal for having been rendered **moot and academic**.

As borne by the records of the Court, the *Certiorari* Petition, which was previously pending before the CA at the time of the filing of the instant Petition, was eventually decided by the CA **in favor of Prime Savings Bank** in its Decision dated July 29, 2015 and Resolution dated June 21, 2016. The Sps. Santos appealed the CA's unfavorable Decision in CA-G.R. SP No. 03348-MIN before the First Division of the Court. The appeal

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[20] *Calleja v. Panday*, 518 Phil. 801, 808 (2006).

[21] *Villasin v. Seven-Up Bottling Co. of the Philippines*, 107 Phil. 801, 803 (1960).

[22] *Spouses Perez v. Tan*, G.R. No. 186617, April 23, 2014, p. 4 (Unsigned Resolution).

was docketed as G.R. No. 226193, entitled *Spouses Roberto and Heide L. Santos v. Prime Savings Bank (PSB) represented by its Statutory Liquidator, The Philippine Deposit Insurance Corporation (PDIC)*. In its Resolution[23] dated October 12, 2016, the Court, First Division denied the Petition for Review on *Certiorari* filed by the Sps. Santos. In its subsequent Resolution dated July 31, 2017, the Court, First Division denied the Sps. Santos' Motion for Reconsideration with finality.

Therefore, with the *Certiorari* Petition having been decided with finality, the instant Petition has been rendered moot and academic.

WHEREFORE, the instant Petition is **DISMISSED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 209081. June 19, 2019]

HEIRS OF SPOUSES MONICO SUYAM and CARMEN BASUYAO[*] (both deceased), namely: OLIVER B. SUYAM, MABLE B. SUYAM, CHRISTOPHER B. SUYAM, ABEL B. SUYAM, and CHESTER B. SUYAM, represented by their attorney-in-fact and on his own behalf, TELESFORO B. SUYAM, *petitioners, vs.* **HEIRS OF FELICIANO JULATON @ PONCIANO, namely: LUCINA J. BADUA,**

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[23] Issued by the Division Clerk of Court.

[*] Spelled as "Basoyang" in *rollo*, p. 34.

SEMEON JULATON, JULIANA J. BUCASAS, ISABEL[**] J. ALLAS, RODOLFO JULATON, CANDIDA[***] J. GAMIT, represented by their attorney-in-fact and on her own behalf, CONSOLACION JULATON, *respondents.*

SYLLABUS

1. POLITICAL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); ONLY PUBLIC LANDS SUITABLE FOR AGRICULTURAL PURPOSES CAN BE DISPOSED BY VIRTUE OF A HOMESTEAD SETTLEMENT; CONDITIONS IMPOSED WHEN CERTIFICATE OF TITLE SHALL BE ISSUED PURSUANT TO A HOMESTEAD PATENT APPLICATION, CITED.— Under Section 11, Chapter III of Commonwealth Act No. 141, otherwise known as the Public Land Act, **only public lands suitable for agricultural purposes** can be disposed by virtue of a homestead settlement. According to Section 14 of the Public Land Act, no certificate of title shall be issued pursuant to a homestead patent application made under Section 13 unless **one-fifth of the land has been improved and cultivated by the applicant within no less than one and no more than five years from and after the date of the approval of the application**. The certificate shall issue only when the applicant shall prove that **he has resided continuously for at least one year in the municipality in which the land is located, or in a municipality adjacent to the same, and has cultivated at least one-fifth of the land continuously since the approval of the application**: x x x To reiterate, under Section 11 of the Public Land Act, only public lands suitable for agricultural purposes can be disposed by virtue of a homestead patent application. The rule is well-settled that an OCT issued on the strength of a homestead patent partakes of the nature of a certificate of title **only when the land disposed of is really part of the disposable land of the public domain**. The open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the

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[**] Spelled as "Isabelita" in *rollo*, p. 76.

[***] Spelled as "Cadida" in some parts of the *rollo*.

land, upon completion of the requisite period, *ipso jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property.

2. ID.; ID.; ID.; ID.; A HOMESTEAD PATENT SECURED THROUGH FRAUDULENT MISREPRESENTATION IS HELD TO BE NULL AND VOID.— [A] homestead patent secured through fraudulent misrepresentation is held to be null and void. As held in *Republic of the Philippines v. Court of Appeals*, citing *Rep. of the Phils. v. Mina*, the Court explained that a certificate of title that is void may be ordered canceled. And, a title will be considered void if it is procured through fraud, as when a person applies for registration of the land on the claim that he has been occupying and cultivating it. In the case of disposable public lands, **failure on the part of the grantee to comply with the conditions imposed by law is a ground for holding such title void**. The lapse of one (1) year period within which a decree of title may be reopened for fraud would not prevent the cancellation thereof for to hold that a title may become indefeasible by registration, even if such title had been secured through fraud or in violation of the law would be the height of absurdity. Registration should not be a shield of fraud in securing title.

3. CIVIL LAW; PROPERTY; OWNERSHIP; WHILE TAX RECEIPTS AND TAX DECLARATIONS ARE NOT INCONTROVERTIBLE EVIDENCE OF OWNERSHIP, THEY CONSTITUTE CREDIBLE PROOF OF A CLAIM OF TITLE OVER THE PROPERTY WHEN COUPLED WITH ACTUAL POSSESSION THEREOF.— While it is true that tax receipts and tax declarations are not incontrovertible evidence of ownership, they constitute credible proof of a claim of title over the property. Coupled with actual possession of the property, tax declarations become strong evidence of ownership.

4. ID.; ID.; ID.; BUYER IN GOOD FAITH OR INNOCENT PURCHASER FOR VALUE; ONE WHO BUYS PROPERTY AND PAYS A FULL AND FAIR PRICE FOR IT AT THE TIME OF THE PURCHASE OR BEFORE ANY NOTICE OF SOME OTHER PERSON'S CLAIM ON OR INTEREST IN IT IS A PURCHASER IN GOOD FAITH OR INNOCENT PURCHASER FOR VALUE; NOT PRESENT IN CASE AT BAR.— As correctly held by the CA, the Sps. Suyam are definitely not buyers in

good faith. In a long line of cases, the Court has defined a purchaser in good faith or innocent purchaser for value as one who buys property and pays a full and fair price for it at the time of the purchase or before any notice of some other person's claim on or interest in it. A buyer who could not have failed to know or discover that the land sold to him was in the adverse possession of another is a buyer in bad faith. To reiterate, in the instant case, as affirmed by the testimony of Telesforo, the Sps. Suyam had fully discovered the fact that another person was possessing the subject property, knowing fully well that Cipriano was in possession of the subject property as tenant of the Heirs of Feliciano. Yet, despite this, the Sps. Suyam still pursued with the sale. Therefore, there is no doubt that the Sps. Suyam were not innocent purchasers of value.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Manolo M. Beltejar, Jr. 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 the petitioners Heirs of Spouses Monico Suyam (Monico) and Carmen Basuyao (Carmen) (collectively, the Sps. Suyam), namely: Oliver, Mable, Christopher, Abel and Chester, all with the surname Suyam (collectively, the Heirs of Sps. Suyam), assailing the Decision[2] dated February 26, 2013 (assailed Decision) and Resolution[3] dated September 2, 2013 (assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CV No. 96366.

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[1] *Rollo*, pp. 12-33.

[2] *Id*. at 40-57. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Japar B. Dimaampao and Angelita A. Gacutan, concurring.

[3] *Id*. at 59-60. Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Japar B. Dimaampao and Elihu A. Ybañez, *concurring*.

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:

On June 20, 2001, the respondents Heirs of Feliciano Julaton (Feliciano), *a.k.a.* Ponciano, namely: Lucina J. Badua, Semeon Julaton, Juliana J. Bucasas, Isabel J. Allas, Rodolfo Julaton, Candida J. Gamit, represented by their attorney-in-fact and on her own behalf, Consolacion Julaton (Consolacion) (collectively, the Heirs of Feliciano), filed a Complaint[4] for Recovery of Ownership, Cancellation of Title, Annulment of Sale, Reinstatement of Title, Reconveyance and Damages (Complaint) before the Municipal Circuit Trial Court of Maddela-Nagtipunan, Quirino (MCTC) against the Sps. Suyam and Isabel Ramos (Isabel). The case was docketed as Civil Case No. 372.

It was alleged in the Complaint that the Heirs of Feliciano have a valid claim of ownership over a parcel of land located at Dipintin, Maddela, Quirino (subject property), which was allegedly originally owned by Feliciano. It is further alleged that Feliciano had been in possession of the subject property as early as the 1940s or 1950s, and that the Heirs of Feliciano had been cultivating the subject property personally and through their tenants. Furthermore, it is alleged that the Heirs of Feliciano had declared the subject property as their own for taxation purposes and had paid realty taxes thereon.[5]

The controversy arose when, in 1997, upon trying to pay tax arrears on the subject property at the Treasurer's Office in Maddela, Quirino, the Heirs of Feliciano were informed that the subject property had been declared for taxation purposes by the Sps. Suyam. It was discovered that the Sps. Suyam purchased the subject property from Isabel, who was supposedly issued a patent and a corresponding Original Certificate of Title

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[4] *Id*. at 70-75.

[5] *Id*. at 71.

(OCT), *i.e.*, OCT No. P-1081[6] in 1980. In 1987, Transfer Certificate of Title (TCT) No. T-5864[7] was issued in the name of the Sps. Suyam.[8]

The Heirs of Feliciano vigorously maintained that Isabel acquired title to the subject property fraudulently as she had never possessed or declared ownership of the subject property. Further, the Heirs of Feliciano alleged that the Sps. Suyam were buyers in bad faith because they did not verify who was in possession of the subject property prior to purchasing the same.[9]

In the course of the proceedings, Monico passed away. Hence, he was substituted by the Heirs of Sps. Suyam. Isabel failed to file any responsive pleading and was thus declared in default.

On February 12, 2002, the Heirs of Sps. Suyam filed a Motion[10] to dismiss the Complaint (Motion) on the ground that the MCTC has no jurisdiction over the Complaint, that the Complaint states no cause of action, and that the action brought by the Heirs of Feliciano is not covered by the Rules on Summary Procedure. The MCTC denied the Motion in two (2) Orders, *i.e.*, the Order[11] dated June 20, 2002 directing the Heirs of Sps. Suyam to file their Answer and the Order[12] dated August 23, 2002 setting the hearing of the case to September 5, 2002.

On July 30, 2002, Carmen filed an Answer,[13] denying the allegations in the Complaint. Carmen argued that they are not buyers in bad faith when they purchased the subject property

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

[7] *Id*. at 87.

[8] *Id.* at 71-72.

[9] *Id*. at 73.

[10] A copy of which was not attached to the instant Petition.

[11] *Id.*

[12] *Id.*

[13] *Rollo*, pp. 89-90.

as they merely relied on the OCT possessed by their predecessor-in-interest, Isabel.

However, in an Order[14] dated December 29, 2005, the new MCTC Judge, *i.e.,* Acting Presiding Judge Josephine B. Gayagay, set aside the aforesaid Orders and granted the Motion on the ground of lack of jurisdiction. The MCTC held that the Complaint involved several causes of action that comprehend more than the issue of title to, possession of, or any interest in the subject property, such as annulment of contract, reconveyance, and specific performance. According to the MCTC, these are actions incapable of pecuniary estimation and are within the jurisdiction of the Regional Trial Court.

On March 14, 2006, the Heirs of Feliciano filed an appeal before the Regional Trial Court of Maddela, Quirino, Branch 38 (RTC).

On August 2, 2006, the RTC issued an Order[15] affirming the MCTC's Order dated December 29, 2005. Nonetheless, the RTC took cognizance of the Complaint and directed the setting of the case for pre-trial. Trial then ensued.

The Ruling of the RTC

In its Decision[16] dated September 30, 2010, the RTC dismissed the Complaint for lack of merit. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered **DISMISSING** the complaint of plaintiffs against the defendants for lack of merit.

The counterclaim of the defendants against plaintiffs is also **DISMISSED** for lack of evidence.

SO ORDERED.[17]

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[14] A copy of which was not attached to the instant Petition.

[15] *Id*.

[16] *Rollo*, pp. 103-107.

[17] *Id*. at 107.

In sum, the RTC believed that the Heirs of Feliciano "failed to establish by clear and convincing evidence their public, peaceful and uninterrupted possession in the concept of an owner of the litigated property."[18]

Feeling aggrieved, the Heirs of Feliciano appealed before the CA.[19]

The Ruling of the CA

In its assailed Decision, the CA reversed the RTC's Decision and granted the Heirs of Feliciano's appeal. The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, the instant appeal is hereby **GRANTED**. The Decision dated September 30, 2010 of the Regional Trial Court, Branch 38, Maddela, Quirino in Civil Case No. 372 for *Recovery of Ownership, Cancellation of Title, Annulment of Sale, Reinstatement of Title, Reconveyance and Damages* is **REVERSED and SET ASIDE.**
>
> The Register of Deeds of Quirino is directed to **CANCEL** the following titles: Original Certificate of Title No. P-1081 in the name of Isabel Ramos, and Transfer Certificate of Title No. T-5864 in the name of Monico Suyam married to Carmen Basuyao.
>
> We declare [the] appellants to be entitled to the possession of the subject land and may now apply for its registration before the proper court.
>
> **SO ORDERED**.[20]

Upon examination of the evidence on record, the CA found that there is "scant evidence either to declare that defendant Isabel's OCT No. P-1081 or that appellees' TCT No. T-5864, were issued validly and legally, and, therefore, We are constrained to direct and order the cancellation of the aforementioned titles, and declare the entitlement of appellants to the subject land."[21]

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[18] *Id*. at 105.

[19] The records do not show if the Heirs of Feliciano filed a Motion for Reconsideration of the RTC's Decision dated September 30, 2002.

[20] *Rollo*, p. 56.

[21] *Id*.

The CA thoroughly explained that, contrary to the findings of the RTC, several uncontroverted facts "prove that there was no natural interruption, for prescription, in [the Heirs of Feliciano's] possession of the subject land."[22]

Hence, the instant Petition filed by the Heirs of Sps. Suyam under Rule 45 of the Rules of Court.

The Heirs of Feliciano filed their Comment[23] dated April 6, 2014, to which the Heirs of Sps. Suyam responded with their Reply[24] dated November 26, 2014.

Issue

The Heirs of Sps. Suyam pose a singular issue for the Court's disposition: whether the CA gravely erred in reversing the Decision of the RTC, thereby granting the Heirs of Feliciano's Complaint for recovery of ownership, cancellation of title, annulment of sale, reinstatement of title, reconveyance and damages.

The Court's Ruling

Upon a close reading of the records of the instant case, the Court finds no cogent reason to reverse the CA's assailed Decision and Resolution and resolves to deny the instant Petition for lack of merit.

It is not disputed that the Heirs of Sps. Suyam trace their supposed ownership of the subject property to their predecessor-in-interest, Isabel. The latter allegedly gained ownership over the subject property when a patent was issued in her favor, leading to the issuance of OCT No. P-1081 in 1980.

A perusal of OCT No. P-1081 reveals that the patent issued in favor of Isabel is a homestead patent, *i.e.*, Homestead Patent No. 151715, issued on August 4, 1980.

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[22] *Id*. at 49.

[23] *Id.* at 149-157.

[24] *Id*. at 171-177.

Under Section 11, Chapter III of Commonwealth Act No. 141, otherwise known as the Public Land Act, **only public lands suitable for agricultural purposes** can be disposed by virtue of a homestead settlement.

According to Section 14 of the Public Land Act, no certificate of title shall be issued pursuant to a homestead patent application made under Section 13 unless **one-fifth of the land has been improved and cultivated by the applicant within no less than one and no more than five years from and after the date of the approval of the application**. The certificate shall issue only when the applicant shall prove that **he has resided continuously for at least one year in the municipality in which the land is located, or in a municipality adjacent to the same, and has cultivated at least one-fifth of the land continuously since the approval of the application**:

SEC. 13. Upon the filing of an application for a homestead, the Director of Lands, if he finds that the application should be approved, shall do so and authorize the applicant to take possession of the land upon the payment of five pesos, Philippine Currency, as entry fee. Within six months from and after the date of the approval of the application, the applicant shall begin to work the homestead, otherwise he shall lose his prior right to the land.

SEC. 14. No certificate shall be given or patent issued for the land applied for until at least one-fifth of the land has been improved and cultivated. The period within which the land shall be cultivated shall not be less than one nor more than five years, from and after the date of the approval of the application. The applicant shall, within the said period, notify the Director of Lands as soon as he is ready to acquire the title. lf at the date of such notice, the applicant shall prove to the satisfaction of the Director of Lands, that he has resided continuously for at least one year in the municipality in which the land is located, or in a municipality adjacent to the same, and has cultivated at least one-fifth of the land continuously since the approval of the application, and shall make affidavit that no part of said land has been alienated or encumbered, and that he has complied with all the requirements of this Act, then, upon the payment of five pesos, as final fee, he shall be entitled to a patent.

In the instant case, as correctly held by the CA in its assailed Decision, the subject property was clearly acquired by Isabel through a fraudulently issued homestead patent.

First and foremost, **a homestead patent secured through fraudulent misrepresentation is held to be null and void**.[25] As held in *Republic of the Philippines v. Court of Appeals*,[26] citing *Rep. of the Phils. v. Mina*,[27] the Court explained that a certificate of title that is void may be ordered canceled. And, a title will be considered void if it is procured through fraud, as when a person applies for registration of the land on the claim that he has been occupying and cultivating it. In the case of disposable public lands, **failure on the part of the grantee to comply with the conditions imposed by law is a ground for holding such title void**. The lapse of one (1) year period within which a decree of title may be reopened for fraud would not prevent the cancellation thereof for to hold that a title may become indefeasible by registration, even if such title had been secured through fraud or in violation of the law would be the height of absurdity. Registration should not be a shield of fraud in securing title.

It is clear from the undisputed facts that Isabel failed to comply with any of the conditions imposed under Section 14 of the Public Land Act for the granting of a certificate of title pursuant to a homestead patent application.

It is not seriously disputed that **Isabel has never possessed, much more continuously cultivated, the subject property**. During the pre-trial held before the RTC on June 17, 2008, it was expressly stipulated by the parties that "**[t]he [Heirs of Feliciano] have been in possession of the land in question for a long time, but the [Heirs of Sps. Suyam] have never been in possession thereof** despite the fact that they are

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[25] *Director of Lands v. Manuel*, 119 Phil. 939 (1964).

[26] 262 Phil. 677, 684-685 (1990).

[27] 200 Phil. 428 (1982).

residents of the same place where the land is located (Dipintin, Maddela, Quirino)."[28]

In fact, even the RTC factually found that **the nephew of Feliciano, Cipriano Marzan (Cipriano), started tilling the subject property as a tenant of the Heirs of Feliciano as early as 1966**.[29] As noted by the CA, Isabel "never appeared to possess or lay claim over the subject land even as Cipriano was physically present on the subject land since 1966, tilling and harvesting crops."[30] Hence, it is abundantly clear that Isabel never cultivated the land.

Second, as further noted by the CA, not only did Isabel fail to declare the subject property for taxation purposes under her name and to pay any realty taxes, lending more credence to the fact that Isabel never possessed and cultivated the subject property, as a matter of fact, at the time when Isabel was supposed to cultivate the subject property in view of the purported homestead patent application as a prerequisite for the issuance of the OCT, since 1978, it was the Heirs of Feliciano who had been paying real estate taxes.[31]

The CA stressed that when "OCT No. P-1081 [was issued in favor of Isabel] in 1980, [the Heirs of Feliciano] were paying the realty taxes."[32] The CA stressed that while Isabel never declared the subject land for taxation purposes, "the tax declaration remained in the name of Feliciano until the [S]pouses Suyam had the subject land declared in their name because of the title the spouses held."[33]

Hence, based on the foregoing, and coupled with the lack of any serious refutation on the part of the Heirs of Sps. Suyam

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[28] *Rollo*, p. 104; emphasis and underscoring supplied.

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

[30] *Id*. at 50.

[31] *Id*. at 51-52.

[32] *Id*. at 52-53.

[33] *Id*. at 50.

that Isabel never possessed and continuously cultivated the subject property, the essential requisite for the issuance of a certificate of title pursuant to a homestead application under Section 14 of the Public Land Act, *i.e.*, cultivation of one-fifth of the land by Isabel, had not been met. Hence, it is clear that the title from which the Heirs of Sps. Suyam trace their claim of ownership was acquired through fraudulent misrepresentation and is therefore void.

Aside from the fraudulent misrepresentation and manifest failure on the part of Isabel in procuring the homestead patent in accordance with the requirements of the Public Land Act, the Court agrees with the CA and finds that the Heirs of Feliciano have acquired the subject property by open, continuous and undisputed possession for more than thirty (30) years, making the subject property the private property of the Heirs of Feliciano even prior to Isabel's homestead patent application.

To reiterate, under Section 11 of the Public Land Act, only public lands suitable for agricultural purposes can be disposed by virtue of a homestead patent application. The rule is well-settled that an OCT issued on the strength of a homestead patent partakes of the nature of a certificate of title **only when the land disposed of is really part of the disposable land of the public domain**.[34]

The open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period, *ipso jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property.[35]

In the recently decided case of *Melendres v. Catambay*,[36] which involves fairly similar factual circumstances, the Court

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[34] *Heirs of Gregorio Tengco v. Heirs of Jose Aliwalas*, 250 Phil. 205, 211 (1988).

[35] *The Director of Lands v. IAC*, 230 Phil. 590, 600 (1986).

[36] G.R. No. 198026, November 28, 2018 < http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64938 >.

held that an OCT that originated from a Free Patent was null and void, considering that prior to the application for such Free Patent, the petitioners therein, through their predecessors-in-interest, had actually, publicly, openly, adversely and continuously possessed the subject property therein in the concept of an owner since the 1940s, cultivating the said property as a rice field, making the subject lot the private property of the petitioners therein prior to the application for Free Patent in accordance with Section 48(b)[37] of the Public Land Act, *viz.*:

In connection with the foregoing doctrine, the Public Land Act states that those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious

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[37] The original text of Section 48(b) of the Public Land Act reads:

(*b*) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, except as against the Government, since July twenty-sixth, eighteen hundred and ninety-four, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

On June 22, 1957, Republic Act No. (RA) 1942 amended the aforesaid provision as follows:

"(*b*) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter."

Subsequently, on January 25, 1977, RA 1942 was amended by Section 4, Presidential Decree No. 1073:

SEC. 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII, of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a *bona fide* claim of acquisition of ownership, since June 12, 1945.

possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, for at least 30 years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure* shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title.

x x x x x x x x x

In the instant case, by virtue of the actual, public, open, adverse, and continuous possession of the subject property by petitioners in the concept of an owner since 1940s, the subject property ceased to be a land of the public domain and became private property.

Hence, in line with established jurisprudence, **if the land in question is proven to be of private ownership** and, therefore, beyond the jurisdiction of the then Director of Lands (now Land Management Bureau), **the free patent and subsequent title issued pursuant thereto are null and void**. The indefeasibility and imprescriptibility of the Torrens title issued pursuant to such null and void patent do not prevent the nullification of the title. **If it was private land, the patent and certificate of title issued upon the patent are a nullity.**

Therefore, the Court finds Free Patent No. (IV-1) 001692 issued in favor of Alejandro Catambay null and void. Necessarily, OCT No. M-2177 which was issued in accordance with Free Patent No. (IV-1) 001692 is deemed invalidly issued.[38]

In *Celso Amarante Heirs v. Court of Appeals,*[39] the Court held that the open, exclusive and undisputed possession of public land for more than 30 years by a person in accordance with Section 48(b) of the Public Land Act, who occupied the land by planting various coconut, mango, and bamboo trees, wherein the grandchildren of the planter likewise continued occupying the said property for several years, created the legal fiction whereby the said land, upon completion of the requisite period of possession, *ipso jure* became private property.

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[38] *Melendres v. Catambay*, *supra* note 36.

[39] 264 Phil. 174 (1990).

In *Heirs of Santiago v. Heirs of Santiago*,[40] wherein the Court held that since the petitioners therein were able to prove their open, continuous, exclusive, and notorious possession and occupation of the land for several decades, such land was deemed to have already been acquired by the petitioners therein by operation law, thus segregating such land from the public domain. **This led the Court to invalidate a patent covering such land, as well as the certificate of title issued by virtue of such void patent**, *viz.*:

> The settled rule is that a free patent issued over a private land is null and void, and produces no legal effects whatsoever. **Private ownership of land — as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants — is not affected by the issuance of a free patent over the same land, because the Public Land law applies only to lands of the public domain**. The Director of Lands has no authority to grant free patent to lands that have ceased to be public in character and have passed to private ownership. Consequently, a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding only if the land covered by it is really a part of the disposable land of the public domain.
>
> In the instant case, **it was established that Lot 2344 is a private property of the Santiago clan since time immemorial, and that they have declared the same for taxation**. Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.

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[40] 452 Phil. 238 (2003).

Considering the open, continuous, exclusive and notorious possession and occupation of the land by respondents and their predecessors-in-interests, they are deemed to have acquired, by operation of law, a right to a government grant without the necessity of a certificate of title being issued. The land was thus segregated from the public domain and the director of lands had no authority to issue a patent. Hence, the free patent covering Lot 2344, a private land, and the certificate of title issued pursuant thereto, are void.

Similarly in *Magistrado v. Esplana*, the applicant for a free patent declared that the lots subject of the application formed part of the public domain for the sole purpose of obtaining title thereto as cheaply as possible. We annulled the titles granted to the applicant after finding that the lots were privately owned and continuously possessed by the applicant and his predecessors-in-interest since time immemorial. Likewise, in *Robles v. Court of Appeals*, the free patent issued to the applicant was declared void because the lot involved was shown to be private land which petitioner inherited from his grandparents.

Respondents' claim of ownership over Lot 2344-C and Lot 2344-A is fully substantiated. Their open, continuous, exclusive, and notorious possession of Lot 2344-C in the concept of owners for more than seventy years supports their contention that the lot was inherited by Mariano from her grandmother Marta, who in turn inherited the lot from her parents. This fact was also corroborated by respondents' witnesses who declared that the house where Marta and Mariano's family resided was already existing in the disputed portion of Lot 2344 even when they were still children. It is worthy to note that although Lot 2344-C was within the property declared for taxation by the late Simplicia Santiago, he did not disturb the possession of Marta and Mariano. Moreover, while the heirs of Simplicio tried to make it appear that Mariano built his house only in 1983, Nestor Santiago admitted on cross-examination that Mariano Santiago's house was already existing in the disputed lot since he attained the age of reason. The fact that Mariano did not declare Lot 2344-C for taxation does not militate against his title. As he explained, he was advised by the Municipal Assessor that his 57 square meter lot was tax exempt and that it was too small to be declared for taxation, hence, he just gave his share in the taxes to his uncle,

Simplicio, in whose name the entire Lot 2344 was declared for taxation.[41] (Emphasis and underscoring supplied)

In the instant case, the Court does not find any cogent reason to reverse the CA's factual finding that "there was no natural interruption, for prescription, in [the Heirs of Feliciano's] possession of the subject land."[42] The Court finds the factual conclusion of the CA to be with basis.

To reiterate, it was even stipulated by both parties during the pre-trial that **"the [Heirs of Feliciano] have been in possession of the land in question for a long time, but the [Heirs of Sps. Suyam] have never been in possession thereof** despite the fact that they are residents of the same place where the land is located (Dipintin, Maddela, Quirino)."[43] Hence, it cannot now be disputed that the Heirs of Feliciano have been possessing the subject property for a great length of time.

As found by the CA, the testimony of Consolacion clearly established that she was born in the subject property in 1938 and that her family has been in possession of the subject property in 1938. In fact, her testimony established that the family was able to erect a house that still stands on the subject property up to this day.[44] Consolacion herself continued to reside on the subject property until 1974 or 1975 when she transferred her residence to Pangasinan.

The aforesaid is corroborated by the testimony of Cipriano, the tenant of the subject property, who testified that the subject property was owned and possessed by his uncle Feliciano and that he was entrusted the subject property as a tenant by the latter. Cipriano unequivocally testified that from the time he began tilling the subject property in 1966 up to the present time

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[41] *Id.* at 248-250.

[42] *Rollo*, p. 49.

[43] *Id.* at 104; emphasis and underscoring supplied.

[44] *Id*. at 48.

as the tenant of the Heirs of Feliciano, no other person appeared to claim ownership over the subject property.[45]

Despite Consolacion's transfer of residence to Pangasinan in 1974 or 1975, it cannot be argued that the possession of the subject property by the Heirs of Feliciano ceased to be continuous, considering that prior to Consolacion's transfer to Pangasinan, the Heirs of Feliciano had instituted Cipriano as the tenant of the Heirs of Feliciano since 1966, continuously tilling and cultivating the subject property for the Heirs of Feliciano.

Further solidifying the aforesaid testimonies, the CA likewise notes that the Heirs of Feliciano have been consistently paying realty taxes and declaring the subject property for tax purposes. While it is true that tax receipts and tax declarations are not incontrovertible evidence of ownership, they constitute credible proof of a claim of title over the property. Coupled with actual possession of the property, tax declarations become strong evidence of ownership.[46]

To rebut the unequivocal testimonies of Consolacion and Cipriano as regards the open, continuous, exclusive, and notorious possession of the subject property by the Heirs of Feliciano, the Heirs of Sps. Suyam were only able to present their lone witness, the son of the Sps. Suyam, Telesforo, who merely testified on the surrounding circumstances of the purchase of the subject property by the Sps. Suyam from Isabel. In fact, the testimony of Telesforo even confirmed that Cipriano was tilling and cultivating the subject property as a tenant of the Heirs of Feliciano, as Telesforo testified that the Sps. Suyam indeed had full knowledge of the fact that Cipriano was in possession of the subject property as tenant of the Heirs of Feliciano.[47]

Bearing in mind that the title of Isabel is null and void, it is elementary that **no valid TCT can issue from a void**

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[45] *Id*. at 48-49.

[46] See *Ranola v. Court of Appeals,* 379 Phil. 1, 11 (2000).

[47] *Rollo*, p. 53.

title, unless an innocent purchaser for value has intervened.[48]

As correctly held by the CA, the Sps. Suyam are definitely not buyers in good faith.

In a long line of cases, the Court has defined a purchaser in good faith or innocent purchaser for value as one who buys property and pays a full and fair price for it at the time of the purchase or before any notice of some other person's claim on or interest in it.[49] A buyer who could not have failed to know or discover that the land sold to him was in the adverse possession of another is a buyer in bad faith.[50]

To reiterate, in the instant case, as affirmed by the testimony of Telesforo, the Sps. Suyam had fully discovered the fact that another person was possessing the subject property, knowing fully well that Cipriano was in possession of the subject property as tenant of the Heirs of Feliciano.[51] Yet, despite this, the Sps. Suyam still pursued with the sale. Therefore, there is no doubt that the Sps. Suyam were not innocent purchasers of value.

All told, the Court holds that the CA did not err when it rendered the assailed Decision and Resolution.

WHEREFORE, the instant appeal is hereby **DENIED**. The Decision dated February 26, 2013 and Resolution dated September 2, 2013 rendered by the Court of Appeals in CA-G.R. CV No. 96366 are **AFFIRMED**.

SO ORDERED.

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

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[48] *Pineda v. Court of Appeals*, 456 Phil. 732, 747 (2003).

[49] *Sps. Tanglao v. Sps. Parungao*, 561 Phil. 254, 262 (2007), citing *Tanongon v. Samson,* 431 Phil. 729 (2002).

[50] *Heirs of Durano, Sr. v. Spouses Uy*, 398 Phil. 125, 152 (2000).

[51] *Rollo*, p. 53.

SECOND DIVISION

[G.R. No. 211533. June 19, 2019]

CHEVRON PHILIPPINES, INC. (formerly known as Caltex Philippines, Inc.), *petitioner, vs.* **LEO Z. MENDOZA,** *respondent.*

[G.R. No. 212071. June 19, 2019]

LEO Z. MENDOZA, *petitioner, vs.* **CHEVRON PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; HUMAN RELATIONS; ABUSE OF RIGHTS; ELEMENTS; MALICE OR BAD FAITH IS AT THE CORE OF AN ABUSE OF RIGHT, WHICH MUST BE SUBSTANTIATED BY EVIDENCE.— The Court has previously explained that the aforesaid Civil Code provision contains what is commonly referred to as the **principle of abuse of rights**. It sets certain standards which may be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith. x x x As correctly explained by the CA in the assailed Decision, jurisprudence has held that the elements of an abuse of right under Article 19 of the Civil Code are the following: (1) the existence of a legal right or duty, (2) which is exercised in bad faith, and (3) for the sole intent of prejudicing or injuring another. **Malice or bad faith is at the core of an abuse of right.** Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. **Such must be substantiated by evidence.**

2. ID.; DAMAGES; MORAL DAMAGES; AS A RULE, A CORPORATION IS NOT ENTITLED TO MORAL DAMAGES EXCEPT WHERE THE CORPORATION HAS A GOOD REPUTATION THAT IS DEBASED RESULTING IN ITS SOCIAL HUMILIATION; NOT ESTABLISHED IN CASE AT BAR.— A corporation is not as a rule entitled to moral damages because, not being a natural person, it cannot experience physical suffering or such sentiments as wounded feelings,

serious anxiety, mental anguish and moral shock. The only exception to this rule is where **the corporation has a good reputation that is debased, resulting in its social humiliation**. Be that as it may, as explained in the very recent case of *Noell Whessoe, Inc. v. Independent Testing Consultants, Inc.*, the Court held that "**[c]laims for moral damages must have sufficient factual basis, either in the evidence presented or in the factual findings of the lower courts.**" x x x In the instant case, the CA factually found that: "Here, **no evidence was presented by Chevron to establish the factual basis of its claim for moral damages**. Mere allegations do not suffice; they must be substantiated by clear and convincing proof. Thus, We delete the award of moral damages in favor of Chevron."

3. **ID.; ID.; EXEMPLARY DAMAGES; NO EXEMPLARY DAMAGES CAN BE AWARDED UNLESS THE CLAIMANT FIRST ESTABLISHES HIS RIGHT TO MORAL DAMAGES; APPLICATION IN CASE AT BAR.—** Considering that Chevron is not entitled to moral damages, necessarily, it is likewise not entitled to exemplary damages. As made clear under Article 2234 of the Civil Code, **the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded**. Hence, exemplary damages are merely ancillary with respect to moral, temperate, or compensatory damages. Jurisprudence has held that "this specie of damages is allowed only in addition to moral damages such that **no exemplary damages can be awarded unless the claimant first establishes his clear right to moral damages**."

4. **ID.; ID.; ATTORNEY'S FEES; ATTORNEY'S FEES AND EXPENSES OF LITIGATION CAN BE AWARDED BY THE COURT IN THE CASE OF A CLEARLY UNFOUNDED CIVIL ACTION OR PROCEEDING OR IN ANY OTHER CASE WHERE THE COURT DEEMS IT JUST AND EQUITABLE TO RECOVER THE SAME.—** According to Article 2208 of the Civil Code, attorney's fees and expenses of litigation can be awarded by the court in the case of a **clearly unfounded civil action or proceeding** or **in any other case where the court deems it just and equitable** that attorney's fees and expenses of litigation should be recovered. As held by the CA, the award of attorney's fees and costs of suit are warranted because "Mendoza's Complaint against Chevron is unfounded." Further, the RTC

found that based on the documentary evidence on record, Mendoza's Complaint was merely an unfounded suit instigated by a "sore loser x x x [who] refused to accept [the reasonable explanation of Chevron]."

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for Chevron Philippines, Inc.

Peter Leo M. Ralla for Leo Z. Mendoza.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court are two consolidated petitions. In **G.R. No. 211533**, Chevron Philippines, Inc. (Chevron), formerly known as Caltex Philippines, Inc. (Caltex), filed a Petition for Review on *Certiorari*[1] under Rule 45 (Chevron Petition) dated April 14, 2014 against Leo Z. Mendoza (Mendoza), partially assailing the Decision[2] dated September 18, 2013 (assailed Decision) and Resolution[3] dated February 24, 2014 (assailed Resolution) rendered by the Court of Appeals (CA) in CA-G.R. CV No. 93847. **G.R. No. 212071**, in turn, is the Petition for Review on *Certiorari*[4] under Rule 45 dated April 4, 2014, filed by Mendoza (Mendoza Petition) against Chevron, praying for the reversal of the CA's assailed Decision and Resolution.

The Facts and Antecedent Proceedings

As culled from the CA's recital of the facts in the assailed Decision, as well as from the records of the instant case, the pertinent facts and antecedent proceedings are as follows:

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[1] *Rollo* (G.R. No. 211533), Vol. 1, pp. 15-48.

[2] *Id*. at 51-68. Penned by Associate Justice Florito S. Macalino with Associate Justices Sesinando E. Villon and Pedro B. Corales, concurring.

[3] *Id*. at 71-71-A.

[4] *Rollo* (G.R. No. 212071), Vol. 1, pp. 9-23.

Sometime in 1997, Mendoza applied with Caltex for dealership of a company-owned service station in Sta. Cruz, Virac, Catanduanes ("Virac"). Pursuant to the selection procedure of Caltex, Mendoza passed the psychographic exam, had undergone the required on-the-job evaluation and training ("OJET") and made a successful defense of his business proposal.

The dealer selection board of Caltex, however, awarded the Virac dealership to the Spouses Carmen ("Carmen") Francisco and Jose ("Jose") Romeo Francisco (collectively, "the Franciscos"). Jose happened to be the grandson of the owner/lessor of the lot occupied by the Virac service station. In a letter[5] dated February 28, 1997, Caltex informed Mendoza of its decision regarding his application:

"Dear Mr. Mendoza:

We thank you for your time and effort in your interests in our station in Virac, Catanduanes.

However, please be advised that your name has been included in the Dealers Pool listing. You have met our minimum dealer requirements and will be eligible to apply at any of our future retail station sites, provided you submit and defend your new business plan for the site you are interested in.

We will be informing you of any of our retail station opening and we look forward in becoming Business Partners soon. x x x" (Emphasis supplied)

Dissatisfied with the result of his application, Mendoza wrote the President of Caltex a letter of protest[6] dated March 11, 1997, the pertinent portion of which provides:

"May I remark at the outset that I have a co-applicant who is the lot owner on which the said Caltex Station leases for operation. My findings made me to conclude that the company and the lot owner were in cahoots. That there was indeed an internal arrangement between the good company and the fortunate lot owner. That the said lot owner was given priority not based on the disclosed criteria and qualifications. To mention one, it was confirmed that my co-applicant resigned from x x x

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[5] *Rollo* (G.R. No. 211533), Vol. 1, p. 104.

[6] *Id*. at 199-201.

her former job right after the OJET and before the submission of the business plan or before the awarding of the contested station. But sheer logic or pure reason would infere *(sic)* than an ordinary applicant, at her age and with alluring position and salary in a prestigious international pharmaceutical company will never dare to risk to resign from the said company unless there is a promise or guarantee from the Caltex (Phil.), Inc. x x x" (Copied verbatim)

On July 9, 1998, Mendoza re-applied for dealership of a dealer-owned service station either in Virac or San Andres, since one (1) of the two (2) Caltex service stations in Catanduanes had closed. Mendoza offered four (4) service station sites to Caltex, three (3) of which were owned by him.

In a letter-reply[7] dated August 3, 1998, Caltex, through its Luzon South Retail District Manager, Constantino F. Bocanegra ("Bocanegra"), apprised Mendoza that "it has been decided that the Caltex dealership be awarded to the site which offers a more strategic location and is more accessible to the target market (which is comprised of the municipalities of San Andres, Pandan and Caramoran)." It turned out that the San Andres dealership was awarded to Mendoza's brother-in-law, [Joseph] Cua [(Cua)], whom Mendoza claims to have not even passed the initial screening of Caltex to qualify and be included in the dealers pool listing.

Firmly believing that he was again by-passed, Mendoza mailed a letter[8] dated January 21, 1999 to [Frank] Cruz [(Cruz)], the Country Manager of Caltex, reminding the latter that his membership in the dealers pool established a "partnership inchoate" between him and Caltex which must be respected and fulfilled. Mendoza added that as a member of the dealers pool, he expects that he will be given priority and that his proposed site will be well-evaluated. Mendoza, through his counsel, likewise delivered a letter of demand[9] dated February 24, 1999 to Caltex, reiterating his position that the award of the San Andres dealership to Cua deprived him of his rightful dealership, causing him injustice and irreparable damages. Thus, Mendoza demanded that Caltex settle the matter within fifteen (15)

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[7] *Id*. at 105.

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

[9] *Id*. at 110.

days from receipt of the letter of demand; otherwise he will be constrained to take the necessary legal remedy to protect his interest.

Through a letter-reply[10] dated February 25, 1999, Caltex explained to Mendoza that:

> "**As you yourself know, the outlet under consideration is a *dealer-owned* outlet**; in which case, consistent with oil industry practice, it is the lot-owner who is appointed dealer, he having put in the investment. In a very real sense, we are powerless to dictate who the dealer will be in a dealer-owned station, because **our discretion is limited to pinpointing the *most preferable site* thereof** to ensure its commercial viability and maximize its service to the public.
>
> In your case, while it is true that you have offered a lot in the same town of San Andres, **your lot is in the *interior* thereof and on a *one-way* street**. On the other hand, **the location we have chosen is on the *national highway*** and therefore is more convenient to motorists not just from San Andres, but also those from the nearby towns of Pandan and Caramoran whom we seek to serve. As you can see, public interest was very much in our mind when we made the choice we did.
>
> **Although you are indeed a member of our dealer pool in the area, this does not, by any means guarantee that you will be chosen dealer, nor does it create a 'Partnership Inchoate' between us, as you so creatively allege.** Nowhere in our advertisements or communications is this implied or stated. On the contrary, we made it clear to you and the other applicants that our dealership selection is a highly competitive process, and that owing to the very limited number of stations available, less than half of the applicants would ultimately be awarded dealerships. x x x" (Emphasis supplied)

Still discontented with the explanation of Caltex, Mendoza filed his Complaint [for Torts & Damages with Preliminary Mandatory Injunction and/or Temporary Restraining Order[11] (Complaint) before the Regional Trial Court of Virac, Catanduanes, Branch 43 (RTC)] on March 29, 1999. [The case was docketed as Civil Case No. 1886.]

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

[11] *Id*. at 75-79.

After due hearing, Mendoza's application for a temporary restraining order was denied by the RTC in its Order dated May 18, 1999. x x x

Meanwhile, On October 13, 2000, Caltex filed its Answer with Counterclaims,[12] restating the explanations it previously offered to Mendoza and setting up as an affirmative defense Mendoza's lack of cause of action against it since he had no vested right to a dealership from Caltex. As Mendoza's unfounded allegations allegedly tarnished its good name and reputation, Caltex prayed that it be awarded moral and exemplary damages, attorney's fees and litigation expenses. [Caltex subsequently changed its name to Chevron Philippines, Inc. (Chevron).]

x x x x x x x x x

After the parties have filed their respective memoranda, the RTC rendered the Assailed Decision[13] dated March 30, 2009.

In ruling against Mendoza, the RTC applied the Supreme Court's declaration in *Cebu Country Club et al. v. Elizagaque* that the petitioners therein "committed fraud and evident bad faith in disapproving respondent's applications" because the respondent: (1) was left groping in the dark wondering why his application was disapproved; (2) was not even informed that a unanimous vote of the Board Members was required; (3) did not receive any reply to his letter for reconsideration and an inquiry whether there was an objection to his application; and (4) was not informed why his application was disapproved. The RTC ruled that the four (4) circumstances mentioned are unavailing in the instant case. It also held that Chevron had no obligation to award the dealership to Mendoza; hence, Mendoza is not entitled to any of the damages he prayed for. Conversely, considering its stature and prestige in the oil industry, the RTC deemed reasonable the award of PhP 1,000,000.00 as moral damages and PhP500,000.00 as exemplary damages to Chevron. The RTC also deemed just and equitable the award of attorney's fees in the amount of PhP 291,838.85[13a] to Chevron since Mendoza's Complaint against it was unfounded.

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[12] *Id*. at 89-103.

[13] *Id*. at 434-448. Penned by Presiding Judge Lelu P. Contreras.

[13a] Also indicated as PhP 292,838.85 in some parts of the *rollo*.

His Motion for Reconsideration[14] having been denied by the RTC in its Assailed Order dated June 22, 2009, Mendoza filed his Notice of Appeal,[15] which was given due course by the RTC on July 21, 2009.[16]

The Ruling of the CA

The main issue decided by the CA was "whether Chevron's act of awarding dealerships to the Franciscos and Cua, and not to Mendoza, constitutes an abuse of right which is compensable under our civil laws."[17]

In the assailed Decision, the CA answered the aforementioned question in the negative; Mendoza's appeal was denied for lack of merit. In sum, the CA found that "[*n*]*o abuse of right can be ascribed to Chevron in not awarding the two (2) dealerships to Mendoza*."[18]

Nevertheless, while sustaining the award of attorney's fees and costs of suit in favor of Chevron, the CA held that Chevron is not entitled to moral and exemplary damages, finding that there was no evidence presented establishing the factual basis for the award of moral and exemplary damages in favor of Chevron.

Hence, the dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the Decision dated March 30, 2009 and the Order dated June 22, 2009 of the Regional Trial Court of Virac, Catanduanes, Branch 43 are hereby **AFFIRMED** with **MODIFICATION** in that the award of moral and exemplary damages in favor of Chevron Philippines, Inc. is **DELETED.** The award of attorney's fees in the amount of PhP 291,838.85, as well as the award of costs, in favor of Chevron Philippines, Inc. stand.

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[14] *Rollo* (G.R. No. 211533), Vol. 1, pp. 450-471.

[15] *Id*. at 495-497.

[16] *Id*. at 52-59.

[17] *Id*. at 60.

[18] *Id*. at 61.

SO ORDERED.[19]

Chevron filed its Motion for Partial Reconsideration[20] on October 14, 2013, while Mendoza filed his Motion for Partial Reconsideration[21] on October 22, 2013.

In the assailed Resolution, the CA denied the two Motions for Partial Reconsideration filed respectively by Chevron and Mendoza.

Hence, the instant Petitions for Review on *Certiorari* were respectively filed by Chevron and Mendoza. Chevron's appeal was docketed as G.R. No. 211533, while Mendoza's appeal was docketed as G.R. No. 212071.

On October 23, 2014, Mendoza filed his Comment[22] to the Chevron Petition.

On October 14, 2014, Chevron filed a Motion for Consolidation,[23] praying that G.R. Nos. 211533 and 212071 be consolidated. On November 26, 2014, the Court issued a Resolution[24] consolidating G.R. Nos. 211533 and 212071.

On March 11, 2015, Chevron filed its Reply[25] to Mendoza's Comment to the Chevron Petition.

Chevron filed its Comment[26] to the Mendoza Petition, to which Mendoza responded with a Reply,[27] which was filed on April 24, 2018.

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[19] *Id*. at 68.

[20] *Rollo* (G.R. No. 211533), Vol. 2, pp. 827-836.

[21] *Rollo* (G.R. No. 212071), Vol. 1, pp. 43-49.

[22] *Rollo* (G.R. No. 211533), Vol. 2, pp. 855-866.

[23] *Id.* at 842-850.

[24] *Id*. at 899-901.

[25] *Id*. at 910-931.

[26] *Rollo* (G.R. No. 212071), Vol. 1, pp. 251-292.

[27] *Rollo* (G.R. No. 211533), Vol. 2, pp. 946-954.

Issues

In the Mendoza Petition, two issues are raised: (1) whether the CA erred in affirming the RTC's Decision dismissing Mendoza's Complaint for being unfounded; and (2) whether the CA erred in maintaining the award of attorney's fees and costs of suit in favor of Chevron.

Meanwhile, in the Chevron Petition, two main issues are raised: (1) whether the CA erred in deleting the award of moral damages previously awarded by the RTC in favor of Chevron; and (2) whether the CA erred in deleting the award of exemplary damages previously awarded by the RTC in favor of Chevron.

The Court's Ruling

After a review of the records of the instant case, the Court finds the Chevron and Mendoza Petitions equally unmeritorious.

Chevron did not commit any abuse of right in awarding dealerships to the Franciscos and Cua, and not to Mendoza.

The Court shall first delve into the argument raised by Mendoza that the CA supposedly erred in sustaining the RTC's Decision, which held that Chevron's act of awarding dealerships to the Franciscos and Cua, and not to Mendoza, did not constitute an abuse of right. Mendoza maintains that "[Chevron's] actions bordered on the abuse of its prerogative of choice."[28]

The Court finds Mendoza's argument patently unmeritorious. There was no abuse of right committed by Chevron in denying an award of dealership in favor of Mendoza. The CA did not commit any reversible error when it sustained the RTC's Decision dismissing Mendoza's Complaint for lack of merit.

The Court has previously explained that the aforesaid Civil Code provision contains what is commonly referred to as the **principle of abuse of rights**. It sets certain standards which

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[28] *Rollo* (G.R. No. 212071), Vol. 1, p. 17.

may be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: to act with justice; to give everyone his due; and to observe honesty and good faith.[29]

The recognized Civil Law Commentator, former CA Justice Eduardo P. Caguioa, explained that through the principle of abuse of rights, "he incurs in liability who, acting under the aegis of a legal right and an apparently valid exercise of the same, oversteps the bounds or limitations imposed on the right by equity and good faith[,] thereby causing damage to another or to society."[30]

As correctly explained by the CA in the assailed Decision, jurisprudence has held that the elements of an abuse of right under Article 19 of the Civil Code[31] are the following: (1) the existence of a legal right or duty, (2) which is exercised in bad faith, and (3) for the sole intent of prejudicing or injuring another. **Malice or bad faith is at the core of an abuse of right.** Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. **Such must be substantiated by evidence.**[32] In the instant case, as noted by the CA, "Mendoza utterly failed in this regard, and was unable to prove the alleged indications of bad faith on the part of Chevron."[33]

The unchallenged factual finding of the CA states that:

x x x [I]t is clear that [the Franciscos] were awarded the Virac dealership not because of the former's relationship with the lessor of the land where the service station is situated, but because among

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[29] *Albenson Enterprises Corp. v. Court of Appeals*, 291 Phil. 17, 27 (1993).

[30] Eduardo P. Caguioa, *COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES*, 3rd ed., 1967, Vol. I, p. 30.

[31] ART. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[32] *ABS-CBN Broadcasting Corp. v. CA*, 361 Phil. 499, 531 (1999).

[33] *Rollo* (G.R. No. 211533), Vol. 1, p. 61.

the three (3) finalists, the Franciscos ranked first and Mendoza ranked only second. Mendoza cannot impeach Jose, who is his own witness, under Section 12, Rule 132 of the Rules of Court Having voluntarily offered Jose to the witness stand, Mendoza is bound by his testimony.[34]

To recall, Jose, Mendoza's own witness, testified under oath that Chevron assured the Franciscos that there was absolutely no undue advantage given to them by Chevron and that they were awarded the franchise by the latter because of Jose's qualifications as a civil engineer and his wife's experience as a former marketing manager.[35] There is absolutely no argument raised by Mendoza in his Petition that belies this factual finding by the CA.

With respect to Chevron's award of the San Andres dealership to Cua, as emphasized by the CA, it was stipulated by the parties during the pre-trial that the site offered by Cua was a two-way street located along the national highway, making the site obviously and manifestly preferable compared to Mendoza's site, which was located at a one-way, inner street not located along the national highway.[36] Again, upon perusal of the Mendoza Petition, there is undeniably no cogent argument raised that seriously contradicts the factual finding by the CA that Chevron's act of awarding a dealership in favor of Cua was perfectly above-board and was exercised in good faith.

In sum, the Court completely concurs with the CA's assessment that "Chevron had been more than patient and accommodating to Mendoza who could not simply accept his defeat."[37] Chevron's act of denying Mendoza's stubborn and obstinate attempts to obtain something which he has absolutely no right to acquire is definitely not an actionable wrong.

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[34] *Id*. at 62.

[35] *Id*.

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

[37] *Id*. at 65.

The Court shall now delve into the issues raised with respect to the damages previously awarded by the RTC in favor of Chevron.

Chevron is not entitled to moral damages.

In the Chevron Petition, Chevron insist that the RTC committed an error in deleting the award for moral damages because the acts of Mendoza purportedly "showed the intention to destroy the reputation and credibility of petitioner Chevron."[38]

The Court does not agree.

A corporation is not as a rule entitled to moral damages because, not being a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish and moral shock. The only exception to this rule is where **the corporation has a good reputation that is debased, resulting in its social humiliation**.[39]

Be that as it may, as explained in the very recent case of *Noell Whessoe, Inc. v. Independent Testing Consultants, Inc.*,[40] the Court held that "**[c]laims for moral damages must have sufficient factual basis, either in the evidence presented or in the factual findings of the lower courts.**"[41]

Similarly, in the earlier case of *Crystal v. Bank of the Philippine Islands*,[42] the Court held that:

x x x [T]here must still be **proof of the existence of the factual basis of the damage and its causal relation to the defendant's acts**. This is so because moral damages, though

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[38] *Id.* at 31; emphasis and capitalization omitted.

[39] *Simex International (Manila), Inc. v. Court of Appeals,* 262 Phil. 387, 394 (1990).

[40] G.R. No. 199851, November 7, 2018, accessed at < http://elibrary.judiciary.gov.ph/thebookshelf/ showdocs/1/64830 >.

[41] *Id.*; emphasis and underscoring supplied.

[42] 593 Phil. 344 (2008).

incapable of pecuniary estimation, are in the category of an award designed to compensate the claimant for ***actual injury* suffered** and not to impose a penalty on the wrongdoer.[43] (Emphasis supplied and italics in the original)

In the instant case, the CA factually found that: "Here, **no evidence was presented by Chevron to establish the factual basis of its claim for moral damages**. Mere allegations do not suffice; they must be substantiated by clear and convincing proof. Thus, We delete the award of moral damages in favor of Chevron."[44]

At this juncture, it must be stressed that, as an elementary rule, in an appeal by *certiorari* under Rule 45, the Court does not pass upon questions of fact as the factual findings of the trial and appellate courts are binding on the Court. The Court is not a trier of facts.[45]

In any case, the Court finds that the CA did not commit any reversible error in not granting moral damages in favor of Chevron. Chevron supports its claim for moral damages merely by pointing out that Mendoza copy furnished third persons his correspondence with Chevron. However, there was absolutely no evidence presented showing that Chevron's reputation was even remotely scathed by the letters of Mendoza. It is very much implausible and inconceivable how the mere act of furnishing copy of the letters from a single, unknown trader can even slightly affect the reputation of one of the largest oil companies in the country.

Hence, the CA's assessment that no evidence was presented by Chevron to establish the factual basis of its claim for moral damages must be left undisturbed.

Chevron is not entitled to exemplary damages.

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[43] *Id*. at 355, citing *Development Bank of the Phils. v. Court of Appeals*, 451 Phil. 563, 586-587 (2003).

[44] *Rollo* (G.R. No. 211533), Vol. 1, p. 67; emphasis supplied.

[45] *Romualdez-Licaros v. Licaros*, 449 Phil. 824, 837 (2003).

Considering that Chevron is not entitled to moral damages, necessarily, it is likewise not entitled to exemplary damages. As made clear under Article 2234 of the Civil Code, **the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded**. Hence, exemplary damages are merely ancillary with respect to moral, temperate, or compensatory damages. Jurisprudence has held that "this specie of damages is allowed only in addition to moral damages such that **no exemplary damages can be awarded unless the claimant first establishes his clear right to moral damages**."[46]

Therefore, the CA was correct in deleting the award of exemplary damages previously awarded by the RTC in favor of Chevron.

The CA did not err in sustaining attorney's fees and costs of suit in favor of Chevron

Lastly, in the Mendoza Petition, Mendoza argues that the CA was mistaken in upholding the award of attorney's fees and costs of suit in favor of Chevron, alleging that such award finds no basis.

The argument fails to convince.

According to Article 2208 of the Civil Code, attorney's fees and expenses of litigation can be awarded by the court in the case of a **clearly unfounded civil action or proceeding** or **in any other case where the court deems it just and equitable** that attorney's fees and expenses of litigation should be recovered.

As held by the CA, the award of attorney's fees and costs of suit are warranted because "Mendoza's Complaint against Chevron is unfounded."[47] Further, the RTC found that based on the

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[46] *Mahinay v. Atty. Velasquez, Jr.*, 464 Phil. 146, 150 (2004); emphasis supplied.

[47] *Rollo* (G.R. No. 211533), Vol. 1, p. 68.

documentary evidence on record, Mendoza's Complaint was merely an unfounded suit instigated by a "sore loser x x x [who] refused to accept [the reasonable explanation of Chevron]."[48]

Considering the serious lack of merit of Mendoza's Complaint against Chevron, which considerably and palpably failed to substantiate the claim of abuse of right hurled against Chevron, the Court has no reason to overturn the RTC and CA's assessment and exercise of discretion that it is just and equitable to impose attorney's fees and litigation costs against Mendoza in favor of Chevron.

WHEREFORE, in view of the foregoing, the Petitions in G.R. Nos. 211533 and 212071 are hereby **DENIED**. The Decision dated September 18, 2013 and Resolution dated February 24, 2014 rendered by the Court of Appeals in CA-G.R. CV No. 93847 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 212170. June 19, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEX ESCARAN** *y* **TARIMAN,** *accused-appellant.*

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[48] *Id*. at 446-447.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); PROCEDURE THAT MUST BE FOLLOWED TO PRESERVE THE INTEGRITY OF THE CONFISCATED DRUGS AND/OR PARAPHERNALIA USED AS EVIDENCE.—** In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is essential, therefore, that the identity and integrity of the seized 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 should 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 Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination.

2. **ID.; ID.; ID.; COMPLIANCE WITH THE PROCEDURE MAY BE EXCUSED AS LONG AS THERE IS A JUSTIFIABLE GROUND, 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 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 the non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved**. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses. Without any justifiable explanation, which must be proven as a fact, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt. x x x In this case, the Court finds that the police officers failed to comply with the prescribed chain of custody rule, thereby putting into question the identity and evidentiary value of the items purportedly seized from Escaran. x x x In this case, the records do not show that the prosecution was able to establish a justifiable ground as to why the police officers failed to mark, photograph and inventory the seized items and why they were not able to secure the presence of the required witnesses. x x x Moreover, contrary to the findings of the CA, the records reveal that **gaps exist** in the chain of custody of the seized items which create reasonable doubt as to the identity and integrity thereof. To establish an unbroken chain of custody, "[i]t is necessary that every person who touched the seized item describe how and from whom he or she received it; where and what happened to it while in the witness' possession; its condition when received and at the time it was delivered to the next link in the chain." This requirement was, however, not complied in this case.

3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN PERFORMANCE OF OFFICIAL DUTY; CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE; LAPSES IN THE PROCEDURES UNDERTAKEN BY THE BUY-BUST TEAM ARE AFFIRMATIVE PROOFS OF IRREGULARITY.— The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Judicial

> reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. x x x 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. Trial courts have been directed by the Court to apply this differentiation. **In this case, the presumption of regularity does not even arise because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.** Indeed, what further militates against according the police 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.

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 Alex Escaran *y* Tariman (Escaran) assailing the Decision[2] dated August 30, 2013 of the Court of Appeals, Twentieth Division, Cebu City (CA), in CA-G.R. CEB CR-HC No. 01275, which affirmed with modification the Joint Judgment[3] dated October 18, 2010 of the Regional Trial Court (RTC), Branch 28, 7th Judicial Region, Mandaue City in Criminal Case Nos. DU-11130 and DU-11131, finding Escaran guilty

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[1] See Notice of Appeal dated October 2, 2013; CA *rollo*, pp. 123-125.

[2] CA *rollo*, pp. 99-122. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with Associate Justices Ramon Paul L. Hernando (now a Member of this Court) and Carmelita Salandanan-Manahan concurring.

[3] *Id*. at 49-57. Penned by Judge Marilyn Lagura-Yap.

beyond reasonable doubt of the crimes punished under Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the C*omprehensive Dangerous Drugs Act of 2002.*

The Facts

In two separate Informations[5] both dated March 23, 2004, Escaran was charged with illegal sale and illegal possession of dangerous drugs defined and punished under Sections 5 and 11, respectively, Article II of RA 9165. The accusatory portions of the Informations read as follows:

Criminal Case No. DU-11130 (For violation of Section 5):

That on or about the 21st day of March, 2004 in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and without being authorized by law, did then and there wilfully, unlawfully and feloniously sell, deliver and give away to another two (2) packets containing "shabu" or methylamphetamine hydrochloride having a total weight of 0.06 gram, a dangerous drug.

CONTRARY TO LAW.[6]

Criminal Case No. DU-11131 (For violation of Section 11):

That on or about the 21st day of March, 2004, in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control four (4) heat-sealed transparent plastic packet[s] of white crystalline substance having a combined weight of 0.08 gram which when subjected to laboratory examination gave

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[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 (Crim. Case No. DU-11130), pp. 1-2; records (Crim. Case No. DU-11131), pp. 1-2.

[6] *Id.* at 1.

positive results for the presence of methylamphetamine hydrochrloride, a dangerous drug.

CONTRARY TO LAW.[7]

When arraigned, Escaran pleaded not guilty to both charges against him.[8] During the pre-trial, the court dispensed with the testimony of Police Senior Inspector, Forensic Chemical Officer Mutchit G. Salinas (PSI Salinas) after the parties stipulated on the following:

1. The complaining policemen are all members of the Mandaue Police Office, assigned to the DEU;
2. Escaran was arrested on March 21, 2004 at about 9:20 in the evening at Ibabao, Mandaue City;
3. The existence of Chemistry Reports D-523-2004 and D-552-2004 as well as the expertise of PSI Salinas;
4. The Pre-Operation Report refers to March 21, 2004, 2000H-2200H, or from 8:00 to 10:00 in the evening.[9]

Thereafter, trial ensued. The prosecution presented PO1 Roque Veraño , Jr. (PO1 Veraño) and PO1 Bimon Montebon (PO1 Montebon) whose testimonies were summarized by the CA as follows:

> On March 21, 2004[,] at around 7:00 o'clock in the evening the confidential agent of the Drug Enforcement Unit of Mandaue made a phone call to Police Chief [Inspector Juanito] Enguerra [PCI Enguerra,] informing the latter that [Escaran] is selling *shabu* at Sitio Sapa-Sapa, Ibabao, Mandaue City. Their conversation lasted for an hour and a half. On the basis of the said information, PCI Enguerra directed PO1 Montebon and PO1 Veraño together with their informant to conduct a surveillance at Sitio Sapa-Sapa at around &:00 o'clock in the evening, wherein the said policemen ascertained that the information they received was accurate.

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[7] Records (Crim. Case No. DU-11131), p. 1.

[8] CA *rollo*, p. 101.

[9] *Id*. at 101-102.

Upon their return at the police station, PCI Enguerra conducted a briefing attended by the confidential agent, PO1 Montebon, PO1 Veraño and SPO4 Tumakay wherein the group hatched a plan to conduct a buy bust operation against [Escaran]. PO1 Veraño was designated as the poseur-buyer and he was given x x x pre-marked two x x x ₱100.00 peso bills furnished by SPO1 Enri[q]uez who affixed his signature on the upper left portion of the said bills.

After their briefing, at around 9:00 o'clock in the evening, on board the service vehicle, Mobile 9, PO1 Montebon, PO1 Veraño and SPO1 Enriquez together with the confidential agent went to the designated area. Twenty minutes after the group arrived, they were met by [Escaran,] who asked PO1 Veraño if he would be interested to buy *shabu* to which the latter answered in the affirmative. PO1 Veraño then told [Escaran] that he would buy worth ₱200.00[;] thereafter the latter handed to the former two [2] packs of *shabu*.

After that, PO1 Veraño and PO1 Montebon introduced themselves as policemen and [arrested Escaran] who was thereafter appraised of his constitutional rights. When [Escaran] was frisked by PO1 Montebon, the policeman was able to recover an additional four [4] packs of *shabu* from the right front pocket of [Escaran]'s trousers.

The police officers then brought [Escaran] to the police station. The two [2] packets from the sale were then marked as "Alex-1" and "Alex-2" while the four [4] packets obtained from the search were marked as "AET- 1" to "AET-4". The contraband were then brought to the PNP Crime Laboratory for examination.

The Chemistry Report [p]repared by [PSI Salinas] on the items seized from [Escaran] yielded positive results for *shabu*.[10]

For his defense, Escaran denied the charges and narrated that:

x x x At around 5:00 o'clock in the afternoon of March 21, 2004, [Escaran] was told by his co-worker Arman to wait for him by the bamboo groove near his house so that they could go together to work. They were supposed to report at 9:30 o'clock (*sic*) in the evening at the back portion of Sitio Sapa-Sapa. [Escaran] had been under the employ of one Titing as a butcher of chickens for the past four [4] years prior to his arrest. Two minutes into waiting for Arman, the latter arrived and told [Escaran] to wait further as he was going

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[10] *Id*. at 102-103.

to sharpen his knife and if their other companions would arrive before him [Arman] then [Escaran] should go with them.

[Escaran] decided to wait further as their other companions were not yet in sight. A while later he noticed four [4] persons who approached him and asked where they could buy *shabu*. [Escaran] replied that he does not sell *shabu* and directed the persons to go further back out and he saw the group heading towards the store. Thereafter, one of the persons in the group came back to him and asked him to accompany them because they were not familiar with the place. [Escaran] declined and said that he was waiting for his companions. The person left him alone. Still, no companions in sight, another person from the group was able to come back and asked him again to accompany them but then again he declined. This infuriated the person who retorted "Why will you not accompany us? We are just requesting you to accompany us."

Undaunted, another one from the group whom he identified as Montebon introduced himself saying "Bay, we are policemen. You just accompany us where we can buy *shabu*." But [Escaran] was adamant saying he could not do that because he was waiting for his companions. Montebon then replied[,] "It's up to you, you might regret it", after he said that he returned to his companions.

The four of them, then approached him and ordered him to stand up. [Escaran] asked why he was ordered around but they retorted that he was hard-headed. Suddenly, one of the four people drew his gun and aimed at [Escaran] saying[,] "If you only had accompanied us, this [would] not have happened to you.["] Thereafter, he was dragged in a corner and was told to board the vehicle. He was later on brought to the Command Office where he was asked to point to them [policemen] the house of a certain Dennis and was even told that should he supply them the information, the four will set him free. Not knowing any person in the name of Dennis, he could not give them an answer.

They left him for a while in a small room and a few short minutes later, they brought him outside and made him sit on a table near the computer and was told: "do you see those packs? Those 6 packs will be yours if you will not tell us." He pleaded to them and told them that he was still on probation but they were just laughing at him. He was later on locked up and brought to Precinct l.[11]

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[11] *Id*. at 104-106.

Ruling of the RTC

The RTC found Escaran guilty beyond reasonable doubt of violation of Sections 5 and 11 of RA 9165 and sentenced him to life imprisonment and an indeterminate penalty of twelve (12) years as minimum term to twelve (12) years and one (1) day as maximum term, respectively.[12] The RTC found that all the elements of illegal sale and illegal possession of dangerous drugs were established by the prosecution and that there was regularity in the performance of official duties by the members of the buy-bust team.[13] The RTC further held that Escaran's defense of denial is not sufficient to overcome the positive assertion of the police officers that Escaran was caught selling *shabu*.[14]

Ruling of the CA

On appeal, the CA, in the assailed Decision,[15] sustained Escaran's conviction. The CA agreed with the RTC that all the elements of the crimes charged were established by the straightforward and categorical declaration of the prosecution's witnesses, especially since the defense did not adduce any evidence showing that the police officers in the buy-bust operation had any ill motive to make false charges against Escaran.[16]

The CA further held that the failure of the police officers to strictly comply with the provisions of Section 21 of RA 9165 is of no moment since the integrity and evidentiary value of the drugs seized from Escaran were preserved.[17]

The CA, however, modified the penalties imposed upon Escaran that in Criminal Case No. DU-11130, Escaran was further ordered to pay ₱500,000.00 as fine; while in Criminal Case

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

[13] *Id*. at 54-56.

[14] *Id*. at 56.

[15] *Id*. at 99-122.

[16] *Id*. at 109 117.

[17] *Id*. at 117-119.

No. DU-11131, Escaran was sentenced to an indeterminate penalty of twelve (12) years and one (1) day to twenty (20) years with all the accessory penalties provided by law and ordered to pay ₱300,000.00 as fine.[18]

Hence, the instant appeal.

Issue

Whether the CA erred in sustaining Escaran's conviction for violation of Sections 5 and 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. Escaran is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[19] and the fact of its existence is vital to sustain a judgment of conviction.[20] It is essential, therefore, that the identity and integrity of the seized drug be established with moral certainty.[21] 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.[22]

In this regard, Section 21,[23] Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, outlines

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[18] *Id.* at 121.

[19] *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

[20] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[21] *See People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 9.

[22] *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

[23] 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

the procedure which the police officers should 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 Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination.[24]

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. In this connection, this also means that the three (3) 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**

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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[.]

[24] See RA 9165, Art. II, Sec. 21(1) and (2).

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.[25]

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;[26] 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 the non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved**.[27] It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.[28] Without any justifiable explanation, which must be proven as a fact,[29] 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.[30]

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[25] *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 10.

[26] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[27] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

[28] *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6; *People v. Crispo*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 6; *People v. Magsano*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Manansala*, G.R. No. 229092, February 21, 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. Jugo*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[29] See *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[30] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

The police officers failed to comply with the mandatory requirements under Section 21.

In this case, the Court finds that the police officers failed to comply with the prescribed chain of custody rule, thereby putting into question the identity and evidentiary value of the items purportedly seized from Escaran.

First, while PO1 Montebon[31] and PO1 Veraño[32] narrated that SPO1 Enriquez marked the items recovered from Escaran, there is no evidence as to when and where the seized drugs were marked and whether the marking was made in Escaran's presence. In *People v. Ameril*,[33] the Court stressed that marking of the seized items should be done immediately upon seizure and in the presence of the accused to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence.

Second, PO1 Veraño admitted that after the alleged sale of drugs was consummated and Escaran was arrested and apprised of his constitutional rights, the latter was immediately brought to the police station for interrogation. The buy-bust team did not make any inventory nor did it take photographs of the items seized from Escaran. Pertinent portions of PO1 Veraño's testimony read as follows:

Q After the arrest of the accused, what happened next?

A We brought him to [t]he Mandaue City Police Office and interrogated him.[34]

x x x x x x x x x

Q Was there an inventory made of the 6 packs?

A None, but a report was made.

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[31] See TSN, April 14, 2005, p. 8.

[32] See TSN, April 12, 2005, pp. 28-29.

[33] 799 Phil. 484, 494 (2016).

[34] TSN, April 12, 2005, p. 10.

Q What report are you referring to?

A Report for Crime Laboratory.

Q That is a request.

A Yes, request.

Q You know that when you arrest somebody for selling or for possession, you have to make an inventory of the items seized or confiscated from him in the presence of the accused or his representative?

A No, we already coordinated with the PDEA.[35]

x x x x x x x x x

Q You wouldn't know if a photograph was taken of the items seized?

A No, but there was a picture of the accused.

Q Only a picture of the accused?

A Yes.[36]

The lack of inventory and photographs of the seized items was corroborated by PO1 Montebon, who testified as follows:

Q You immediately brought him [Escaran] to your office and placed him under investigation and booked him?

A [Y]es.

Q There was an inventory made?

A No.

Q No photographs taken?

A The photograph of Escaran was taken.

Q Photographs of items which you said were confiscated from him?

A No.[37]

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[35] *Id*. at 29-30.

[36] *Id*. at 31.

[37] TSN, April 18, 2005, p. 14.

Third, none of the three (3) required witnesses under Section 21 was present at the place of seizure and apprehension and even at the police station. It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[38] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,[39] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 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 to 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 —

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[38] G.R. No. 228890, April 18, 2018.

[39] 736 Phil. 749,764 (2014).

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".[40] (Emphasis and underscoring in the original)

Indeed, case law states that the procedure enshrined in Section 21, Article II of **RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects**.[41] For indeed, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[42]

The saving clause does not apply to this case.

As earlier stated, following the IRR of RA 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites are present: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team**.[43]

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[40] *People v. Tomawis*, *supra* note 38, at 11-12.

[41] *Gamboa v. People*, 799 Phil. 584, 597 (2016), citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

[42] *Id.* at 597.

[43] *People v. Callejo*, *supra* note 25, at 9-10, citing *People v. Cayas*, 789 Phil. 70, 79-80 (2016).

If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the failure to strictly comply with the mandatory requirements of Section 21. It has also been emphasized that the State bears the burden of proving the justifiable cause.[44] Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.[45]

In this case, the records do not show that the prosecution was able to establish a justifiable ground as to why the police officers failed to mark, photograph and inventory the seized items and why they were not able to secure the presence of the required witnesses. It must be noted that the police officers in this case received the information that Escaran was allegedly peddling drugs at around 7:00 in the evening and was even able to conduct a surveillance at the place identified by the confidential agent before the buy-bust was operationalized at around 9:00 in the evening.[46] Thus, the police officers had more than ample time to comply with the requirements established by law; and yet they did not exert even the slightest effort to secure the attendance of the required witnesses.

Moreover, contrary to the findings of the CA, the records reveal that **gaps exist** in the chain of custody of the seized items which create reasonable doubt as to the identity and integrity thereof. To establish an unbroken chain of custody, "[i]t is necessary that every person who touched the seized item describe how and from whom he or she received it; where and what happened to it while in the witness' possession; its condition when received and at the time it was delivered to the next link in the chain."[47] This requirement was, however, not complied in this case.

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[44] *People v. Beran*, 724 Phil. 788, 822 (2014).

[45] *People v. Reyes*, 797 Phil. 671, 690 (2016).

[46] TSN, April 18, 2005, pp. 3-10.

[47] *People v. Gajo*, G.R. No. 217026, January 22, 2018, p. 8.

PO1 Veraño testified that the six (6) plastic sachets confiscated from Escaran were turned over to PCI Enguerra, who later on delivered the same to SP01 Enriquez to prepare the request for laboratory examination.[48] Further, the Request for Laboratory examination showed that the confiscated drugs were delivered to the crime laboratory by PO1 Veraño.[49] However, the Court does not see from the records the details on how the specimens were handled from the time they were handed to PCI Enguerra to the time they were delivered to SPO1 Enriquez until they were returned to PO1 Veraño and submitted to PSI Salinas for examination. The testimonies of PO1 Veraño and PO1 Montebon were sorely lacking on these details.

Similarly, PSI Salinas did not testify on how she handled the seized items during examination and before it was transferred to the court — which testimony is required to ensure that that there was no change in the condition of the seized drug and no opportunity for someone not in the chain to have possession while in her custody. Instead of the forensic chemist turning over the substance to the court and testifying, the parties merely made stipulations, which do not in any way prove how the drugs were handled by said chemist. In other words, the records do not indicate how the identity and integrity of seized drugs were preserved from the time they were confiscated from Escaran to the time they were turned over to the next responsible person until they were offered in court as evidence.

As the seized drugs themselves are the *corpus delicti* of the crime charged, it is of utmost importance that there be no doubt or uncertainty as to their identity and integrity. The State, and no other party, has the responsibility to explain the lapses in the procedures taken to preserve the chain of custody of the dangerous drugs. Without the explanation by the State, the evidence of the *corpus delicti* is unreliable,[50] as in this case. Consequently, Escaran must perforce be acquitted.

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[48] TSN, April 12, 2005, pp. 28-29.

[49] Records, pp. 38-39.

[50] *People v. Supat*, G.R. No. 217027, June 6, 2018, p. 16.

The presumption of innocence of the accused vis-a-vis the presumption of regularity in the performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[51] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[52]

Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. In *People v. Enriquez*,[53] the Court held:

> x x x [A]ny divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the **non-compliance is an irregularity**, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*.[54] (Emphasis supplied)

The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[55] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[56]

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[51] 1987 CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[52] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[53] 718 Phil. 352 (2013).

[54] *Id.* at 366.

[55] *People v. Callejo*, *supra* note 25, at 20, citing *People v. Mendoza*, *supra* note 39, at 770.

[56] *Id.*, citing *People v. Mendoza*, *id.*

Trial courts have been directed by the Court to apply this differentiation.[57]

In this case, the presumption of regularity does not even arise because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.

Indeed, what further militates against according the police 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 PNP Drug Enforcement Manual[58] (PNPDEM), the conduct of buy-bust operations required the following:

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x x x x x x

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[;]

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[57] *Id*., citing *People v. Mendoza*, *id*.

[58] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

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 and underscoring supplied)

The Court has ruled in *People v. Zheng Bai Hui*[59] that it will not presume to set an *a priori* basis on what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

All told, the prosecution failed to prove the *corpus delicti* of the offenses of sale and possession 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 drugs. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellant Escaran.

As a final note, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with**. In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence.

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[59] 393 Phil. 68, 133 (2000).

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.[60]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated August 30, 2013 of the Court of Appeals, Twentieth Division, Cebu City in CA-G.R. CEB CR-HC No. 01275 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Alex Escaran *y* Tariman 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 sent to 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. A copy shall also be furnished to the Director General of the Philippine National Police for his information.

SO ORDERED.

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

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[60] *People v. Otico*, G.R. No. 231133, June 6, 2018, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

SECOND DIVISION

[G.R. No. 213874. June 19, 2019]

JEBSENS MARITIME, INC. and/or STAR CLIPPERS, LTD., *petitioners, vs.* **EDGARDO M. MIRASOL,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; DISABILITY COMPENSATION; RULES ON CLAIMS FOR TOTAL AND PERMANENT DISABILITY BENEFITS; FAILURE OF THE COMPANY-DESIGNATED PHYSICIAN TO ISSUE A FINAL AND DEFINITE ASSESSMENT WITHIN THE 120-DAY PERIOD MAKES THE SEAFARER ENTITLED TO PERMANENT AND TOTAL DISABILITY BENEFITS; CASE AT BAR.— In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.* (Elburg), the Court summarized the rules when a seafarer claims total and permanent disability benefits, as follows: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification. A final, conclusive, and definite medical assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment. It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all possible

treatment options within the periods allowed by law. x x x [T]he 5th Medical Report [issued by the company-designated physician] does not reflect a definite and final assessment of respondent's fitness to work or disability rating, or whether his illness was work-related. The report was merely an interim report as it specifically stated a date for the next appointment. Further, it indicates that respondent's treatment was "in progress." Following *Elburg*, the company-designated physicians' failure to issue a final and definite assessment within the 120-day period makes respondent entitled to permanent and total disability benefits. It was no longer necessary for respondent to present evidence that his illness is work-related and compensable because the law operates to declare respondent entitled to total and permanent disability benefits after the company-designated physicians' failure to issue a final and definite assessment within the 120-day period.

2. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; MAY BE RECOVERED BY AN EMPLOYEE IN ACTIONS FOR INDEMNITY UNDER THE EMPLOYER'S LIABILITY LAWS; CASE AT BAR.— As to the LA and the CA's award of ten percent (10%) attorney's fees, the Court affirms the same. The award of attorney's fees is proper as the Court ruled in *Cariño v. Maine Marine Phils., Inc.* that attorney's fees may be recovered by an employee in actions for indemnity under the employer's liability laws.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Emmanuel E. Sandicho for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the

[1] *Rollo*, pp. 3-33, excluding Annexes.

Decision[2] dated May 12, 2014 and Resolution[3] dated August 14, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 133037. The CA Decision granted the petition for *certiorari* and annulled the Resolutions dated June 28, 2013[4] and September 30, 2013[5] of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. OFW (M) 11-16383-12; NLRC LAC No. (OFW-M) 03-000279-13, and awarded to respondent permanent and total disability benefits, sickness allowance, and attorney's fees.

Facts

The factual antecedents as found by the CA, are as follows:

A Complaint dated 08 November 2012 was filed by complainant Edgardo Malate Mirasol against respondents Jebsens Maritime, Inc., Star Clippers Ltd., and/or Maria Theresa Lunzaga for total and permanent disability benefits, moral and exemplary damages, four months basic wages, and attorney's fees.

In his Position Paper dated 17 December 2012, complainant [(respondent herein)] alleged, *inter alia*, that: he is entitled to total permanent disability benefits of US$60,000.00 under the POEA Standard Employment Contract; his illness is work-related as it was sustained in the course of his duties; said illness was not pre-existing since he underwent the mandatory pre-employment medical examination before he was employed by the respondents, and was found to be fit and given a clean bill of health; the law does not require that a seafarer be totally paralyzed in order to claim total permanent disability benefits; he is entitled to moral and exemplary damages, and attorney's fees; respondents [(petitioners herein)] must be ordered to pay moral damages in the amount of Php500,000.00; in addition to his sickness/loss of right testicle, he also suffered serious anxiety, sleepless nights, wounded feelings and loss of appetite; respondents must likewise be ordered to pay him exemplary damages of Php500,000.00; and since

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[2] *Id*. at 35-51. Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Franchito N. Diamante and Melchor Q.C. Sadang.

[3] *Id*. at 53-54.

[4] *Id*. at 65-71. Penned by Commissioner Pablo C. Espiritu, Jr., with Presiding Commissioner Alex A. Lopez and Gregorio O. Bilog III concurring.

[5] *Id*. at 72 to 72-A.

it was respondents' act of refusing to pay his disability benefits which forced him to litigate, they must likewise be ordered to pay attorney's fees of ten percent (10%) of the total award in his favor.

Complainant also filed an Addendum Supplement dated 27 December 2012, wherein it was alleged that respondents are legally mandated to provide sickness allowance equivalent to 120 days salaries; and that their refusal to pay sickness allowance is a manifest sign of bad faith which makes them liable for damages.

Respondents filed their Position Paper dated 05 December 2012, and averred, *inter alia*, that: complainant is not entitled to disability compensation under the POEA Standard Employment Contract because his testicular cancer is not work-related; Section 32 of the POEA Standard Employment Contract states that epidydimitis and testicular cancer are not considered as occupational diseases; Section 32-A of the POEA Standard Employment Contract provides that for an occupational disease and the resulting disability or death to be compensable, four conditions must be satisfied; none of these conditions have been met; his work did not involve the risks inherent in acquiring epidydimitis and testicular cancer; none of his duties as a First Cook was a contributing factor in the development of epidydimitis which is an illness pertaining to the male reproductive organ in relation to sexual intercourse; testicular cancer is a disease in which cells become malignant in one or both testicles; he has the burden of proving the reasonable connection between his ailments and his working conditions; he was onboard the Royal Clipper for ten days before he started complaining of pain in his right testicle; it is medically impossible for him to have developed his epidydimitis and testicular cancer in such a short period of time; his epidydimitis, which became testicular cancer, is not work-related, and not compensable; and he is not entitled to sickness allowance and reimbursement of medical expenses, damages and attorney's fees.

Respondents filed their Reply dated 09 January 2013. Complainant also filed his Reply dated 15 January 2013 and Rejoinder of even date. Respondents then filed their Rejoinder dated 18 January 2013.[6]

Labor Arbiter (LA) Decision

The LA found that petitioners were liable to pay respondent permanent and total disability benefits and sickness allowance

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

for 120 days, as well as attorney's fees. The dispositive portion of the LA Decision[7] dated January 31, 2013 states:

> **WHEREFORE**, Respondents **JEBSENS MARITIME, INC. and STAR CLIPPERS LTD.** are solidarily liable to pay the Complainant the amount of **SIXTY THOUSAND U.S. DOLLARS (US$60,000.00)** representing his total and permanent disability benefits, **TWO THOUSAND FIVE HUNDRED EIGHTY U.S. DOLLARS (US$2,580.00)** as his sickness allowance; and ten (10%) percent thereof, or **SIX THOUSAND TWO HUNDRED FIFTY EIGHT U.S. DOLLARS (US$6,258.00)** as and for attorney's fees, or their peso equivalent at the time of payment.
>
> All other claims are dismissed for lack of merit.
>
> **SO ORDERED.**[8]

The LA found that respondent acquired epidydimitis and testicular cancer[9] while he was on-board the vessel because he was declared fit to work during his pre-employment medical examination.[10] The LA also found that respondent was subjected to enormous stress and constantly exposed to dusts, chemical irritants, and/or natural elements such as harsh sea weather.[11]

NLRC Resolution

On appeal, the NLRC partially granted the appeal. The dispositive portion of the NLRC Resolution[12] dated June 28, 2013 states:

> WHEREFORE, premises considered, the appeal is **PARTLY GRANTED** and the Decision dated 31 January 2013 is hereby **MODIFIED** ordering respondents-appellants who are solidarily held

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[7] *Id*. at 56-63. In NLRC-NCR Case No. OFW (M) 11-16383-12, penned by Labor Arbiter Rommel R. Veluz.

[8] *Id*. at 63.

[9] See *id.* at 59.

[10] *Id.*

[11] *Id*. at 60.

[12] *Id*. at 65-71.

liable, to pay complainant-appellee disability compensation in the amount of US$7,465 corresponding to the Grade II Schedule of Disability under Section 32 of the POEA Standard Contract.

The Labor Arbiter's award of sickness allowance and attorney's fees to complainant-appellee is **AFFIRMED**.

SO ORDERED.[13]

The NLRC ruled that respondent's testicular cancer is not work-related because respondent complained of pain in his right testicle on his 10th day onboard the vessel and that cancer cannot happen in just 10 days.[14] Nonetheless, the NLRC ruled that given the fact that it was undisputed that respondent lost one testicle, which is considered an illness under Urinary and Generative Organs with a disability grade of 11, respondent is entitled to US$7,465.00.[15] Having failed to show proof of payment of sickness allowance to respondent, the NLRC affirmed the LA's award of sickness allowance to respondent.[16]

CA Decision

Aggrieved, respondent filed a petition for *certiorari* with the CA, which nullified the NLRC Resolutions and reinstated the LA Decision. The dispositive portion states:

WHEREFORE, premises considered, the Petition is **GRANTED**. The Resolutions dated 28 June 2013 and 30 September 2013 of the National Labor Relations Commission (Third Division) in *NLRC NCR Case No. OFW (M) 11-16383-12; NLRC LAC No. (OFW-M) 03-000279-13* are **NULLIFIED**. The Decision dated 31 January 2013 of Labor Arbiter Rommel R. Veluz is **REINSTATED**. No pronouncement as to costs.

SO ORDERED.[17]

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[13] *Id*. at 71.

[14] *Id*. at 70.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 48.

The CA ruled that respondent is entitled to permanent and total disability benefits because the company-designated physicians failed to arrive at a timely and definite assessment of respondent's fitness to work or permanent disability.[18] The CA found that respondent was repatriated on August 4, 2012 and in a Medical Report dated August 29, 2012, the company-designated physicians diagnosed respondent with epidydimitis and solid mass in his right testicle and recommended for radical orchiectomy.[19] The CA found that respondent was admitted at the Manila Doctors Hospital on October 18, 2012, radical orchiectomy was performed on October 19, 2012, and he was discharged from the hospital on October 23, 2012. Thereafter, the company-designated physicians did not arrive at an assessment of respondent's fitness to work or permanent disability.[20] The CA therefore ruled that respondent is entitled to permanent and total disability benefits for the company-designated physicians' failure to declare a definite assessment of respondent's fitness to work or permanent disability during the 120 or 240- day periods.[21]

Further, the CA affirmed the award of sickness allowance and attorney's fees.[22]

Petitioner moved for reconsideration but the CA denied this. Hence, this Petition.

Issues

The Petition raises the following issues:

I. THE [CA] SERIOUSLY ERRED IN RULING THAT RESPONDENT IS ENTITLED TO PERMANENT TOTAL DISABILITY BENEFITS PURSUANT TO SECTION 32 OF THE POEA-SEC; AND

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[18] *Id*. at 44.

[19] *Id*.

[20] *Id*.

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

[22] *Id*. at 46-47.

II. THE [CA] GRAVELY ERRED IN RULING THAT RESPONDENT IS ENTITLED TO ATTORNEY'S FEES.[23]

The Court's Ruling

The Petition is denied.

Respondent is entitled to permanent and total disability benefits and attorney's fees.

Petitioners argue that respondent's illness was not work-related as he only experienced his symptoms 10 days after joining the crew's vessel[24] and that he failed to present substantial evidence to prove that his illness was work-related.[25] This is baseless in light of the undisputed fact that the company-designated physicians failed to arrive at a final and definite assessment of respondent's fitness to work or the degree of his disability.

In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*[26] (*Elburg*), the Court summarized the rules when a seafarer claims total and permanent disability benefits, as follows:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment

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[23] *Id*. at 10.

[24] *Id.* at 13.

[25] *Id*. at 14.

[26] 765 Phil. 341 (2015).

or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[27]

A final, conclusive, and definite medical assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment. It should no longer require any further action on the part of the company-designated physician and it is issued by the company-designated physician after he or she has exhausted all possible treatment options within the periods allowed by law.

Here, petitioners admit that respondent was repatriated on August 4, 2012.[28] Further, they also admit that the last medical assessment issued by the company-designated physicians was on August 29, 2012,[29] which stated the following:

Date:	August 29, 2012
Attention:	**MS. EFFEL SANTILLAN** Employee Administration Manager
Patient:	**MIRASOL, EDGARDO M.**
Position:	1st COOK
Vessel:	ROYAL CLIPPER
Agent:	**JEBSENS MARITIME, INC.**
Principal:	STAR CLIPPERS LTD.
Date of Repatriation:	August 04, 2012 (Manila)
Status:	Treatment in Progress
Days on Treatment:	**23 Day(s)**

[27] *Id.* at 362-363.

[28] *Rollo*, p. 6.

[29] See *id*. at 7.

MEDICAL REPORT

Report:
5th MEDICAL REPORT

The patient was seen today in our clinic.

He was seen by our urologist. CT scan was reviewed and he opined that malignancy of the right testicle is highly entertained. He recommended radical orchiectomy (right).

He complains of pain and tenderness on his right testicle.

Diagnosis:
Epidydimitis, right
Solid mass - right testicle
To consider Malignancy

Recommendation:
Radical Orchiectomy
Estimate cost: Php 200,000.00 (actual cost may vary)

Next Appointment:
September 12, 2012

By:	Noted:
(Signed)	(Signed)
Regino, Amado G.	Cruz, Nicomedes G., M.D.[30]

The foregoing shows that the 5th Medical Report does not reflect a definite and final assessment of respondent's fitness to work or disability rating, or whether his illness was work-related. The report was merely an interim report as it specifically stated a date for the next appointment. Further, it indicates that respondent's treatment was "in progress."

Following *Elburg*, the company-designated physicians' failure to issue a final and definite assessment within the 120-day period makes respondent entitled to permanent and total disability benefits. It was no longer necessary for respondent to present evidence that his illness is work-related and compensable because the law operates to declare respondent entitled to total and

[30] *Id*. at 99.

permanent disability benefits after the company-designated physicians' failure to issue a final and definite assessment within the 120-day period.[31]

As to the LA and the CA's award of ten percent (10%) attorney's fees, the Court affirms the same. The award of attorney's fees is proper as the Court ruled in *Cariño v. Maine Marine Phils., Inc.*[32] that attorney's fees may be recovered by an employee in actions for indemnity under the employer's liability laws.

WHEREFORE, premises considered, the Petition is **DENIED**. The Decision dated May 12, 2014 and Resolution dated August 14, 2014 of the Court of Appeals in CA-G.R. SP No. 133037 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 214044. June 19, 2019]

UNIVERSITY OF THE PHILIPPINES, *petitioner, vs.* **CITY TREASURER OF QUEZON CITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; QUESTIONS OF LAW; ISSUE OF WHETHER UNIVERSITY OF THE PHILIPPINES (UP), AS A CHARTERED ACADEMIC INSTITUTION WITH SPECIFIC

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[31] *Pastor v. Bibby Shipping Philippines, Inc.*, G.R. No. 238842, November 19, 2018, pp. 8-9.

[32] G.R. No. 231111, October 17, 2018, p. 15.

LEGISLATED TAX EXEMPTIONS, IS LEGALLY LIABLE FOR THE REAL PROPERTY TAX ON THE LAND LEASED TO AYALA LAND, INC. (ALI) IS A PURE QUESTION OF LAW WHICH THE SUPREME COURT HAS THE POWER TO DECIDE.— This Court has the power to decide the present case. Findings of fact are not necessary as the present petition asks to determine whether UP, as a chartered academic institution with specific legislated tax exemptions, is legally liable for the real property tax on the land leased to ALI. This issue is a pure question of law, not of fact.

2. **POLITICAL LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT TAXATION; EXEMPTIONS; THE EXERCISE OF TAXING POWERS OF THE LOCAL GOVERNMENT UNIT SHALL NOT EXTEND TO LEVY OF TAXES, FEES OR CHARGES OF ANY KIND ON GOVERNMENT INSTRUMENTALITIES, LIKE THE UNIVERSITY OF THE PHILIPPINES (UP); CASE AT BAR.—** One source of UP's exemption from tax comes from its character as a government instrumentality. Section 133(o) of the Local Government Code states that, unless otherwise provided by the Code, the exercise of taxing powers of the local government units shall not extend to levy of taxes, fees or charges of any kind on government instrumentalities. However, a combined reading of Sections 205 and 234 of the Local Government Code, previously quoted above, also provides for removal of the exemption to government instrumentalities when beneficial use of a real property owned by a government instrumentality is granted to a taxable person. Stated differently, when beneficial use of a real property owned by a government instrumentality is granted to a taxable person, then the taxable person is not exempted from paying real property tax on such property. This is the doctrine used by the City Assessor and the City Treasurer in the present set of facts. The City Assessor and the City Treasurer concluded that ALI is liable for the real property tax on the land that it leased from UP.

3. **ID.; REPUBLIC ACT NO. 9500 (UP CHARTER OF 2008); EXEMPTS UP'S REVENUES AND ASSETS USED FOR EDUCATIONAL PURPOSES OR IN SUPPORT THEREOF FROM ALL TAXES AND DUTIES; DETERMINATION OF THE TAX STATUS OF THE POSSESSOR OR OF THE BENEFICIAL USER TO FURTHER ASCERTAIN WHETHER**

UP'S REVENUE OR ASSET IS EXEMPT FROM TAX IS NO LONGER NECESSARY; CASE AT BAR.— The enactment and passage of Republic Act No. 9500 in 2008 superseded Sections 205(d) and 234(a) of the Local Government Code. Before the passage of Republic Act No. 9500, there was a need to determine who had beneficial use of UP's property before the property may be subjected to real property tax. After the passage of Republic Act No. 9500, there is a need to determine whether UP's property is used for educational purposes or in support thereof before the property may be subjected to real property tax. x x x Section 22 of Republic Act No. 9500, previously quoted above, allows UP to lease and develop its land subject to certain conditions. The Contract of Lease between UP and ALI shows that there is an intent to develop "a prestigious and dynamic science and technology park, where research and technology-based collaborative projects between technology and the academe thrive, thereby becoming a catalyst for the development of the information technology and information technology-enabled service." The development of the subject land is clearly for an educational purpose, or at the very least, in support of an educational purpose. UP President Pascual pointed out to City Treasurer Villanueva that Republic Act No. 9500 granted extensive tax exemptions to UP. More specifically, Section 25(a) of Republic Act No. 9500, previously quoted above, provided that all of UP's "**revenues and *assets* used for educational purposes or in support thereof shall be exempt from all taxes and duties**." Republic Act No. 9500 bases UP's tax exemption upon compliance with the condition that UP's revenues and assets must be used for educational purposes or in support thereof. There is no longer any need to determine the tax status of the possessor or of the beneficial user to further ascertain whether UP's revenue or asset is exempt from tax.

4. **ID.; ID.; ID.; UP'S TAX EXEMPTION DOES NOT EXTEND TO THE IMPROVEMENTS ON THE LEASED LAND WHICH ARE FOR THE ACCOUNT OF THE LESSEE DURING THE TERM OF THE LEASE; CASE OF *NPC V. PROVINCE OF QUEZON*, NOT APPLICABLE TO THE CASE AT BAR.—** The facts of the present case are not on all fours with the facts in the NPC case. x x x We declared in the NPC case that it is "essentially wrong to allow the NPC to assume in its BOT contracts the liability of the other contracting party for taxes that the

government can impose on that other party, and at the same time allow NPC to turn around and say that no taxes should be collected because the NPC is tax-exempt as a government-owned and controlled corporation." This was the situation set up by UP with ALI in 2008, before the passage of Republic Act No. 9500. Before the passage of Republic Act No. 9500, it was essentially wrong for UP to assume in its lease contract with ALI the liability of ALI for real property taxes based on its beneficial use of the land, and then turn around and tell the City Treasurer that UP is exempt from paying taxes on the land because it is a government instrumentality. We also declared in the NPC case that if we continue to allow what NPC did to the Province of Quezon without congressional authority, we "intrude into the realm of policy and to debase the tax system that the Legislature established." The passage of Republic Act No. 9500 in 2008 obliterated what was essentially wrong in the lease contract between UP and ALI. The legislature established a tax system that allows UP to validly claim exemption from real property taxes on the land leased to ALI. Republic Act No. 9500 is UP's congressional authority for this particular exemption from real property tax. Thus, when the City Treasurer addressed to UP the Statement of Delinquency dated 27 May 2014 and the Final Notice of Delinquency dated 11 July 2014 and required UP to pay real property tax on the subject land, UP was already authorized by the legislature to validly claim exemption from real property taxes on the land leased to ALI. Considering that the subject land and the revenue derived from the lease thereof are used by UP for educational purposes and in support of its educational purposes, UP should not be assessed, and should not be made liable for real property tax on the land subject of this case. Under Republic Act No. 9500, this tax exemption, however, applies only to "assets of the University of the Philippines," referring to assets owned by UP. Under the Contract of Lease between UP and ALI, all improvements on the leased land "shall be owned by, and shall be for the account of the LESSEE [ALI]" during the term of the lease. The improvements are not "assets" owned by UP; and thus, UP's tax exemption under Republic Act No. 9500 does not extend to these improvements during the term of the lease.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 214044 is a petition for *certiorari* and prohibition[1] filed by the University of the Philippines (UP) against the City Treasurer of Quezon City (City Treasurer) seeking to annul the Statement of Delinquency dated 27 May 2014 addressed to UP as well as the Final Notice of Delinquency dated 11 July 2014 which required UP to pay real property tax on a parcel of land covered by TCT No. RT-107350 (192689), which is currently leased to Ayala Land, Inc. (ALI). The petition also seeks to enjoin the City Treasurer, or any of his agents or representatives, from proceeding with the sale of the subject land at a public auction pursuant to the 11 July 2014 Final Notice of Delinquency.

The Facts

In their submitted pleadings before this Court, both UP and the City Treasurer admitted that UP is the registered owner of a parcel of land covered by TCT No. RT-107350 (192689). UP entered into a contract of lease with ALI over the subject land on 27 October 2006.[2]

UP further narrated in its petition:

x x x x x x x x x

5. UP is the registered owner of a parcel of land covered by and more particularly described in TCT No. RT-107530 (192689) of the Registry

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[1] Under Rule 65 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 3, 126.

of Deeds of Quezon City, with an area of 985,597 square meters and located along Commonwealth Avenue, Diliman, Quezon City.

6. On 27 October 2006, UP entered into a *Contract of Lease with Development Obligations* with [ALI] over a portion of the aforementioned parcel of land containing an area of 380,630 square meters. The leased property is now known as the UP-Ayala Technohub.

7. In a *Notice of Assessment* addressed to ALI dated 23 August 2012, ALI was informed that the subject property has been "reclassified and assessed for taxation purposes with an assessed value of ₱499,500,000.00 effective 2009."

8. In a letter to UP President Pascual dated 22 August 2012, the City Assessor of Quezon City informed UP that the aforementioned *Notice of Assessment* was served upon ALI as the entity liable for the real property tax on the subject property pursuant to Section 205(d) and Section 234(a) of the Local Government Code.

9. In a *Statement of Delinquency* dated 05 December 2012, addressed to the UP North Property Holdings, Inc., the [City Treasurer] demanded the payment of real property tax on the subject property amounting to ₱78,970,950.00 for the years 2009-2011 and the first three quarters of 2012.

10. In another letter to UP President Pascual dated 09 September 2013, the City Assessor of Quezon City furnished UP a copy of the letter of the Bureau of Local Government Finance (BLGF) of the Department of Finance [(DOF)] dated 01 August 2013, which opined that ALI is the party legally accountable for the real property taxes on the subject property. It was further stated that the City Assessor's Office "will be sending the official Notice of Assessment and the corresponding Tax Declaration for the subject property under the name of [ALI]. . ."

11. In another *Statement of Delinquency* dated 24 September 2013, addressed to the UP North Property Holdings, Inc., the [City Treasurer] again demanded the payment of real property tax on the subject property in the updated amount of ₱102,747,150.00 for the years 2009-2012 and the first three quarters of 2013.

12. For the first time and without a prior *Notice of Assessment*, a *Statement of Delinquency* dated 27 May 2014 addressed to UP was issued by the [City Treasurer] demanding the payment of real property

tax on the subject property amounting to ₱106,992,990.00 for the years 2009 to 2013 and the first quarter of 2014.

13. In his letter to the City Treasurer of Quezon City dated 13 June 2014, UP President Pascual requested the postponement of any proceeding related to the aforementioned *Statement of Delinquency*. He explained —

> We respectfully take exception to the Statement of Delinquency dated 27 May 2014 and the alleged delinquency of the University with respect to the payment of the real estate taxes. The University of the Philippines, as the National University, has been granted tax exemptions under Republic Act No. 9500, otherwise known as the University of the Philippines Charter of 2008, that are express, patent and unambiguous. The grant is exceedingly extensive that it provided the University the exemption from all taxes and duties *vis-a-vis* all revenues and assets used for educational purposes or in support thereof.
>
> Moreover, in the letter of the Bureau of Local Government Finance ("BLGF") dated 01 August 2013, addressed to the Hon. City Mayor, Herbert M. Bautista, the BLGF opined on the issue as to which party shall be accountable for the unpaid real estate taxes due on the thirty-seven (37) hectares of land owned by the University and being leased out to [ALI], the same property which is the subject of the Statement of Delinquency dated 27 May 2014. The BLGF concluded that "[ALI], being the lessee, is the legally accountable party to the unpaid real property taxes on the government-owned UP Property." The foregoing opinion of the BLGF confirms that the University is exempt from real estate taxes, an absolute right that the University enjoys under R.A. No. 9500.

14. On 22 July 2014, UP received the *Final Notice of Delinquency* dated 11 July 2014 from the Office of the City Treasurer demanding the payment of real property tax on the subject property in the updated amount of ₱117,182,700.00 for the years 2009-2013 and the first three quarters of 2014.[3]

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[3] *Id*. at 3-5.

UP filed the present case before this Court within 60 days from receipt of the 11 July 2014 Final Notice of Delinquency.[4]

On 29 September 2014, we issued a Resolution[5] which required the City Treasurer to file a Comment. We also issued a Temporary Restraining Order to enjoin the City Treasurer, his agents or representatives, from enforcing the Final Notice of Delinquency dated 11 July 2014 and proceeding with the sale of subject land at a public auction scheduled on 20 November 2014.

On 20 July 2015, we issued a Resolution[6] requiring the City Treasurer to show cause why he/she should not be disciplinarily dealt with or held in contempt for failure to file comment before the period expired on 12 October 2014.

On 7 March 2016, we issued a Resolution[7] imposing upon the City Treasurer a fine of ₱1,000.00 for failure to file comment, and required compliance within ten days from notice. On 20 July 2016, we issued a Resolution[8] imposing upon the City Treasurer an increased fine of ₱2,000.00 for failure to file comment, and required compliance within ten days from notice.

On 18 August 2016, we received an Urgent Motion for Extension of Time with Manifestation[9] from Ms. Ruby Rosa G. Guevarra (Ms. Guevarra), Acting Assistant City Treasurer of Quezon City. She alleged and manifested:

x x x x x x x x x

2. That as early on [sic] April 15, 2016, herein respondent through its City Treasurer, Ms. Basilia S. Pacis and to date, through its Acting Assistant City Treasurer, sought for the legal assistance of Atty. Christian B. Valencia, City Legal Officer of the Local Government

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[4] *Id*. at 3.

[5] *Id.* at 71-72.

[6] *Id*. at 95.

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

[8] *Id*. at 104-105.

[9] *Id*. at 114-119.

Unit, Quezon City, to prepare and file Comment to the instant Petition for *Certiorari* and Prohibition, as may be evidenced by the Indorsement dated August 11, 2016 and Indorsement dated August 15, 2016 true copies of them are hereto attached as Annexes "1" and "2" and made parts hereof[;]

To date, August 18, 2016, there was no prepared Comment by the City Legal Officer to be filed in the Honorable Court;

3. That to date, the undersigned, Ms. Ruby Rosa G. Guevarra is in [sic] the Acting Assistant City Treasurer of the Local Government Unit, Quezon City, as the City Treasurer, Ms. Basilia S. Pacis retired [from] said position as Treasurer;

4. That to date, the undersigned, Ms. Ruby Rosa G. Guevarra is looking for a counsel to help her in the preparation and filing of a Comment to the Petition for *Certiorari* and Prohibition;

5. That the amount of Two Thousand (₱2,000) Pesos, as fine for the non-filing of the Comment was paid, but the said payment shall be considered payment under protest, as the undersigned is unjustifiably failed [sic], refused and ignored to be legally assisted by the City Legal Officer of the Local Government Unit, Quezon City, for [sic] the preparation and filing the said required Comment[.][10]

On 29 September 2016, Ms. Guevarra, as Officer in Charge of the City Treasurer's Office, filed her Comment[11] which reads:

1. That the relief prayed for in the instant Petition for *Certiorari* and Prohibition is the same allegation specifically stated in its body, that:

> to annul the Statement of Delinquency dated 27 May 2014 and the Final Notice of Delinquency dated 11 July 2014.

WITH ALL DUE RESPECT, not within the province of the Honorable Court to adjudicate. Truth to tell, there must be [a] full-blown trial to be conducted by a trial court for the determination of the true facts whether to annul the said Statement of Delinquency dated 27 May 2014 and the Final Notice of Delinquency dated 11 July 2014.

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[10] *Id*. at 114-115.

[11] *Id*. at 124-128.

But, time and again, it is ruled that the Honorable Court is not a trier of facts.

In APQ Shipmanagement [sic] Co., LTD, *versus* Casenas, 725 SCRA 108, the Honorable Court reminded us:

> The Supreme Court is not a trier of facts and, thus, its jurisdiction is limited only to reviewing errors of law.

2. That the respondent is not the real party-in-interest in the instant Petition for *Certiorari* and Prohibition[.]

3. That the petitioner failed to file the Motion for Reconsideration, when it admitted the receipt of the assailed Notice of Statement of Delinquency dated May 27, 2014 and the Final Notice of Delinquency dated July 11, 2014.

Thus, petitioner filed the Instant Petition without filing the appropriate motion to give the respondent the opportunity to correct its alleged error.

In Lanier *versus* People. 719 SCRA 477, the Honorable Court held:

> Well-established is the rule that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*.
>
> x x x x x x x x x
>
> [7.] Most importantly, petitioner is not exempted from paying real property tax for its real property leased to [ALI] pursuant to the mandate of Section 205(d) and Section 234(a) of Republic Act No. 7160, otherwise known as "The Local Government Code of 1991[.]"
>
> Admittedly, on October 27, 2006, petitioner entered into the Contract of Lease with [ALI], subject matter of which is petitioner's parcel of land covered by Transfer Certificate of Title No. RT-107350 (192689), now allegedly owned by UP North Property Holdings, Inc. Said leased [sic] of the real property belonging to the petitioner failed to pay the real property tax from 2009-2013 and the first three quarters of 2014.

In City of Pasig *versus* Republic, 656 SCRA 271, the Honorable Court unswervingly ruled:

> Where the parcels of land owned by the Republic are not properties of public dominion, portions of the properties leased to taxable entities are not only subject to real estate tax, they can also be sold at public auction to satisfy the tax delinquency.

Moreover, respondent merely followed the legal basis of the Department of Finance, that:

> ALI (Ayala Land Inc.) is the party legally accountable for the real property taxes on the subject property.
>
> [ALI] was duly notified of the subject Statement of Delinquency and other similar notices.[12]

On 28 November 2016, we issued a Resolution[13] that, among others, noted Ms. Guevarra's Comment, and required UP to file a reply. UP, through the OSG, filed its Reply[14] on 20 February 2017, where it addressed Ms. Guevarra's questions regarding the propriety of the remedy and the taxability of UP based on Republic Act No. 9500[15] and on Section 133(o)[16] of the Local Government Code.

The Issue

Petitioner UP raised only one issue before this Court:

WHETHER PETITIONER UNIVERSITY OF THE PHILIPPINES IS LIABLE FOR REAL PROPERTY TAX IMPOSED ON THE SUBJECT PROPERTY LEASED TO AYALA LAND, INC.[17]

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[12] *Id*. at 124-126.

[13] *Id*. at 131-132.

[14] *Id.* at 142-152.

[15] Also, University of the Philippines Charter of 2008.

[16] Section 133. *Common Limitations on the Taxing Powers of Local Government Units*. — Unless otherwise provided herein, the exercise of the taxing powers of provinces; cities, municipalities, and barangays shall not extend to the levy of the following:

x x x x x x x x x

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

[17] *Rollo*, p. 5.

The Court's Ruling

We grant the petition.

This Court has the power to decide the present case. Findings of fact are not necessary as the present petition asks to determine whether UP, as a chartered academic institution with specific legislated tax exemptions, is legally liable for the real property tax on the land leased to ALI. This issue is a pure question of law, not of fact.

The property subject of this case refers only to the parcel of land covered by TCT No. RT-107350 (192689). The improvements on this parcel of land that were introduced by ALI are not covered by the present case.

Timeline of Events and Applicable Laws

The Contract of Lease (with Development Obligations) between UP and ALI was executed on 27 October 2006. The 4th Whereas Clause of the Contract described the project proposal, thus:

> WHEREAS, in response to the LESSOR's aforementioned invitation, Ayala Land, Inc., in September 2005, submitted to the LESSOR a Development Proposal entitled "DEVELOPMENT PROPOSAL FOR UP NORTH SCIENCE & TECHNOLOGY PARK," dated August 1, 2005, and subsequently, presented to the then UP Board of Regents such proposal which is embodied in a presentation manual, entitled "DEVELOPMENT PROPOSAL FOR UP NORTH SCIENCE & TECHNOLOGY PARK," dated September 2005, both attached hereto and marked as Annexes "E" and "E-1," respectively (the "Development Proposals"), signifying therein its interest in leasing and developing the UP North S&T Park and proposing to lease and develop the UP North S&T Park Phase I according to its proposals, into a prestigious and dynamic science and technology park, where research and technology-based collaborative projects between technology and the academe thrive, thereby becoming a catalyst for the development of the information technology and information technology-enabled services;[18]

[18] *Id*. at 22.

The Contract provided that ALI owns the improvements on the leased land:

3.2 PERMANENT IMPROVEMENTS; LESSOR TO BECOME OWNER OF PERMANENT IMPROVEMENTS AT END OF LEASE

x x x x x x x x x

(c) Before the termination, expiration, or cancellation of this Contract prior to the lapse of the original Lease Term, all renovations, alterations, and improvements and the Permanent Improvements constructed during the original Lease Term shall be owned by, and shall be for the account of the LESSEE; x x x.[19]

As to real property taxes, the contract between UP and ALI stated:

12.2 REAL ESTATE TAXES ON LAND

Should real estate taxes be levied on the LEASED PREMISES, the LESSOR shall assume the payment of the real estate taxes on the land, while the LESSEE shall assume the payment of real property taxes on the improvements introduced on the LEASED PREMISES.[20]

On 29 April 2008, Republic Act No. 9500, or the UP Charter of 2008, was signed into law. Republic Act No. 9500 addressed UP's real property and income derived therefrom in Sections 22 and 25(a). These sections read:

SEC. 22. *Land Grants and Other Real Properties of the University*. —

(a) The State shall support the University of the Philippines System as the national university in the form of lump sum amount, through general appropriations and other financial benefits, and in kind, through land grants and donations and use of other real properties. To carry out the intent of these grants, income derived from the development of all land grants and real properties shall be used to further the end of the national university, as may be decided by the board;

x x x x x x x x x

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[19] *Id*. at 33-34.

[20] *Id*. at 45.

(c) The Board may plan, design, approve and/or cause the implementation of land leases: *Provided*, That such mechanisms and arrangements shall sustain and protect the environment in accordance with law, and be exclusive of the academic core zone of the campuses of the University of the Philippines: *Provided, further*, That such mechanisms and arrangements shall not conflict with the academic mission of the national university;

(d) The Board may allow the use of the income coming from real properties of the national university as security for transactions to generate additional revenues when needed for educational purposes;

x x x x x x x x x

SEC. 25. *Tax Exemptions*. - The provisions of any general or special law to the contrary notwithstanding:

(a) All revenues and **assets** of the University of the Philippines used for educational purposes or in support thereof shall be exempt from all taxes and duties;

x x x x x x x x x (Emphasis supplied)

A letter,[21] dated 22 August 2012 and addressed to the UP President from Mr. Rodolfo M. Ordanes, Officer In Charge, City Assessor (City Assessor), informed UP of the City Assessor's service of a Notice of Assessment to ALI. This Notice of Assessment had Sections 205 and 234 of the Local Government Code as its bases. On 23 August 2012, the City Assessor issued a Notice of Assessment[22] to ALI. The notice stated that the land subject of the lease agreement with UP was reclassified and assessed for taxation purposes with an assessed value of ₱499,500,000.00 effective 2009. The pertinent provisions of Sections 205 and 234 read:

Section 205. *Listing of Real Property in the Assessment Rolls*. —

x x x x x x x x x

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[21] *Id*. at 61-62.

[22] *Id*. at 60.

(d) Real property owned by the Republic of the Philippines, its instrumentalities and political subdivisions, the beneficial use of which has been granted, for consideration or otherwise, to a taxable person, shall be listed, valued and assessed in the name of the possessor, grantee or of the public entity if such property has been acquired or held for resale or lease.

Section 234. *Exemptions from Real Property Tax.* - The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

x x x x x x x x x

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or controlled corporations are hereby withdrawn upon the effectivity of this Code.

The Local Government Code took effect on 1 January 1992.

On 5 December 2012, the City Treasurer issued a Statement of Delinquency[23] to UP North Property Holdings, Inc. for the period 2009 to 2011 and the first three quarters of 2012 in the total amount of ₱78,970,950.00. The total amount included the tax due and penalty.

Mr. Salvador M. Castillo, Officer-In-Charge, Executive Director of Bureau of Local Government Finance, Department of Finance (BLGF-DOF), sent a letter[24] dated 1 August 2013 to Quezon City Mayor Herbert M. Bautista (Mayor Bautista). This letter also referred to Sections 205 and 234 of the Local Government Code as bases to conclude that ALI, as the lessee, is the legally accountable party for the unpaid real property taxes due covering the "government-owned UP property."[25]

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[23] *Id*. at 63.

[24] *Id*. at 65-67.

[25] *Id*. at 67.

The 1 August 2013 letter from BLGF- DOF to Mayor Bautista also stated:

Evidently, real property owned by the Republic of the Philippines are exempt from payment of the real property tax. However, if the beneficial use thereof has been granted for consideration or otherwise to a taxable person, the subject real property shall: (1) be listed, valued and assessed in the name of the beneficial user; and (2) becomes taxable.

It is also worthy to note that as soon as the notice of assessment is served and received by the taxpayer, an obligation to pay the amount assessed and demanded arises (BLGF Memorandum Circular No. 04-2008, January 7, 2008)[.]

As to the argument that as stipulated in the Lease Contract entered into by and between UP and Ayala Land Inc. that UP shall shoulder the real property taxes due on the subject property, please be informed of the Supreme Court Decision under G.R. No. 171586, dated July 15, 2009 (National Power Corporation *vs.* Province of Quezon and Municipality of Pagbilao), which is quoted in part, below:

xxx x x x xxx

> Lastly, from the points of view of essential fairness and the integrity of our tax system, we find it essentially wrong to allow the NPC to assume in its BOT contracts the liability of the other contracting party for taxes that the government can impose on that other party, and at the same time allow NPC to turn around and say that no taxes should be collected because the NPC is tax-exempt as a government-owned and controlled corporation. We cannot be a party to this kind of arrangement; for us to allow it without congressional authority is to intrude into the realm of policy and to debase the tax system that the Legislature established. We will then also be grossly unfair to the people of the Province of Quezon and the Municipality of Pagbilao who, by law, stand to benefit from the tax provisions of the LGC.

xxx x x x xxx

Further, attention is likewise invited to the pertinent portion of another SC Decision (G.R. No. L-29772), in the case of the City of Baguio *vs.* Fernando S. Busuego, *viz*:

> . . . when the GSIS sold the property and imposed said condition, the agency although exempt from the payment of taxes clearly indicated that the property became taxable upon its delivery to the purchaser and that **the sole determinative factor for exemption from realty taxes is the 'use' to which the property is devoted. And where the 'use' is the test, the ownership is immaterial**. (Martin on the Rev. Adm. Code, 1961, Vol. II, p. 487, citing Apostolic Prefect of Mt. Province *vs*. Treasurer of Baguio City, 71 Phil. 547). In the instant case, although the property was still in the name of the GSIS pending the payment of the full price, its use and possession was already transferred to the defendant.' Such contractual stipulation that the purchaser on installment pay the real estate taxes pending completion of payments, although the seller who retained title is exempt from such taxes, is valid and binding, absent any law to the contrary and none has been cited by appellant. x x x.

Similarly, therefore, we also deemed it essentially wrong being without congressional authority for UP to assume the real property tax liability of the Ayala Land, Inc. over the subject property. **Hence, we opine that the Ayala Land, Inc., being the lessee, is the legally accountable party to the unpaid real property taxes due on the government-owned UP property.**[26] (Underscoring, boldfacing and italicization in the original)

On 24 September 2013, the City Treasurer issued a Statement of Delinquency[27] to UP North Property Holdings, Inc. The City Treasurer demanded payment of real property tax on the subject land in the amount of ₱102,747,150.00 for the years 2009 to 2012 and the first three quarters of 2013.

On 27 May 2014, the City Treasurer issued a Notice of Delinquency[28] to UP for the years 2009 to 2013 and the first quarter of 2014 in the total amount of ₱106,992,900.00. The total amount included the tax due and penalty. This was the first time that the City Treasurer demanded payment from UP

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[26] *Id*. at 66-67.

[27] *Id*. at 68.

[28] *Id*. at 16.

of real property tax on the subject land. The City Treasurer sent the Notice of Delinquency to UP without any prior issuance of a Notice of Assessment.

On 13 June 2014, then UP President Alfredo E. Pascual (UP President Pascual) wrote then City Treasurer Edgar T. Villanueva (City Treasurer Villanueva) to address the Statement of Delinquency dated 27 May 2014. The pertinent portions of the letter read:

> We write in connection with the Statement of Delinquency dated 27 May 2014 issued by your office, which the University received on 3 June 2014. In the Statement of Delinquency, the University was required to pay the real estate taxes on its property/ies, specifically on Tax Declaration E-128-00051, for the period from 2009 to the 1st quarter of 2014, which was noted to be in the total amount of Php106,992,900.00, including penalties. The University was given a period of ten (10) days from receipt of the Statement of Delinquency, or until 13 June 2014, to pay the said real estate taxes.
>
> We respectfully take exception to the Statement of Delinquency dated 27 May 2014 and the alleged delinquency of the University with respect to the payment of real estate taxes. The University of the Philippines, as the National University, has been granted tax exemptions under Republic Act No. 9500, otherwise known as the University of the Philippines Charter of 2008, that are express, patent, and unambiguous. The grant is exceedingly extensive that it provided the University exemption from all taxes and duties *vis-a-vis* all its revenues and assets used for educational purposes or in support thereof.
>
> Moreover, in the letter of the Bureau of Local Government Finance ("BLGF") dated 1 August 2013, addressed to the Hon. City Mayor, Herbert M. Bautista, the BLGF opined on the issue as to which party shall be held accountable for the unpaid real estate taxes due on the thirty-seven (37) hectares of land owned by the University and being leased out to Ayala Land, Inc., the same property which is [the] subject of the Statement of Delinquency dated 27 May 2014. The BLGF concluded that "Ayala Land, Inc., being the lessee, is the legally accountable party to the unpaid real property taxes due on the government-owned UP property." The foregoing opinion of the BLGF confirms that the University is exempt from real estate taxes, an absolute right that the University enjoys under [Republic Act] No. 9500.

Finally, while maintaining the position that the University is exempt from real estate taxes, we wish to point out that the University was not furnished any Notice of Assessment prior to the issuance of the Statement of Delinquency dated 27 May 2014.[29]

On 11 July 2014, the City Treasurer issued a Final Notice of Delinquency[30] to UP for the years 2009 to 2013 and the first three quarters of 2014 in the total amount of ₱117,182,700.00. The total amount also included the tax due and penalty.

We reiterate that UP is a chartered academic institution with specific legislated tax exemptions. These tax exemptions come from the Local Government Code, as well as from its legislative charter, Republic Act No. 9500.

Tax Exemption from the Local Government Code

One source of UP's exemption from tax comes from its character as a government instrumentality. Section 133(o) of the Local Government Code states that, unless otherwise provided by the Code, the exercise of taxing powers of the local government units shall not extend to levy of taxes, fees or charges of any kind on government instrumentalities.[31]

However, a combined reading of Sections 205 and 234 of the Local Government Code, previously quoted above, also provides for removal of the exemption to government instrumentalities when beneficial use of a real property owned by a government instrumentality is granted to a taxable person. Stated differently, when beneficial use of a real property owned by a government instrumentality is granted to a taxable person, then the taxable person is not exempted from paying real property tax on such property. This is the doctrine used by the City Assessor and the City Treasurer in the present set of facts. The City Assessor and the City Treasurer concluded that ALI

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[29] *Id*. at 69-70.

[30] *Id*. at 17.

[31] *Supra* note 16.

is liable for the real property tax on the land that it leased from UP.

Republic Act No. 9500, however, gave a specific tax exemption to UP which covers the land subject of the present case. The City Assessor and the City Treasurer overlooked this specific exemption awarded to UP by Republic Act No. 9500. The legislative authority given to UP by Republic Act No. 9500 is the point where the present case differs from our ruling in *National Power Corporation v. Province of Quezon* (NPC case)[32] which the BLGF-DOF cited in its letter addressed to Mayor Bautista.

Tax Exemption from Republic Act No. 9500

It is clear from the timeline above that the date of effectivity of UP's legislative charter lies between the date of effectivity of the lease contract between UP and ALI and the dates of issuance of the Statement of Delinquency and Final Notice of Delinquency from the City Treasurer. Republic Act No. 9500, which took effect in 2008, was not yet enacted when UP and ALI entered into their lease contract in 2006. However, Republic Act No. 9500 was already operative when the City Treasurer issued the Statement of Delinquency and Final Notice of Delinquency to UP in 2014. Republic Act No. 9500 was also operative when the City Assessor issued a Notice of Assessment to ALI in 2012, a Statement of Delinquency to UP North Property Holdings, Inc. in 2012, and a Statement of Delinquency to UP North Property Holdings, Inc. in 2013.

The enactment and passage of Republic Act No. 9500 in 2008 superseded Sections 205(d) and 234(a) of the Local Government Code. Before the passage of Republic Act No. 9500, there was a need to determine who had beneficial use of UP's property before the property may be subjected to real property tax. After the passage of Republic Act No. 9500, there is a need to determine whether UP's property is used for

[32] 610 Phil. 456 (2009).

educational purposes or in support thereof before the property may be subjected to real property tax.

In *University of the Phils. v. Judge Dizon*,[33] we stated:

> The UP was founded on June 18, 1908 through Act 1870 to provide advanced instruction in literature, philosophy, the sciences, and arts, and to give professional and technical training to deserving students. Despite its establishment as a body corporate, the UP remains to be a "chartered institution" performing a legitimate government function. It is an institution of higher learning, not a corporation established for profit and declaring any dividends. In enacting Republic Act No. 9500 (*The University of the Philippines Charter of 2008*), Congress has declared the UP as the national university "dedicated to the search for truth and knowledge as well as the development of future leaders."
>
> Irrefragably, the UP is a government instrumentality, performing the State's constitutional mandate of promoting quality and accessible education. As a government instrumentality, the UP administers special funds sourced from the fees and income enumerated under Act No. 1870 and Section 1 of Executive Order No. 714, and from the yearly appropriations, to achieve the purposes laid down by Section 2 of Act 1870, as expanded in Republic Act No. 9500. All the funds going into the possession of the UP, including any interest accruing from the deposit of such funds in any banking institution, constitute a "special trust fund," the disbursement of which should always be aligned with the UP's mission and purpose, and should always be subject to auditing by the COA.[34] (Citations omitted)

In the present set of facts, both parties agree that UP owns the land subject of this case.

Section 22 of Republic Act No. 9500, previously quoted above, allows UP to lease and develop its land subject to certain conditions. The Contract of Lease between UP and ALI shows that there is an intent to develop "a prestigious and dynamic science and technology park, where research and technology-based collaborative projects between technology and the academe thrive, thereby becoming a catalyst for the development of the

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[33] 693 Phil. 226 (2012).

[34] *Id*. at 248-249.

information technology and information technology-enabled service."[35] The development of the subject land is clearly for an educational purpose, or at the very least, in support of an educational purpose.

UP President Pascual pointed out to City Treasurer Villanueva that Republic Act No. 9500 granted extensive tax exemptions to UP. More specifically, Section 25(a) of Republic Act No. 9500, previously quoted above, provided that all of UP's "**revenues and *assets* used for educational purposes or in support thereof shall be exempt from all taxes and duties**." Republic Act No. 9500 bases UP's tax exemption upon compliance with the condition that UP's revenues and assets must be used for educational purposes or in support thereof. There is no longer any need to determine the tax status of the possessor or of the beneficial user to further ascertain whether UP's revenue or asset is exempt from tax.

Apart from the rule in statutory construction that a law that is enacted later prevails over a law that is enacted earlier because it is the latest expression of legislative will,[36] Sections 27 and 30 of Republic Act No. 9500 provide for rules of construction in favor of Republic Act No. 9500:

> SEC. 27. *Rules of Construction*.- No statutory or other issuances shall diminish the powers, rights, privileges and benefits accorded to the national university under this Act or enjoyed at present, by it under other issuances not otherwise modified or repealed under this Act, unless subsequent legislation expressly provides for their repeal, amendment or modification. Any case of doubt in the interpretation of any of the provisions of this Charter shall be resolved in favor of the academic freedom and fiscal autonomy of the University of the Philippines.
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> SEC. 30. *Repealing Clause*. — Act No. 1870, as amended, and all laws, decrees, orders, rules, and regulations or other issuances or

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[35] *Rollo*, p. 22.

[36] *See Development Bank of the Philippines v. Court of Appeals*, 259 Phil. 1096 (1989).

parts inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Non-Applicability of the NPC Case

The facts of the present case are not on all fours with the facts in the NPC case. In the NPC case, the NPC assumed in its build-operate-transfer (BOT) contract with Mirant Pagbilao Corporation (Mirant) "all real estate taxes and assessments, rates and other charges in respect of the site, the buildings and improvements thereon and the [power plant]."[37] The Municipality of Pagbilao, Quezon assessed Mirant's tax liabilities and furnished the NPC with a copy of the assessment letter. The NPC filed a petition before the Local Board of Assessment Appeals and objected to the assessment against Mirant. The NPC claimed tax exemptions or at least a reassessment for lower tax liability due to depreciation allowance and lower assessment level. The Local Board of Assessment Appeals, the Central Board of Assessment Appeals, and the Court of Tax Appeals all ruled against the NPC.

We ruled in the NPC case that the NPC has no right to protest the assessment on Mirant because the NPC is neither the owner nor the possessor or user of the subject machineries. Under the law, Mirant is liable for the said taxes based on its "ownership, use, and possession of the plant and its machineries."[38] We further stated in the NPC case that the contractual stipulation between NPC and Mirant is entirely between them, and "does not bind third persons who are not privy to the contract x x x."[39] Only Mirant can demand compliance from the NPC for the payment of the said taxes, and the Municipality of Pagbilao and the Province of Quezon cannot demand payment from the NPC. Neither can these local

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[37] *NPC v. Province of Quezon*, *supra* note 32, at 470.

[38] *Id.*

[39] *Id.* at 472.

government units be compelled to recognize the NPC's protest of the assessment.

We declared in the NPC case that it is "essentially wrong to allow the NPC to assume in its BOT contracts the liability of the other contracting party for taxes that the government can impose on that other party, and at the same time allow NPC to turn around and say that no taxes should be collected because the NPC is tax-exempt as a government-owned and controlled corporation." This was the situation set up by UP with ALI in 2008, before the passage of Republic Act No. 9500. Before the passage of Republic Act No. 9500, it was essentially wrong for UP to assume in its lease contract with ALI the liability of ALI for real property taxes based on its beneficial use of the land, and then turn around and tell the City Treasurer that UP is exempt from paying taxes on the land because it is a government instrumentality.

We also declared in the NPC case that if we continue to allow what NPC did to the Province of Quezon without congressional authority, we "intrude into the realm of policy and to debase the tax system that the Legislature established." The passage of Republic Act No. 9500 in 2008 obliterated what was essentially wrong in the lease contract between UP and ALI. The legislature established a tax system that allows UP to validly claim exemption from real property taxes on the land leased to ALI. Republic Act No. 9500 is UP's congressional authority for this particular exemption from real property tax. Thus, when the City Treasurer addressed to UP the Statement of Delinquency dated 27 May 2014 and the Final Notice of Delinquency dated 11 July 2014 and required UP to pay real property tax on the subject land, UP was already authorized by the legislature to validly claim exemption from real property taxes on the land leased to ALI.

Considering that the subject land and the revenue derived from the lease thereof are used by UP for educational purposes and in support of its educational purposes, UP should not be assessed, and should not be made liable for real property tax on the land subject of this case. Under Republic Act No. 9500,

this tax exemption, however, applies only to "assets of the University of the Philippines," referring to assets owned by UP. Under the Contract of Lease between UP and ALI, all improvement on the leased land "shall be owned by, and shall be for the account of the LESSEE [ALI]" during the term of the lease. The improvements are not "assets" owned by UP; and thus, UP's tax exemption under Republic Act No. 9500 does not extend to these improvements during the term of the lease.

WHEREFORE, the petition is **GRANTED**. We **DECLARE** the University of the Philippines **EXEMPT** from real property tax imposed by the City Treasurer of Quezon City on the parcel of land covered by TCT No. RT-107350 (192689), which is currently leased to Ayala Land, Inc. Accordingly, we declare **VOID** the Statement of Delinquency dated 27 May 2014 as well as the Final Notice of Delinquency dated 11 July 2014 issued by the City Treasurer of Quezon City to the University of the Philippines in connection with the parcel of land covered by TCT No. RT-107350 (192689). Furthermore, the City Treasurer of Quezon City is permanently restrained from levying on or selling at public auction the parcel of land covered by TCT No. RT-107350 (192689) to satisfy the payment of the real property tax delinquency.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 215118. June 19, 2019]

MARIA NYMPHA MANDAGAN, *petitioner, vs.* **JOSE M. VALERO CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT OF ACQUITTAL; IMMEDIATELY FINAL AND UNAPPEALABLE, AND MAY NO LONGER BE RECALLED REGARDLESS OF ANY CLAIM OF ERROR OR INCORRECTNESS.—** In criminal cases, no rule is more settled than that a judgment of acquittal is immediately final and unappealable. Such rule proceeds from the accused's constitutionally-enshrined right against prosecution if the same would place him under double jeopardy. Thus, a judgment in such cases, once rendered, may no longer be recalled for correction or amendment — regardless of any claim of error or incorrectness.

2. **ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; EXTRAORDINARY REMEDY TO REVIEW A JUDGMENT OF ACQUITTAL TAINTED WITH GRAVE ABUSE OF DISCRETION; THERE MUST BE A SHOWING THAT THE PROSECUTION'S RIGHT TO DUE PROCESS WAS VIOLATED OR THAT THE TRIAL CONDUCTED WAS A SHAM; CASE AT BAR.—** The Court is not unaware that, in some situations, it had allowed a review from a judgment of acquittal through the extraordinary remedy of a Rule 65 petition for *certiorari*. A survey of these exceptional instances would, however, show that such review was only allowed **where the prosecution was denied due process or where the trial was a sham**. x x x In this case, petitioner Mandagan faults the CA in granting the petition for *certiorari* of respondent JMV Corporation and reversing her acquittal. While petitioner Mandagan agrees that the rule on double jeopardy is not without exceptions, she nevertheless maintains that no grave abuse of discretion was attributable to the RTC in rendering the Decision dated February 15, 2011. The Court agrees.

3. ID.; ID.; ID.; A CORRECTIVE WRIT RESERVED ONLY FOR JURISDICTIONAL ERRORS AND CANNOT BE USED TO CORRECT A LOWER TRIBUNAL'S FACTUAL FINDINGS; CASE AT BAR.— The CA, in taking cognizance of the petition for *certiorari* of respondent JMV Corporation, thus reasoned that such error of judgment on the part of the RTC "unfolded" into one of jurisdiction, allegedly due to a misappreciation of the evidence. This is egregious error. The office of a writ of *certiorari* is narrow in scope and does not encompass an error of law or a mistake in the appreciation of evidence. As a corrective writ, the extraordinary remedy of *certiorari* is reserved only for jurisdictional errors and cannot be used to correct a lower tribunal's factual findings. x x x As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion is not reviewable *via certiorari* for being nothing more than errors of judgment. Guided by the foregoing, the Court so finds that the CA committed reversible error when it annulled the RTC Decision dated February 15, 2011 based merely on errors of jurisdiction.

4. CRIMINAL LAW; BATAS PAMBANSA BLG. 22 (BOUNCING CHECKS LAW); ELEMENTS; TO ESTABLISH THE SECOND ELEMENT, THE STATE SHOULD PRESENT THE GIVING OF A WRITTEN NOTICE OF THE DISHONOR TO THE DRAWER, MAKER OR ISSUER OF THE DISHONORED CHECK; CASE AT BAR.— In cases for violation of B.P. 22, the following essential elements must be established: (1) The making, drawing, and issuance of any check to apply for account or for value; (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment. Here, the existence of the first and third elements are no longer in contention; there being concurrent findings of fact between the MeTC, RTC, and CA on this score, the Court finds no cogent reason to disturb such findings at this stage. Perforce, only the presence of the second element remains disputed. Case law has laid down the following guidelines in establishing the existence of such element: To establish the existence of the second element, the

State should present the giving of a written notice of the dishonor to the drawer, maker or issuer of the dishonored check. The rationale for this requirement is rendered in *Dico v. Court of Appeals*, to wit: To hold a person liable under B.P. Blg. 22, the prosecution must not only establish that a check was issued and that the same was subsequently dishonored, **it must further be shown that accused knew at the time of the issuance of the check that he did not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment. x x x** Applied to this case, in the Decision dated February 15, 2011, the RTC found that the prosecution failed to present any documentary evidence to prove receipt by petitioner Mandagan of the notice of dishonor (*i.e.,* the Letter dated June 20, 2003). The RTC found that the admissions relied upon by the MTC in convicting petitioner Mandagan could not be used as specific admissions of her receipt of a notice of dishonor: **It appears in this case that the agreement or admissions made or entered during the preliminary conference were not reduced in writing and signed by the accused and her counsel, hence, such agreement or admissions cannot be used against the accused.** Likewise, it remains unclear whether the alleged admission made by the accused was approved by the Court.

5. REMEDIAL LAW; EVIDENCE; OFFER OF EVIDENCE; COURTS WILL ONLY CONSIDER AS EVIDENCE THAT WHICH HAS BEEN FORMALLY OFFERED; NOT COMPLIED WITH IN CASE AT BAR.— Anent the Reply-Letter dated June 27, 2003, **it was gross error for the CA to consider the same as it was not formally offered by the prosecution in the first place**. In the Order dated September 19, 2006 of the MeTC, which admitted the evidence of the prosecution, nowhere is such a letter found. On this subject, the Court's pronouncements in *Candido v. Court of Appeals*, are compelling: We are not persuaded. It is settled that courts will only consider as evidence that which has been formally offered. The affidavit of petitioner Natividad Candido mentioning the provisional rate of rentals was never formally offered; neither the alleged certification by the Ministry of Agrarian Reform. **Not having been formally offered, the affidavit and certification cannot be considered as evidence.** Thus the trial court as well as the appellate court correctly disregarded them. **If they neglected to offer those documents**

> **in evidence, however vital they may be, petitioners only have themselves to blame, not respondent who was not even given a chance to object as the documents were never offered in evidence.** x x x Hence, in this case, even assuming that the Reply-Letter dated June 27, 2003 was appended to the records, the fact still remains that the court cannot consider evidence which was not formally offered. As such, any statement allegedly made on behalf of petitioner Mandagan in the said letter could not be considered an admission of receipt of a notice of dishonor as the same has no evidentiary value whatsoever. Verily, the RTC could not be faulted, much less accused of capriciousness, in appreciating the evidence without the Reply-Letter dated June 27, 2003.

APPEARANCES OF COUNSEL

Sañez Taguinod Guia and Cruz for petitioner.
Ligon Solis Florendo Law Firm for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is an appeal by *certiorari*[1] under Rule 45 of the Rules of Court (Petition) questioning the Decision[2] dated June 16, 2014 and Resolution[3] dated October 29, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 119814. The CA Decision annulled the Decision[4] dated February 15, 2011 of the Regional Trial Court of Manila, Branch 10 (RTC), in Criminal Case Nos. 10-276006 to 276013, which acquitted herein petitioner Maria Nympha Mandagan (petitioner Mandagan) of eight (8) counts of violation of Batas Pambansa Blg. (B.P.) 22.

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[1] *Rollo*, pp. 21-35.

[2] *Id*. at 36-44. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Amelita G. Tolentino and Ricardo R. Rosario concurring.

[3] *Id*. at 45-46. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Ricardo R. Rosario and Priscilla J. Baltazar-Padilla concurring.

[4] *Id*. at 56-75. Penned by Judge Virgilio M. Alameda.

The Facts

The antecedents, as summarized by the CA, are as follows:

JMV Corporation (JMV), herein private complainant, agreed to grant an accommodation in favor of the accused by allowing her to use its corporate name and account for a car loan intended for her personal use. The accommodation was extended to accused when she still enjoyed the good graces of company director, Mrs. Rosie V. Gutierrez (RVG), being her client. Upon full payment of [the] car, the accused would in turn purchase the same from JMV Corporation.

On July 28, 2001, JMV Corporation, represented by its executive officer, Ramon Ricardo V. Gutierrez, the son of RVG, entered into a lease-to-own arrangement with BPI Leasing Corporation (BPI) covering a 2001 Kia Rio sedan. Under the lease-to-own arrangement, BPI Leasing Corporation will remain the registered owner of the vehicle until full payment by JMV Corporation. Earlier, on July 11, 2001, JMV paid the down payment of Php87,922.00, guarantee deposit of Php3,078.00, initial rental of Php12,796.00 and notarial fee of Php200.00. Likewise, on July 28, 2001, JMV gave the possession and use of the Kia vehicle to accused Maria Nympha Mandagan (Mandagan), who in turn, issued and delivered to JMV thirty four (34) postdated checks against her bank account (Equitable-PCI). Said checks were all payable to JMV representing Mandagan's monthly payment of ₱12,796.00. In addition, Mandagan explicitly agreed that ownership over the Kia vehicle will only be transferred to her after full payment of the costs of the vehicle to JMV.

Fourteen (14) out of the thirty (34) checks in the amount of Php12,796.00 each totaling to Php179,144.00 were deposited by JMV with BPI and were honored by the bank. However, the following eleven (11) checks, when deposited on their respective due dates were dishonored for reason drawn against insufficient funds or account closed. BPI advised Ms. Marcelina Balmeo, JMV's Treasury Head, every time the checks were dishonored, who in turn immediately communicated the dishonor of said checks to Mandagan and demanded for payment which were all unheeded by Mandagan.

JMV's General Account Supervisor, Ms. Rosemarie Edora, also started communicating with Mandagan sometime in April 2003, repeatedly informing the latter of the dishonored checks and reminding her of her outstanding obligations with JMV. Mandagan responded by requesting for photocopies of the dishonored checks and gave

assurance that she would replace them with new ones and even promised that she will immediately settle her obligations with JMV by one-time payment, after she acknowledged receipt of her requested photocopies of the dishonored checks.

Meanwhile, all the checks issued by JMV to BPI as payment for its monthly amortization of the Kia vehicle were all honored.

On June 30, 2003, JMV's counsel demanded from Mandagan the payment of the eleven (11) checks that were dishonored plus 12.75% or to return the Kia vehicle, plus the amount of Php119,434.67 to cover depreciation costs. Mandagan was given five (5) days to comply with the demands of JMV. This was unheeded, however.

Thus JMV was constrained to institute the corresponding legal action against Mandagan. After preliminary investigation, the City Prosecutor's Office of Manila found probable cause against Mandagan for eight (8) counts of Violation of B.P. 22 and filed the corresponding informations before the Metropolitan Trial Court (MTC) of Manila. Charges representing the three (3) other checks were dismissed for insufficiency of evidence.[5]

Ruling of the MeTC[6]

In a Decision[7] dated December 28, 2009, the MeTC found petitioner Mandagan guilty of eight (8) counts of violation of B.P. 22:

WHEREFORE, upon a careful consideration of the foregoing evidence, the Court finds the same to be sufficient to support a conviction of the accused beyond reasonable doubt of violation of Batas Pambansa Bilang 22. Accordingly, this Court hereby sentences accused Myrna Nympha Mandagan to pay a fine of twenty five thousand five hundred ninety two pesos (₱25,592), plus cost, for each of the eight counts charged, with subsidiary imprisonment in case of insolvency.

The accused is further ordered to pay complainant JMV Corporation the amount of one hundred two thousand three hundred sixty eight

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[5] *Id*. at 36-38.

[6] Metropolitan Trial Court of Manila, Branch 4.

[7] *Rollo*, pp. 48-55. Penned by Presiding Judge Alfonso C. Ruiz II.

pesos (₱102,368) representing the value of Equitable Bank PCI Bank Check Nos. 0025328, 0025338, 0025343, 0025344, 0089351, 0089352, 0089354 and 0089355 with interest thereon at 12% per annum from the filing of the Information until the finality of this decision; and the sum of which, inclusive of interest, shall thereafter incur 12% per annum interest until the amount due is fully paid.

SO ORDERED.[8]

Aggrieved, petitioner Mandagan appealed her conviction to the RTC.

Ruling of the RTC

In the Decision dated February 15, 2011, the RTC **reversed** the MeTC Decision and **acquitted** petitioner Mandagan of all criminal charges but, at the same time, held her civilly liable to respondent JMV Corporation. Thus:

WHEREFORE[, i]n light of [the] foregoing, the Decision dated December 28, 2009 rendered by the Metropolitan Trial Court (MTC), Branch 4, Manila, convicting the accused for violation of BP. 22 is hereby reversed and set aside. Accordingly, the accused is hereby acquitted of the crime charged on ground of reasonable doubt. However, the Decision of the MTC imposing civil liability upon the accused is hereby retained with the modification only that no compound interest shall be imposed. Hence, the accused is hereby ordered to pay JMV Corporation the amount of ₱102,368.00 representing the value of the eight (8) Equitable PCI Bank checks with interest thereon at 12% per annum from the filing of the information until the amount due is fully paid, and to pay the costs of suit.

SO ORDERED.[9]

The RTC found that the MeTC erred in relying on admissions allegedly made by petitioner Mandagan during the preliminary conference proceedings and in her Counter-Affidavit dated November 26, 2006.[10] The RTC held in particular that while

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[8] *Id*. at 55.

[9] *Id*. at 75.

[10] *Id*. at 61-62.

the defense admitted to the genuineness and due execution of a demand letter from respondent JMV Corporation in the Pre-Trial Order of the MeTC, there was no mention, much less any admission, that petitioner Mandagan actually received such demand letter.[11] Moreover, any purported admissions contained in the said Pre-Trial Order were not binding on petitioner Mandagan as she did not sign the same and neither did her counsel.[12]

In the same vein, any alleged admission of receipt of such demand letter by petitioner Mandagan in her Counter-Affidavit was inconclusive as it was unclear whether she came to know of the demand letter *before* the case was filed against her and not just by reason of the criminal complaint as she had insisted.[13] In fine, the RTC concluded that the prosecution failed to prove the fact of petitioner Mandagan's receipt of a notice of dishonor, thus negating the existence of the crime charged.[14]

Aggrieved, respondent JMV Corporation brought the case before the CA *via* Rule 65 petition for *certiorari*, claiming grave abuse of discretion on the part of the RTC in acquitting petitioner Mandagan. Respondent JMV Corporation argued that the prosecution was indeed able to prove that the demand letter precipitating the complaint was received by petitioner Mandagan long before its filing.[15]

Ruling of the CA

In its Decision dated June 16, 2014, the CA **granted** the petition, **annulled** the Decision dated February 15, 2011 of the RTC and **reinstated** the Decision dated December 28, 2009 of the MeTC:

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[11] *Id*. at 69-70.

[12] *Id*.

[13] *Id*. at 70.

[14] *Id*. at 69.

[15] *Id*. at 11.

WHEREFORE, premises considered, We **GRANT** the petition and **ANNUL** the assailed decision of the Regional Trial Court dated February 15, 2011. Accordingly, We **AFFIRM** the Decision of the Metropolitan Trial Court dated December 28, 2009. No costs.

SO ORDERED.[16]

A motion for reconsideration filed by petitioner Mandagan was denied by the CA in the Resolution[17] dated October 29, 2014.

Hence, this Petition.

Before the Court, petitioner Mandagan raises the following issues: (i) that the CA erred in giving due course to respondent JMV's petition for *certiorari* considering that public respondent, Hon. Judge Virgilio M. Almeda, did not commit grave abuse of discretion,[18] and (ii) that the CA erred in ignoring her acquittal by public respondent.[19]

Issue

Simplified, the issue to be resolved is simply whether the CA committed reversible error in annulling the Decision dated February 15, 2011 of the RTC.

The Court's Ruling

The Petition is meritorious.

Finality of judgment of acquittal; exception

In criminal cases, no rule is more settled than that a judgment of acquittal is immediately final and unappealable.[20] Such rule proceeds from the accused's constitutionally-enshrined right

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[16] *Id*. at 15.

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

[18] *Id*. at 26.

[19] *Id*.

[20] *People v. Tria-Tirona*, 502 Phil. 31, 38 (2005).

against prosecution if the same would place him under double jeopardy.[21] Thus, a judgment in such cases, once rendered, may no longer be recalled for correction or amendment — regardless of any claim of error or incorrectness.[22]

The Court is not unaware that, in some situations, it had allowed a review from a judgment of acquittal through the extraordinary remedy of a Rule 65 petition for *certiorari*.[23] A survey of these exceptional instances would, however, show that such review was only allowed **where the prosecution was denied due process or where the trial was a sham**.[24] In *People v. Court of Appeals,*[25] the Court made the following rulings:

> x x x [F]or an acquittal to be considered tainted with grave abuse of discretion, **there must be a showing that the prosecution's right to due process was violated or that the trial conducted was a sham**.
>
> Although the dismissal order is not subject to appeal, it is still reviewable but only through *certiorari* under Rule 65 of the Rules of Court. For the writ to issue, the trial court must be shown to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham thus rendering the assailed judgment void. **The burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.** (Citations omitted)

The petition is bereft of any allegation, much less, evidence that the prosecution's right to due process was violated **or the proceedings**

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[21] *See Philippine Savings Bank v. Spouses Bermoy*, 508 Phil. 96, 109-111 (2005).

[22] *People v. Alejandro*, G.R. No. 223099, January 11, 2018.

[23] *See People v. Sandiganbayan*, G.R. No. 198119, September 27, 2017, 840 SCRA 639, 653-655.

[24] *Id*. at 654-655.

[25] 691 Phil. 783 (2012). *See* also *People v. Ting*, G.R. No. 221505, December 5, 2018.

before the CA were a mockery such that Ando's acquittal was a foregone conclusion. Accordingly, notwithstanding the alleged errors in the interpretation of the applicable law or **appreciation of evidence that the CA may have committed in ordering Ando's acquittal, absent any showing that the CA acted with caprice or without regard to the rudiments of due process, the CA's findings can no longer be reversed, disturbed and set aside without violating the rule against double jeopardy**. x x x[26] (Emphasis and underscoring supplied)

Thus, the Court therein stressed that a re-examination of the evidence without a finding of mistrial will violate the right of an accused as protected by the rule against double jeopardy.[27]

In this case, petitioner Mandagan faults the CA in granting the petition for *certiorari* of respondent JMV Corporation and reversing her acquittal. While petitioner Mandagan agrees that the rule on double jeopardy is not without exceptions, she nevertheless maintains that no grave abuse of discretion was attributable to the RTC in rendering the Decision dated February 15, 2011.[28]

The Court agrees.

The CA erred in finding that the RTC committed grave abuse of discretion in rendering the Decision dated February 15, 2011

To recall, the CA's annulment of the Decision dated February 15, 2011 was predicated on the RTC's perceived error in appreciating the evidence:

In the present case, the Regional Trial Court opined as follows: "*Under the circumstances, therefore, the accused may not be convicted for violation of B.P. 22 for failure of the prosecution to prove all the elements of said crime. The evidence presented by the prosecution is insufficient to prove her guilt beyond reasonable*

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

[27] *Id*. at 787.

[28] See *rollo*, p. 31.

doubt absent any showing that the lawyer's letter of demand was sent to the accused and actually received by her. There is no evidence presented against the accused to prove the receipt of the demand letter other than the alleged admissions made during the preliminary conference and in her counter affidavit. As mentioned, such admissions cannot be used against the accused and are inadmissible in evidence against her. As such the admissions made in the preliminary conference and in her pleading are excluded and deemed suppressed."

x x x x x x x x x

The Regional Trial Court erred in holding that the prosecution failed in proving all the elements of the crime of B.P. 22, as it did not accept the admissions made by the accused during the preliminary conference, and in her counter affidavit and the acknowledgment made by accused, as well as her counsel. Herein lies the grave abuse of discretion envisioned by law and jurisprudence.[29] (Emphasis supplied; italics in the original)

The CA, in taking cognizance of the petition for *certiorari* of respondent JMV Corporation, thus reasoned that such error of judgment on the part of the RTC "unfolded" into one of jurisdiction, allegedly due to a misappreciation of the evidence.[30] This is egregious error.

The office of a writ of *certiorari* is narrow in scope and does not encompass an error of law or a mistake in the appreciation of evidence.[31] As a corrective writ, the extraordinary remedy of *certiorari* is reserved only for jurisdictional errors and cannot be used to correct a lower tribunal's factual findings.[32] The Court in *People v. Sandiganbayan*[33] succinctly stated:

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

[30] See *id*. at 42, 43.

[31] *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, 716 Phil. 500, 517 (2013).

[32] See *Garcia v. House of Representatives Electoral Tribunal,* 371 Phil. 280, 291-292 (1999).

[33] *Supra* note 23.

x x x Judicial review in *certiorari* proceedings shall be confined to the question of whether the judgment for acquittal is *per se* void on jurisdictional grounds. The court will look into the decision's validity — if it was rendered by a court without jurisdiction or if the court acted with grave abuse of discretion amounting to lack or excess of jurisdiction — not on its legal correctness. x x x

x x x x x x x x x

Even if the court *a quo* committed an error in its review of the evidence or application of the law, these are merely errors of judgment. We reiterate that the extraordinary writ of *certiorari* may only correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. **For as long as the court acted within its jurisdiction, an error of judgment that it may commit in the exercise thereof is not correctable through the special civil action of *certiorari*. The review of the records and evaluation of the evidence anew will result in a circumvention of the constitutional proscription against double jeopardy**.[34] (Additional emphasis supplied)

As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion is not reviewable *via certiorari* for being nothing more than errors of judgment.[35]

Guided by the foregoing, the Court so finds that the CA committed reversible error when it annulled the RTC Decision dated February 15, 2011 based merely on errors of jurisdiction. The Court explains.

In cases for violation of B.P. 22, the following essential elements must be established:

(1) The making, drawing, and issuance of any check to apply for account or for value;

(2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and

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[34] *Id*. at 655-656.

[35] *Id*.

(3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.[36]

Here, the existence of the first and third elements are no longer in contention; there being concurrent findings of fact between the MeTC, RTC, and CA on this score, the Court finds no cogent reason to disturb such findings at this stage.[37] Perforce, only the presence of the second element remains disputed. Case law has laid down the following guidelines in establishing the existence of such element:

To establish the existence of the second element, the State should present the giving of a written notice of the dishonor to the drawer, maker or issuer of the dishonored check. The rationale for this requirement is rendered in *Dico v. Court of Appeals*, to wit:

> To hold a person liable under B.P. Blg. 22, the prosecution must not only establish that a check was issued and that the same was subsequently dishonored, **it must further be shown that accused knew at the time of the issuance of the check that he did not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment**.
>
> **This knowledge of insufficiency of funds or credit at the time of the issuance of the check is the second element of the offense. Inasmuch as this element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of** B.P. Blg**.** 22 **creates a *prima facie* presumption of such knowledge**. Said section reads:
>
> SEC. 2. *Evidence of knowledge of insufficient funds*. — The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements

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[36] *Resterio v. People*, 695 Phil. 693, 701 (2012).

[37] See *rollo*, pp. 71-75.

> for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.
>
> **For this presumption to arise, the prosecution must prove** the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) **the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee**. In other words, **the presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor** and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. **The presumption or *prima facie* evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.**
>
> **A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue**. **The notice of dishonor may be sent by the offended party or the drawee bank. The notice must be in writing**. **A mere oral notice to pay a dishonored check will not suffice**. **The lack of a written notice is fatal for the prosecution.** x x x

The giving of the written notice of dishonor does not only supply the proof for the second element arising from the presumption of knowledge the law puts up but also affords the offender due process.

The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid. The Court cannot permit a deprivation of the offender of this statutory right by not giving the proper notice of dishonor. x x x[38] (Additional emphasis and underscoring supplied)

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[38] *Resterio v. People*, *supra* note 36, at 704-705.

Applied to this case, in the Decision dated February 15, 2011, the RTC found that the prosecution failed to present any documentary evidence to prove receipt by petitioner Mandagan of the notice of dishonor (*i.e.*, the Letter dated June 20, 2003). The RTC found that the admissions relied upon by the MTC in convicting petitioner Mandagan could not be used as specific admissions of her receipt of a notice of dishonor:

It appears in this case that the agreement or admissions made or entered during the preliminary conference were not reduced in writing and signed by the accused and her counsel, hence, such agreement or admissions cannot be used against the accused. Likewise, it remains unclear whether the alleged admission made by the accused was approved by the Court. The pertinent portion of the Order of the MTC in pre-trial conference, reads:

> "The parties admitted the jurisdiction of the. Court. The defense admitted the genuineness (sic) and due execution of the subject checks in question and also the demand letter but subject to their defense that the same were all paid. The defense further manifested that they will just present and mark the documents to prove the fact of payment in the course of the trial."

The MTC mentioned in the Order that the defense admitted the gennuiness (*sic*) and due execution of the demand letter subject to their defense that the amount of the checks were all paid. **There is no mention, however, in the Order that the defense admitted that the accused received the demand letter.** Besides, **the accused and her counsel did not sign the pre-trial order issued by the MTC. This being the case, any agreement or admissions made and entered during the preliminary conference which was not signed by the accused and her counsel cannot be used against said accused.** In short, such admission as to the receipt of the demand letter is not admissible in evidence against the accused. **Further, the alleged admission by the accused that she received the demand letter is not binding upon her since it appears that the same was not approved by the Court in the pre-trial order.**

Now the private complainant has taken to task the accused on her alleged admission made in her counter affidavit that she received the demand letter. The pertinent portion of the counter affidavit of the accused reads:

> "Again, in April 2003, when Rosemarie Edora (employee of JMV Corp.) communicated to me the dishonor of the checks, I requested her to collate all the dishonored checks so that I could make a proper accounting thereof, and make a one time payment. **I was waiting for their reply, but JMV Corporation's reply to my request was a demand letter from JMV's counsel (Annex "V" of Complaint Affidavit)**."

Admissions made by the accused in the pleadings submitted in the same case do not require further proof, especially so when such admission is categorical and definite. **However, it will be noted that the accused executed the counter affidavit at a time when the private complainant has already filed the complaint for violation of B.P. 22 against her. It is unclear whether the accused came to know of the demand letter before the filing of the complaint against her. By all indications, she may have known about the demand letter when she received the copy of the complaint-affidavit and its annexes from the private complainant.** In order to hold liable the accused for violation of BP 22, it is necessary that the notice of dishonor or demand letter must be served upon the accused before the filing of the complaint. Precisely, the purpose of the notice of dishonor is to give opportunity to the accused to pay the amount of the bouncing checks to avert criminal prosecution. **If such admission was made after the filing of the complaint, any admission made by the accused in the pleadings without any referral as to the time when she received the demand letter would not prejudice her. To be admissible against the accused, the admission made must be categorical and definite.** Likewise, reminders or oral demands are not sufficient to bind the accused. The notice of dishonor or demand must be in writing as required under Sec. 3 of B.P. 22.

Under the circumstances, therefore, the accused may not be convicted for violation of B.P. 22 for failure of the prosecution to prove all the elements of said crime. **The evidence presented by the prosecution is insufficient to prove her guilt beyond reasonable doubt absent any showing that the lawyer's letter of demand was sent to the accused and actually received by her**. There is no evidence presented against the accused to prove the receipt of the demand letter other than the alleged admissions made during the preliminary conference and in her counter affidavit. x x x[39] (Emphasis supplied)

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[39] *Rollo*, pp. 69-71.

The CA, however, annulled the foregoing findings of the RTC and instead found that the records showed that a notice of dishonor was in fact received by Mandagan:

> We quote with favor portions of the Decision of the Metropolitan Trial Court, to wit: "*The accused tried to contradict the presumption by raising as a defense that no notice of dishonor was actually sent to and received by her. Contrary to her allegation, the receipt of the demand letter was admitted by the defense during preliminary conference proceedings and in her Counter-Affidavit dated November 26, 2006*".
>
> **Records will show that the demand letter dated June 20, 2003 was received by Mandagan. This was evidenced by the June 27, 2003 letter of Mandagan's counsel in its "*reply to demand letter dated 20 June 2003*" where the first paragraph states: "*In response to your letter dated June 20, 2003 addressed to our client Atty. Maria Nympha Mandagan, x x x x*".**
>
> Again, We quote portions of the assailed decision, to wit: "*A few days after their conversation, Ms. Edora called accused Mandagan to remind her once again on her promise to replace the dishonored checks with the new checks. During the said conversation,* ***accused Mandagan acknowledged her receipt of the requested photocopies of the dishonored checks and promised that she will immediately settle her obligations to JMV Corporation by one-time payment*".**
>
> x x x
>
> **What other proof of knowledge and receipt of the notice of dishonor is required, other than the above acknowledgment made by Mandagan's counsel, acting for and in behalf of the accused and by the accused herself?**
>
> The Regional Trial Court erred in holding that the prosecution failed in proving all the elements of the crime of B.P. 22, as it did not accept the admissions made by the accused during the preliminary conference, and in her counter affidavit and the acknowledgment made by accused, as well as her counsel. Herein lies the grave abuse of discretion envisioned by law and jurisprudence.[40] (Additional emphasis supplied; italics in the original)

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

In sum, the CA overturned the RTC's acquittal based solely on the following proof: (i) a Reply-Letter dated June 27, 2003, purportedly written by petitioner Mandagan's counsel in response to the Letter dated June 20, 2003, and (ii) an alleged admission by petitioner Mandagan during a phone conversation with a certain Rosemarie Edora (Edora), a representative of respondent JMV Corporation.

Anent the Reply-Letter dated June 27, 2003, **it was gross error for the CA to consider the same as it was not formally offered by the prosecution in the first place**. In the Order[41] dated September 19, 2006 of the MeTC, which admitted the evidence of the prosecution, nowhere is such a letter found. On this subject, the Court's pronouncements in *Candido v. Court of Appeals*,[42] are compelling:

> We are not persuaded. It is settled that courts will only consider as evidence that which has been formally offered. The affidavit of petitioner Natividad Candido mentioning the provisional rate of rentals was never formally offered; neither the alleged certification by the Ministry of Agrarian Reform. **Not having been formally offered, the affidavit and certification cannot be considered as evidence**. Thus the trial court as well as the appellate court correctly disregarded them. **If they neglected to offer those documents in evidence, however vital they may be, petitioners only have themselves to blame, not respondent who was not even given a chance to object as the documents were never offered in evidence.**
>
> A document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered, and the opposing counsel given an opportunity to object to it or cross examine the witness called upon to prove or identify it. **A formal offer is necessary since judges are required to base their findings of fact and judgment only — and strictly — upon the evidence offered by the parties at the trial. To allow a party to attach any document to his pleading and then expect the court to consider it as evidence may draw unwarranted consequences. The opposing party will be deprived of his chance to examine the document and object to its admissibility.** The appellate court will have difficulty reviewing

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[41] *Id*. at 76-77.

[42] 323 Phil. 95 (1996).

documents not previously scrutinized by the court below. The pertinent provisions of the Revised Rules of Court on the inclusion on appeal of documentary evidence or exhibits in the records cannot be stretched as to include such pleadings or documents not offered at the hearing of the case.[43] (Emphasis supplied)

Hence, in this case, even assuming that the Reply-Letter dated June 27, 2003 was appended to the records, the fact still remains that the court cannot consider evidence which was not formally offered.[44] As such, any statement allegedly made on behalf of petitioner Mandagan in the said letter could not be considered an admission of receipt of a notice of dishonor as the same has no evidentiary value whatsoever.[45] Verily, the RTC could not be faulted, much less accused of capriciousness, in appreciating the evidence without the Reply-Letter dated June 27, 2003.

On the other hand, with respect to the alleged admission of petitioner Mandagan over the phone, the Court notes that neither the MeTC nor the RTC considered the same as evidence of receipt of a notice of dishonor. The Court thus finds the same severely deficient to support a moral conviction that a crime had been committed; such self-serving and uncorroborated statements hardly constitute an admission as they were based on the representations of Edora in her affidavit, more so in the presence of contrary declarations by petitioner Mandagan.[46] Nonetheless, as already stressed above, it was still error on the part of the CA to have entertained such issue as this merely involved the appreciation of the evidence.

Time and again, it has been ruled that the prosecution has the burden of proving each and every element of the crime with evidence sufficient to prove the guilt of the accused beyond reasonable doubt. The evidence for the prosecution must stand or fall on its own merit; it cannot draw strength from the weakness

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

[44] *See Concepcion v. Court of Appeals*, 505 Phil. 529, 542 (2005).

[45] *Id*. at 542.

[46] See *rollo*, pp. 28-29.

of the defense.[47] **Hence, if the evidence falls short of such threshold, an acquittal should come as a matter of course.**[48]

With the foregoing, the Court finds the totality of evidence insufficient to establish the critical element of receipt of notice of dishonor; hence, the CA erred in annulling the Decision dated February 15, 2011 of the RTC based on grave abuse of discretion.

Finally, anent the civil liability of petitioner Mandagan, the Court affirms the same with modification to conform with existing jurisprudence.[49]

WHEREFORE, in view of the foregoing, the Petition is **GRANTED**. The Decision dated June 16, 2014 and Resolution dated October 29, 2014 of the Court of Appeals in CA-G.R. SP No. 119814 are hereby **REVERSED** and **SET ASIDE**. The Decision dated February 15, 2011 of the Regional Trial Court of Manila, Branch 10, in Criminal Case Nos. 10-276006 to 276013 is hereby **REINSTATED** and petitioner Maria Nympha Mandagan is hereby **ACQUITTED**.

Petitioner Maria Nympha Mandagan is further **ORDERED TO PAY** respondent Jose M. Valero Corporation the amount of One Hundred Two Thousand Three Hundred Sixty-Eight Pesos (₱102,368.00) with interest thereon at twelve percent (12%) per annum from the filing of the Information until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until finality of this Decision, and the total amount of the foregoing shall, in turn, earn interest at the rate of six percent (6%) per annum from finality of this Decision until full payment thereof.

SO ORDERED.

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

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[47] See *Santiago v. Court of Appeals*, 356 Phil. 647, 650 and 670 (1998).

[48] *Reyes v. Court of Appeals*, 686 Phil. 137, 153 (2012).

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

SECOND DIVISION

[G.R. No. 221271. June 19, 2019]

GRANDHOLDINGS INVESTMENTS (SPV-AMC), INC., *petitioner, vs.* **COURT OF APPEALS, TJR INDUSTRIAL CORPORATION, PETER C. YU, CONCEPCION C. YU, ANTONIO SIAO INHOK and THELMA SIAO INHOK,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AN AGGRIEVED PARTY WHO RESORTS TO THE FILING OF A *CERTIORARI* PETITION BEARS THE BURDEN TO SHOW THE JURISDICTIONAL ERROR OR GRAVE ABUSE OF DISCRETION COMMITTED BY THE PUBLIC RESPONDENT.—** An aggrieved party who resorts to the filing of a special civil action for *certiorari* under Rule 65 of the Rules of Court bears the burden to show the jurisdictional error or grave abuse of discretion committed by the public respondent. The Court shall grant the petition and order the annulment or modification of the assailed resolutions, decisions, and/or order of the public respondent only upon a clear demonstration of "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."

2. **MERCANTILE LAW; BANKING; REPUBLIC ACT NO. 9182 (THE SPECIAL PURPOSE VEHICLE [SPV] ACT OF 2002); IMPLEMENTING RULES AND REGULATIONS (IRR); CERTIFICATE OF ELIGIBILITY; DEFINED; WITH THE ISSUANCE OF A CERTIFICATE OF ELIGIBILITY, THE BANK OR NON-BANK INSTITUTION CONCERNED OBSERVED ALL THE CONDITIONS, INCLUDING THE PRIOR WRITTEN NOTICE REQUIREMENT, AND SUBMITTED ALL THE NECESSARY DOCUMENTS REQUIRED BY THE SPV LAW AND ITS IRR; CASE AT BAR.—** We now come to the question: Did Allied Bank give prior notice to its borrowers about the transfer of the NPLs? The existence of the certificate of eligibility

in favor of Allied Bank supports an answer in the affirmative. It bears to stress that in this case, petitioner has in its possession the Certificate of Eligibility (of Non-Performing Assets) issued by the BSP to Allied Bank. A certificate of eligibility refers to the document issued to banks and non-bank financial institutions performing quasi-banking functions (NBQBs) by the appropriate regulatory authority having jurisdiction over their operations as to the eligibility of their NPLs or real and other properties owned or acquired in settlement of loans and receivables for purposes of availing of the tax exemptions and privileges granted by R.A. No. 9182. Before a bank or NBQB can transfer its NPAs to an SPV, it is required to file an application for eligibility of said NPAs in accordance with SPV Rule 12 of "The Implementing Rules and Regulations of the Special Purpose Vehicle (SPV) Act of 2002." x x x It can be gleaned from the foregoing that the certificate of eligibility shall only be issued upon compliance with the requirements laid down in the IRR and in Memorandum No. M 2006-001, one of which is that the application must be accompanied by a certification signed by the duly authorized officer of the bank or the NBQB that: 1) the assets to be transferred are NPAs; 2) the proposed transfer is under a true sale; 3) prior notice has been given to the borrowers; and that 4) the borrowers were given 90 days to restructure the loan with the bank or NBQB. Failure to comply with the requirements and adhere to the procedural guidelines will preclude the BSP from issuing the corresponding certificate of eligibility. Thus, it does not go against logic and reason to conclude that with the issuance of the certificate of eligibility, Allied Bank observed all the conditions, including the prior written notice requirement, and submitted all the necessary documents required by the SPV Law and its IRR. Ultimately, the transfer of the NPLs is valid and effective, and, thus, raised petitioner to the status of a transferee *pendente lite*.

3. REMEDIAL LAW; ACTIONS; PARTIES TO CIVIL ACTIONS; TRANSFER OF INTEREST; SUBSTITUTION OF PARTIES ON ACCOUNT OF A TRANSFER OF INTEREST IS NOT MANDATORY; WHETHER OR NOT A CHANGE OR SUBSTITUTION OF PARTY CAN TAKE PLACE IS LEFT TO THE SOUND DISCRETION OF THE COURT; CASE AT BAR.— True, the substitution of parties on account of a transfer of interest is not mandatory. Section 19, Rule 3 of the Rules of

Court provides: SEC. 19. *Transfer of interest.* — In case of any transfer of interest, the action **may** be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. The word "may" reflects the wide latitude and considerable leeway given to the court in ascertaining the propriety of substituting a party by another on account of a transfer of interest. Whether or not a change or substitution of party can take place is left to the sound discretion of the court. However, it is equally true that the discretionary nature of allowing the substitution or joinder by the transferee demands that the court's determination must be well-within the sphere of law, guided by applicable statutory principles, and supported by factual and legal bases. The CA, in denying petitioner's motion for substitution, followed the ruling in *Asset Pool A (SPV-AMC), Inc. v. Court of Appeals.* x x x The *Asset Pool* case bears apparaent parallelism to the case at bench in that the SPVs in both cases did not adduce evidence to prove that the borrowers were notified prior to, or even after the execution of the deed of assignement. But the similarity ends there as the facts obtaining in this case are not on all fours with the *Asset Pool* case. In *Asset Pool*, the CA gave weight to the fact that the SPV failed to prove that the bank filed an application for eligibility as NPA of the borrower's loan. It also failed to establish that the bank had given its borrowers a period of 90 days to restructure or renegotiate its loan. This, however, is in stark contrast with the instant case since petitioner was able to present the certificate of eligibility issued by the BSP recognizing Allied Bank's NPAs and approving their transfer/sale in favor of petitioner. The fact that Allied Bank was able to procure a certificate of eligibility of NPAs is a positive *indicia* that it has complied with all the conditions for its issuance and negates private respondents' allegation of absence of prior notice of the transfer/sale of the NPLs. Accordingly, the deed of assignment is valid; petitioner steps into the shoes of Allied Bank and succeeds to its rights and interests as private respondents' creditor. As such, petitioner has a valid right to ask the court that it be substituted as party-plaintiff especially when it sees that it would be able to better protect its interest if it would be named as party-plaintiff in the case. Clearly, the CA committed grave abuse of discretion when it denied petitioner's motion for substitution.

APPEARANCES OF COUNSEL

Verna Lynn V. Aceveda & Aileen SJ. Manalo for petitioner.
Rolando M. Lim for respondents.

D E C I S I O N

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

This is a Petition for *Certiorari* under Rule 65 of the Rules of Court seeking to annul the Resolutions dated April 21, 2015[1] and September 9, 2015[2] of the Court of Appeals (CA) in CA-G.R. CV No. 96926, "*Philippine National Bank v. TJR Industrial Corporation,*" denying the motion for substitution filed by Grandholdings Investments (SPV-AMC), Inc. (petitioner), a corporation organized as a special purpose vehicle (SPV) created under Republic Act (R.A.) No. 9182, otherwise known as "The Special Purpose Vehicle Act of 2002."

The instant petition arose from a complaint for sum of money filed by Allied Bank against TJR Industrial Corporation, Peter C. Yu, Concepcion Yu, Antonio Siao Inhok, and Thelma Siao Inhok (private respondents) before the Regional Trial Court (RTC) of Makati City, Branch 136, for failure to pay their loan obligations covered by Promissory Note Nos. 9625891, 9700123, 9702681, 9708795, 9708930, and 9711461 (subject PNs) in the total amount of ₱13,800,000.00.[3]

On May 12, 2008, Allied Bank executed a Deed of Assignment[4] assigning to petitioner all its rights, title and interest over its non-performing loans (NPLs) including the subject PNs.

On October 28, 2009, the Bangko Sentral ng Pilipinas (BSP) issued a Certificate of Eligibility (of Non-Performing Assets)[5]

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Apolinario D. Bruselas, Jr. and Edwin D. Sorongon, concurring; *rollo*, pp. 18-21.

[2] *Id*. at 23-24.

[3] *Id*. at 27.

[4] *Id*. at 25-26.

[5] *Id*. at 31-33.

stating, among others, that Allied Bank is qualified as a financial institution having non-performing assets (NPAs) in accordance with R.A. No. 9182, as amended by R.A. No. 9343,[6] and its implementing rules and regulations (IRR). The certificate also indicates that the transfer/sale of Allied Bank's NPAs to petitioner has been approved by the BSP and that such transfer appears to be in the nature of a "true sale" under R.A. No. 9182.

On March 29, 2011, the RTC rendered a Decision[7] ordering private respondents to solidarily pay Allied Bank the amount of ₱13,800,000.00 with interest from January 26, 2000 until full payment. On January 17, 2013 Allied Bank merged with the Philippine National Bank, the latter being the surviving entity.

Aggrieved thereby, private respondents appealed before the CA.

In a letter[8] dated April 3, 2014, Rosauro C. Macalagay, General Manager of petitioner, informed TJR Industrial Corporation that petitioner is now the creditor of its loan account in lieu of Allied Bank and demanded payment of the obligation within 30 days from receipt thereof.

During the pendency of the appeal, petitioner filed a Motion for Substitution dated November 11, 2014 pursuant to the Deed of Assignment executed in its favor. Private respondents filed their Opposition (To the Motion for Substitution filed by Grandholdings Investment [SPV-AMC, Inc.]) contending that petitioner cannot be substituted as plaintiff-appellee in the absence of proof that there was compliance with the notice requirement set forth in Section 12(a), Article III of R.A. No. 9182.

On April 21, 2015, the CA denied the motion.

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[6] AN ACT AMENDING REPUBLIC ACT NO. 9182, OTHERWISE KNOWN AS THE SPECIAL PURPOSE VEHICLE ACT OF 2002 FOR THE PURPOSE OF ALLOWING THE ESTABLISHMENT AND REGISTRATION OF NEW SPVS AND FOR OTHER PURPOSES.

[7] *Rollo*, pp. 28-30.

[8] *Id*. at 34.

Petitioner moved for the reconsideration of the April 21, 2015 Resolution, but the same was denied in its September 9, 2015 Resolution.

Hence, this Petition for *Certiorari* alleging grave abuse of discretion by the CA in rendering the assailed resolutions on the ground of non-compliance with the notice requirement of R.A. No. 9182.

Petitioner argued that the loan account of TJR Industrial Corporation was validly assigned to it by Allied Bank pursuant to the provisions of R.A. No. 9182 since it was approved by the BSP. It averred that it has shown substantial compliance with the requirements under Section 12, to wit: 1) securing the approval of BSP for the transfer/sale of the account of TJR Industrial Corporation as shown by the certificate of eligibility; and 2) sending a letter-notice to the private respondents' last known address informing them of the fact of the sale and/or transfer of the NPLs. It asserted that by virtue of the valid assignment of NPLs by Allied Bank, it has become a transferee *pendente lite* having the right to be substituted as party-plaintiff in the case.[9]

For their part, private respondents countered that the CA did not gravely abuse its discretion in denying petitioner's motion for substitution since it merely complied with the clear and unequivocal mandate of R.A. No. 9182 that prior notice should be given to borrowers before there can be a valid assignment of NPLs to an SPV. They pointed out that their case is identical to the case of *Asset Pool A (SPV-AMC), Inc. v. Court of Appeals*,[10] where the Court denied the SPV's motion for substitution because it failed to prove compliance with the prior notice requirement.[11] They also noted that petitioner has the burden of proving compliance with the required notice and that it failed to discharge the same.[12] Finally, they stressed that

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[9] *Id*. at 9.

[10] 597 Phil. 663 (2009).

[11] Comment and Opposition, *rollo*, pp. 59-60.

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

Section 19, Rule 3 of the Rules of Court uses the word "may" indicating that in case of transfer of interest, the substitution of parties is not mandatory. It is therefore discretionary upon the court to allow or disallow the substitution or joinder by the transferee. The private respondents emphasized that the decision of the CA was arrived at in consideration of the law, and hence, may not be assailed.[13]

The petition is meritorious.

An aggrieved party who resorts to the filing of a special civil action for *certiorari* under Rule 65 of the Rules of Court bears the burden to show the jurisdictional error or grave abuse of discretion committed by the public respondent. The Court shall grant the petition and order the annulment or modification of the assailed resolutions, decisions, and/or order of the public respondent only upon a clear demonstration of "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[14]

The CA denied petitioner's motion for substitution because no evidence was offered to prove that there was compliance with the prior notice requirement imposed by Section 12 of R.A. No. 9182, which provides:

SEC. 12. *Notice and Manner of Transfer of Assets.*—

(a) No transfer of NPLs to an SPV shall take effect unless the FI concerned shall give prior notice, pursuant to the Rules of Court, thereof to the borrowers of the NPLs and all persons holding prior encumbrances upon the assets mortgaged or pledged. Such notice shall be in writing to the borrower by registered mail at their last known address on file with the FI. The borrower and the FI shall be given a period of at

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[13] *Id*. at 63-64.

[14] *Tua v. Mangrobang*, 725 Phil. 208, 223 (2014).

most ninety (90) days upon receipt of notice, pursuant to the Rules of Court, to restructure or renegotiate the loan under such terms and conditions as may be agreed upon by the borrower and the FIs concerned.

(b) The transfer of NPAs from an FI to an SPV shall be subject to prior certification of eligibility as NPA by the appropriate regulatory authority having jurisdiction over its operations which shall issue its ruling within forty-five (45) days from the date of application by the FI for eligibility.

(c) After the sale or transfer of the NPLs, the transferring FI shall inform the borrower in writing at the last known address of the fact of the sale or transfer of the NPLs.

The CA emphasized that petitioner did not adduce evidence to prove that private respondents were notified prior to, or even after the execution of the Deed of Assignment. Consequently, the transfer of the NPLs to petitioner cannot take effect. In so ruling, the CA appears to have overlooked Section 12(a) of the law which explicitly imposes upon the financial institution concerned (Allied Bank) the duty to inform its borrowers (private respondents) about the transfer of the NPLs. It is a condition that the transferring financial institution should first satisfy for the deed of assignment to fully produce legal effects. Hence, contrary to private respondents' contention, petitioner is under no obligation to notify the borrowers of the impending transfer of NPLs considering that it merely assumes the rights and obligations of Allied Bank in collecting and restructuring its NPLs. The duty to conform to the notice requirement rests solely upon the financial institution concerned which conveyed its NPLs to the SPV. It is Allied Bank which carries the burden of proving that its borrowers have been acquainted with the terms of the deed of assignment, as well as the legal effect of the transfer of the NPLs.

We now come to the question: Did Allied Bank give prior notice to its borrowers about the transfer of the NPLs?

The existence of the certificate of eligibility in favor of Allied Bank supports an answer in the affirmative.

It bears to stress that in this case, petitioner has in its possession the Certificate of Eligibility (of Non-Performing Assets) issued by the BSP to Allied Bank. A certificate of eligibility refers to the document issued to banks and non-bank financial institutions performing quasi-banking functions (NBQBs) by the appropriate regulatory authority having jurisdiction over their operations as to the eligibility of their NPLs or real and other properties owned or acquired in settlement of loans and receivables for purposes of availing of the tax exemptions and privileges granted by R.A. No. 9182.[15] Before a bank or NBQB can transfer its NPAs to an SPV, it is required to file an application for eligibility of said NPAs in accordance with SPV Rule 12 of "The Implementing Rules and Regulations of the Special Purpose Vehicle (SPV) Act of 2002." The rule states:

SPV Rule 12 — Notice and Manner of Transfer of Assets

x x x x x x x x x

(b) *Procedures on the Transfer of Assets to the SPV*

An FI that intends to transfer its NPAs to an SPV shall file an application for eligibility of said NPAs, in the prescribed format, with the Appropriate Regulatory Authority having jurisdiction over its operations. Said application shall be filed for each transfer of asset/s.

The application by the FI for eligibility of its NPAs proposed to be transferred to an SPV shall be accompanied by a certification from the FI that:

(1) the assets to be sold/transferred are NPAs as defined under the SPY Act of 2002;

(2) the proposed sale/transfer of said NPAs is under a True Sale;

(3) the notification requirement to the borrowers has been complied with; and

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[15] THE IMPLEMENTING RULES AND REGULATIONS OF THE SPECIAL PURPOSE VEHICLE (SPV) ACT OF 2002, Rule 3(f) < www.bsp.gov.ph/regulations/laws/spav_irr.pdf> (visited June 14, 2019).

(4) the maximum 90-day period for renegotiation and restructuring has been complied with.

The above certification from the transferring FI shall be signed by a senior officer with a rank of at least Senior Vice President or equivalent provided such officer is duly authorized by the FI's board of directors; or the Country Head, in the case of foreign banks.

Items 3 and 4 above shall not apply if the NPL has become a ROPOA after June 30, 2002.

The application may also be accompanied by a certification from an independent auditor acceptable to the Commission in cases of financing companies and investment houses under [Rule 3(a)(3)] or from the Commission on Audit in the case of GFIs or GOCCs, that the assets to be sold or transferred are NPAs as defined under the Act. (Underscoring supplied)

On May 11, 2006, the BSP issued Memorandum No. M-2006-001[16] reiterating the above procedure and providing for specific guidelines for the grant of certificate of eligibility. Relevant portion of the Memorandum is quoted hereunder:

x x x x x x x x x

4. The application shall be accompanied by a written certification signed by a senior officer with a rank of at least Senior Vice President or equivalent, who is authorized by the board of directors, or by the country head, in the case of foreign banks, that:

a. the assets to be sold/transferred are NPAs as defined under the SPV Act of 2002;

b. the proposed sale/transfer of said NPAs is under a true sale;

c. the notification requirement to the borrowers has been complied with; and

d. the maximum 90-day period for renegotiation and restructuring has been complied with.

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[16] <www.bsp.gov.ph/regulations/regulations.asp?type=3&id=854> (visited June 14, 2019).

> Items c and d above shall not apply if the NPL has become a ROPOA after 30 June 2002. (Underscoring supplied)

It can be gleaned from the foregoing that the certificate of eligibility shall only be issued upon compliance with the requirements laid down in the IRR and in Memorandum No. M-2006-001, one of which is that the application must be accompanied by a certification signed by the duly authorized officer of the bank or the NBQB that: 1) the assets to be transferred are NPAs; 2) the proposed transfer is under a true sale; 3) prior notice has been given to the borrowers; and that 4) the borrowers were given 90 days to restructure the loan with the bank or NBQB. Failure to comply with the requirements and adhere to the procedural guidelines will preclude the BSP from issuing the corresponding certificate of eligibility. Thus, it does not go against logic and reason to conclude that with the issuance of the certificate of eligibility, Allied Bank observed all the conditions, including the prior written notice requirement, and submitted all the necessary documents required by the SPV Law and its IRR. Ultimately, the transfer of the NPLs is valid and effective, and, thus, raised petitioner to the status of a transferee *pendente lite*.

True, the substitution of parties on account of a transfer of interest is not mandatory. Section 19, Rule 3 of the Rules of Court provides:

> SEC. 19. *Transfer of interest*.— In case of any transfer of interest, the action **may** be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. (Emphasis supplied)

The word "may" reflects the wide latitude and considerable leeway given to the court in ascertaining the propriety of substituting a party by another on account of a transfer of interest. Whether or not a change or substitution of party can take place is left to the sound discretion of the court. In *Heirs of Francisca*

Medrano v. De Vera,[17] the Court even enunciated that the trial court is afforded such discretion because, after all, the interest of the transferee is already sufficiently represented and safeguarded by the participation of the transferor in the case. The Court expounded on the nature of a transferee *pendente lite's* interest in *Cameron Granville 3 Asset Management, Inc. v. Chua*:[18]

> Indeed, a transferee *pendente lite* is a proper party that stands exactly in the shoes of the transferor, the original party. Transferees are bound by the proceedings and judgment in the case, such that there is no need for them to be included or impleaded by name. We have even gone further and said that the transferee is joined or substituted in the pending action by operation of law from the exact moment when the transfer of interest is perfected between the original party and the transferee.
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> Nevertheless, "[w]hether or not the transferee should be substituted for, or should be joined with, the original party is largely a matter of discretion." That discretion is exercised in pursuance of the paramount consideration that must be afforded for the protection of the parties' interests and right to due process.

However, it is equally true that the discretionary nature of allowing the substitution or joinder by the transferee demands that the court's determination must be well-within the sphere of law, guided by applicable statutory principles, and supported by factual and legal bases.

The CA, in denying petitioner's motion for substitution, followed the ruling in *Asset Pool A (SPV-AMC), Inc. v. Court of Appeals*[19] which held:

> As the notice requirement under Section 12(,] Article III of the SPV Law was not amended, the same was still necessary to effect transfer of Non-Performing Loans to an SPV, like petitioner, to be effective. There being no compliance with such notice requirement at the time of the assignment

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[17] 641 Phil. 228, 242 (2010).

[18] 795 Phil. 116, 123-124 (2016).

[19] *Supra* note 10, at 667.

to petitioner of the subject PN during the effectivity of the SPV [L]aw, as amended, it could not substitute BPI as party plaintiff- appellee. The appellate court's denial of petitioner's Motion was thus not attended with grave abuse of discretion. (Underscoring supplied)

The *Asset Pool* case bears apparent parallelism to the case at bench in that the SPVs in both cases did not adduce evidence to prove that the borrowers were notified prior to, or even after the execution of the deed of assignment. But the similarity ends there as the facts obtaining in this case are not on all fours with the *Asset Pool* case.

In *Asset Pool*, the CA gave weight to the fact that the SPV failed to prove that the bank filed an application for eligibility as NPA of the borrower's loan. It also failed to establish that the bank had given its borrowers a period of 90 days to restructure or renegotiate its loan. This, however, is in stark contrast with the instant case since petitioner was able to present the certificate of eligibility issued by the BSP recognizing Allied Bank's NPAs and approving their transfer/sale in favor of petitioner. The fact that Allied Bank was able to procure a certificate of eligibility of NPAs is a positive *indicia* that it has complied with all the conditions for its issuance and negates private respondents' allegation of absence of prior notice of the transfer/sale of the NPLs. Accordingly, the deed of assignment is valid; petitioner steps into the shoes of Allied Bank and succeeds to its rights and interests as private respondents' creditor. As such, petitioner has a valid right to ask the court that it be substituted as party-plaintiff especially when it sees that it would be able to better protect its interest if it would be named as party-plaintiff in the case.

Clearly, the CA committed grave abuse of discretion when it denied petitioner's motion for substitution.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated April 21, 2015 and September 9, 2015 of the Court of Appeals in CA-G.R. CV No. 96926 are **REVERSED** and **SET ASIDE**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 222551. June 19, 2019]

REPUBLIC OF THE PHILIPPINES, as represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioner, vs.* **SPOUSES PEDRO GOLOYUCO and ZENAIDA GOLOYUCO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW SHOULD BE RAISED THEREIN; FACTUAL ISSUES PERTAINING TO THE VALUE OF THE PROPERTY EXPROPRIATED ARE QUESTIONS OF FACT WHICH ARE GENERALLY BEYOND THE SCOPE OF JUDICIAL REVIEW UNDER RULE 45.—** Settled is the rule that only questions of law should be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Factual findings of the lower courts will generally not be disturbed. Thus, the factual issues pertaining to the value of the property expropriated are questions of fact which are generally beyond the scope of the judicial review of this Court under Rule 45. Unfortunately for petitioner, it has not alleged, much less proven, the presence of any of the exceptional circumstances that would warrant a deviation from the rule that the Court is not a trier of facts. On this ground alone, the denial of the petition is warranted.

2. **ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; DEFINED AS THE FULL AND FAIR EQUIVALENT OF THE PROPERTY TAKEN FROM ITS OWNER BY THE EXPROPRIATOR; STANDARDS FOR THE DETERMINATION THEREOF.—** Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the

meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample. Under Section 5 of R.A. No. 8974, the standards for the determination of just compensation are: SEC. 5. *Standards/or the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale*. — In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards: (a) The classification and use for which the property is suited; (b) The developmental costs for improving the land; (c) The value declared by the owners; (d) The current selling price of similar lands in the vicinity; (e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon; (f) The size, shape or location, tax declaration and zonal valuation of the land; (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and (h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

3. **ID.; ID.; ID.; ID.; ID.; ZONAL VALUATION, ALTHOUGH ONE OF THE INDICES OF THE FAIR MARKET VALUE OF REAL ESTATE, CANNOT, BY ITSELF, BE THE SOLE BASIS OF JUST COMPENSATION ON EXPROPRIATION CASES; PAYMENT OF PROVISIONAL VALUE AS A CONDITION FOR THE ISSUANCE OF A WRIT OF POSSESSION IS DIFFERENT FROM THE PAYMENT OF JUST COMPENSATION.—** As for the contention of petitioner that it is the value indicated in the property's tax declaration, as well as its zonal valuation that must govern, the Court adopts the findings of the RTC and the CA in ruling that the same are not truly reflective of the value of the subject property, but is just one of the several factors to be considered under Section 5 of R.A. No. 8974. Time and again, the Court has held that zonal valuation, although one of the indices of the fair market value of real estate, cannot, by itself, be the sole basis of just compensation in expropriation cases. Moreover, in *Capitol Steel*

Corporation v. PHIVIDEC Industrial Authority, the Court clarified that the payment of the provisional value as a condition for the issuance of a writ of possession is different from the payment of just compensation for the expropriated property. While the provisional value is based on the current relevant zonal valuation, just compensation is based on the prevailing fair market value of the property. In that case, the Court agreed with the CA's explanation that: The first refers to the preliminary or provisional determination of the value of the property. It serves a double-purpose of pre-payment if the property is fully expropriated, and of an indemnity for damages if the proceedings are dismissed. It is not a final determination of just compensation and may not necessarily be equivalent to the prevailing fair market value of the property. Of course, it may be a factor to be considered in the determination of just compensation. Just compensation, on the other hand, is the final determination of the fair market value of the property. It has been described as "the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation."

4. CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; DELAY IN THE PAYMENT OF JUST COMPENSATION IS A FORBEARANCE OF MONEY, AND AS SUCH, IS NECESSARILY ENTITLED TO EARN INTEREST.— Indeed, the delay in the payment of just compensation is a forbearance of money and, as such, is necessarily entitled to earn interest. Thus, the difference in the amount between the final amount as adjudged by the Court, which in this case is ₱415,000.00, and the initial payment made by the government, in the amount of ₱137,500.00 — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money. Moreover, with respect to the amount of interest on this difference between the initial payment and the final amount of just compensation, as adjudged by the Court, the Court has upheld, in recent pronouncements, the imposition of 12% interest rate from the time of taking, when the property owner was deprived of the property, until July 1, 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% per annum by BSP Circular No. 799. Accordingly,

from July 1, 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Pablo M. Inventor, Jr. and Ricardo C. Pilares, Jr. for respondents.

D E C I S I O N

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

Assailed in this Petition for Review on *Certiorari* are the July 21, 2015 Decision[1] and the January 12, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 102609 which affirmed with modification the February 18, 2014 Decision[3] of the Regional Trial Court (RTC), Valenzuela City, Branch 172 in Civil Case No. 254-V-07.

The Antecedents

On December 7, 2007, petitioner Republic of the Philippines (petitioner), through the Department of Public Works and Highways (DPWH) filed a complaint for expropriation before the RTC against respondent-spouses Pedro and Zenaida Goloyuco (spouses Goloyuco),[4] who are the registered owners of a parcel of land located in Barangay Ugong, Valenzuela City, which was sought to be expropriated. The subject property, with a total area of 50 square meters (sq m), was expropriated for the construction of the C-5 Northern Link Road Project.

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[1] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Remedios A. Salazar-Fernando and Socorro B. Inting, concurring; *rollo*, pp. 25-37.

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

[3] Penned by Judge Nancy Rivas-Palmones; *id*. at 89-94.

[4] Also referred to as "Goloyugo" in some parts of the *rollo*.

On February 29, 2009, petitioner filed an Urgent *Ex Parte* Motion for Issuance of Writ of Possession. Thereafter, the court ordered petitioner to issue a check payable to the spouses Goloyuco in the amount of ₱137,500.00 representing the zonal valuation of the subject property. On September 19, 2008, the spouses Goloyuco received DBP Manager's Check No. 615039 dated September 16, 2008 in the amount of ₱137,500.00.[5]

Consequently, the court issued the writ of possession and order of expropriation on September 24, 2008. Thereafter, the court proceeded with the second stage of the proceedings of the case and appointed commissioners who would determine just compensation.

On September 9, 2013, one Commissioner, Cecilynne R. Andrade, filed her Report recommending the amount of ₱12,250.00 per sq m as just compensation of the property subject of expropriation. On the other hand, the two other Commissioners, Engr. Romeo S. Selva and Osita F. De Guzman, recommended the amount of ₱10,000.00 per sq m as just compensation for the subject property.

The RTC Ruling

In a Decision dated February 18, 2014, the trial court declared that the subject property was classified as residential by the Bureau of Internal Revenue (BIR) with a zonal valuation of ₱2,750.00 per sq m. It noted that the subject property is rectangular in shape, with generally flat terrain, and within immediate vicinity of residential and some industrial properties in Barangay Ugong, Valenzuela City. The RTC stated that in determining the fair market value of the subject property, the Commissioners used the valuation of previously expropriated properties involving the same project, and these were the cases of (1) *Mapalad*, Civil Case No. 52-V-08; (2) *Hobart*, Civil Case No. 15-V-08; (3) *Garcia*, Civil Case No. 287-V-99; and (4) *Liao Chin Guat Balisbis and Edna Lim*, Civil Case No. 288-

[5] *Rollo*, p. 90.

V-99. It further observed that the subject property is located in Valenzuela City, a high intensity commercial zone where several business establishments are located. The trial court, thus, fixed the just compensation at ₱8,300.00 per sq m. The *fallo* reads:

> WHEREFORE, judgment is hereby rendered condemning the 50-square meter lot owned by the defendants-spouses Pedro Goloyugo and Zenaida Goloyugo, covered by TCT No. V-20196 of the Registry of Deeds of Valenzuela City, located [in] Barangay Ugong, Valenzuela City, free from all liens and encumbrances whatsoever, for the construction of C-5 Northern Link Road Project, Segment 8.1 from Mindanao Avenue in Quezon City to the North Luzon Expressway, Valenzuela City, a public purpose, in favor of the plaintiff, Republic of the Philippines, upon payment of just compensation which is fixed at Php8,300.00/square meter or in the total amount of Php415,000.00 (50 sq. m. x Php8,300.00), deducting the provisional deposit of ₱137,500.00 previously made and subject to the payment of all unpaid taxes and other relevant taxes, if there be any, by the defendants.
>
> The plaintiff is ordered to pay interest at the rate of 12% per annum on the unpaid balance of just compensation of Php277,500.00 (TWO HUNDRED SEVENTY-SEVEN THOUSAND FIVE HUNDRED PESOS) (Php415,000[.00] — Php137,500.00) computed from the time of the taking of the property until plaintiff fully pays the balance.
>
> For the transfer of the title of the property from the defendants to the plaintiff, the payment of the capital gains tax shall be at the expense of the defendants while the payment for the transfer tax and other related fees to be paid to the City Government of Valenzuela City and the Register of Deeds [of] Valenzuela City shall be at the expense of the plaintiff.
>
> Let a certified true copy of this decision be forwarded to the Office of the Register of Deeds of Valenzuela City for the latter to annotate this decision in the Transfer Certificate of Title No. V-20196 registered in the name of the defendants-spouses Pedro Goloyugo and Zenaida Goloyugo.
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> SO ORDERED.[6]

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[6] *Id*. at 93-94.

Aggrieved, petitioner elevated an appeal before the CA.

The CA Ruling

In a Decision dated July 21, 2015, the CA affirmed with modification the RTC ruling. It opined that the trial court did not entirely base its finding of just compensation on the Commissioners' Report. On the contrary, it made an independent assessment on the matter. In arriving at the amount of just compensation, the lower court considered the BIR zonal valuation, the report of the Commissioners who based the amount of fair market value on the properties previously expropriated by the government involving the same project, the distance of the properties previously expropriated from each other and to the lot under litigation, the shape, the nature and use, as well as the location of the subject property. The appellate court held that the requirements set forth under Section 5 of Republic Act (R.A.) No. 8974 were satisfactorily complied with.

As regards the imposition of interest, the CA ruled that the 6% legal interest should be reckoned from July 1, 2013 when Bangko Sentral ng Pilipinas (BSP) Circular No. 799 took effect. Prior thereto, 12% interest should apply and the same should begin to run from the filing of the complaint considering that the same came ahead of the taking. The dispositive portion reads:

> WHEREFORE, premises considered, the instant petition is PARTIALLY GRANTED. The impugned Decision of the Regional Trial Court dated February 18, 2014 is MODIFIED, in that the imposition of legal interest on just compensation pegged at 12% per annum shall reckon from December 7, 2007 until June 30, 2013. Thereafter, or beginning July 1, 2013, until full satisfaction, the interest shall be at 6% per annum.
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> SO ORDERED.[7]

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[7] *Id*. at 37.

Petitioner moved for reconsideration, but the same was denied by the CA on January 12, 2016. Hence, this Petition for Review on *Certiorari*.

The Issue

Petitioner raises the sole issue of whether the CA erred in upholding the trial court's decision, fixing just compensation for the subject property at ₱8,300.00 per sq m.

Petitioner argues that the appraisal of the subject property should be based on its zonal value of ₱2,750.00 per sq m; that the BIR zonal valuation is essentially reflective of the fair market value in just compensation; that to rule otherwise would result in unfairness and absurdity in that the capital gains tax for the sale of real property paid by the taxpayer would always be lower while the just compensation paid by the Republic would always be higher; that disregarding zonal valuation would sanction the unjust enrichment of private owners of lands to be expropriated; and that assuming that the ruling of the CA represents the fair valuation of the land, it would appear that the spouses Goloyuco have been paying considerably lower taxes for their ownership and use of the subject property, yet the government will pay them the full value of the property.[8]

In their Comment,[9] the spouses Goloyuco counter that the commercial lands along McArthur Highway in Valenzuela City ranged from ₱20,000.00 to ₱30,000.00 per sq m and residential lots have values not quite far from the said prevailing selling price; that the current selling price along Quirino Highway is not less than ₱40,000.00 per sq m; that the Commissioners' Report recommended ₱10,000.00 per sq m as the fair market value of the property, taking into account the prevailing selling price and the cases of *Hobart* and *Mapalad*, among others;

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[8] *Id*. at 16.

[9] *Id*. at 106-119.

that the Commissioner who is an acting City Assessor even recommended ₱12,250.00 per sq m; that the only matter involved in an expropriation case is the determination of the prevailing selling price in the area which is the fair market value, thus, it is error for the State to insist that the fair market value is the same as the zonal value of the property; and that the appraisal of expropriated properties is not limited only to zonal valuation, but also on their location, accessibility, and selling price of comparable properties.

The Court's Ruling

The petition lacks merit.

Settled is the rule that only questions of law should be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Factual findings of the lower courts will generally not be disturbed.[10] Thus, the factual issues pertaining to the value of the property expropriated are questions of fact which are generally beyond the scope of the judicial review of this Court under Rule 45.[11] Unfortunately for petitioner, it has not alleged, much less proven, the presence of any of the exceptional circumstances that would warrant a deviation from the rule that the Court is not a trier of facts. On this ground alone, the denial of the petition is warranted.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and

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[10] *Spouses Plaza v. Lustiva*, 728 Phil. 359, 367-368 (2014).

[11] *National Power Corporation v. Spouses Asoque*, 795 Phil. 19, 49 (2016).

ample.[12] Under Section 5 of R.A. No. 8974, the standards for the determination of just compensation are:

> SEC. 5. *Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale*. — In order to facilitate the determination of just compensation, the court may consider, among other well-established factors, the following relevant standards:
>
> (a) The classification and use for which the property is suited;
>
> (b) The developmental costs for improving the land;
>
> (c) The value declared by the owners;
>
> (d) The current selling price of similar lands in the vicinity;
>
> (e) The reasonable disturbance compensation for the removal and/or demolition of certain improvement on the land and for the value of improvements thereon;
>
> (f) The size, shape or location, tax declaration and zonal valuation of the land;
>
> (g) The price of the land as manifested in the ocular findings, oral as well as documentary evidence presented; and
>
> (h) Such facts and events as to enable the affected property owners to have sufficient funds to acquire similarly-situated lands of approximate areas as those required from them by the government, and thereby rehabilitate themselves as early as possible.

The CA, in affirming the trial court's valuation of ₱8,300.00 per sq m as just compensation, considered several factors including the standards enumerated under Section 5 of R.A. No. 8974. In affirming the valuation of ₱8,300.00 per sq m as just compensation for the subject property, the CA explained:

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[12] *National Power Corporation v. Diato-Bernal*, 653 Phil. 345, 354 (2010).

In the case at bar, the trial court did not entirely base its finding of just compensation on the Commissioners' Report. It made an independent holding on the matter. In arriving at the amount of just compensation, the lower court considered the BIR zonal valuation, the report of the Commissioners who based the amount of fair market value of the properties previously expropriated by the government involving the same project, such as the cases of (a) *Mapalad*, Civil Case No. 52-V-08; (b) *Hobart*, Civil Case No. 15-V-08; (c) *Garcia*, Civil Case No. 287-V-99; and (d) *Liao Chin Guat Balisbis and Edna Lim*, Civil Case No. 288-V-99, the distance of the properties therein expropriated from each other and to the lot under litigation, the shape, the nature and use[,] as well as the location of the subject property. In *Hobart*, the subject lot therein which is 577.15 meters, more or less, away from the property therein, was expropriated at ₱15,000.00 per square meter while that of *Mapalad*, which is 1,518.03 meters, more or less, from the subject lot was pegged at ₱5,000.00 per square meter. The subject property was found to be rectangular in shape, residential in nature and within the immediate vicinity of residential and some industrial properties in Barangay Ugong, Valenzuela.[13]

As for the contention of petitioner that it is the value indicated in the property's tax declaration, as well as its zonal valuation that must govern, the Court adopts the findings of the RTC and the CA in ruling that the same are not truly reflective of the value of the subject property, but is just one of the several factors to be considered under Section 5 of R.A. No. 8974. Time and again, the Court has held that zonal valuation, although one of the indices of the fair market value of real estate, cannot, by itself, be the sole basis of just compensation in expropriation cases.[14]

Moreover, in *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*,[15] the Court clarified that the payment of

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[13] *Rollo*, p. 34.

[14] *Evergreen Manufacturing Corporation v. Republic*, G.R. Nos. 218628 and 218631, September 6, 2017, 839 SCRA 200, 221.

[15] 539 Phil. 644 (2006).

the provisional value as a condition for the issuance of a writ of possession is different from the payment of just compensation for the expropriated property. While the provisional value is based on the current relevant zonal valuation, just compensation is based on the prevailing fair market value of the property. In that case, the Court agreed with the CA's explanation that:

> The first refers to the preliminary or provisional determination of the value of the property. It serves a double-purpose of pre-payment if the property is fully expropriated, and of an indemnity for damages if the proceedings are dismissed. It is not a final determination of just compensation and may not necessarily be equivalent to the prevailing fair market value of the property. Of course, it may be a factor to be considered in the determination of just compensation.
>
> Just compensation, on the other hand, is the final determination of the fair market value of the property. It has been described as "the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation." Market values, has also been described in a variety of ways as the "price fixed by the buyer and seller in the open market in the usual and ordinary course of legal trade and competition; the price and value of the article established as shown by sale, public or private, in the ordinary way of business; the fair value of the property between one who desires to purchase and one who desires to sell; the current price; the general or ordinary price for which property may be sold in that locality."[16]

In fine, the Court finds no cogent reason to reverse the findings of the CA, insofar as the amount of just compensation is concerned.

Indeed, the delay in the payment of just compensation is a forbearance of money and, as such, is necessarily entitled to earn interest. Thus, the difference in the amount between the final amount as adjudged by the Court, which in this case is ₱415,000.00, and the initial payment made by the government, in the amount of ₱137,500.00 — which is part and parcel of the just compensation due to the property owner — should earn legal interest as a forbearance of money. Moreover, with

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[16] *Id.* at 660.

respect to the amount of interest on this difference between the initial payment and the final amount of just compensation, as adjudged by the Court, the Court has upheld, in recent pronouncements, the imposition of 12% interest rate from the time of taking, when the property owner was deprived of the property, until July 1, 2013, when the legal interest on loans and forbearance of money was reduced from 12% to 6% per annum by BSP Circular No. 799. Accordingly, from July 1, 2013 onwards, the legal interest on the difference between the final amount and initial payment is 6% per annum.[17]

Here, petitioner filed the expropriation complaint on December 7, 2007, but, it was able to take possession of the property on September 24, 2008, when the RTC issued the writ of possession prayed for by petitioner following its ability and readiness to pay 100% of the property's zonal value. Thus, a legal interest of 12% per annum shall accrue from September 24, 2008 until June 30, 2013 on the difference between the final amount adjudged by the Court and the initial payment made. From July 1, 2013 until the finality of the Decision of the Court, the difference between the initial payment and the final amount adjudged by the Court shall earn interest at the rate of 6% per annum. Thereafter, the total amount of just compensation shall earn legal interest of 6% per annum from the finality of this Decision until full payment thereof.

WHEREFORE, premises considered, the instant petition is **DENIED** for lack of merit. The assailed Decision dated July 21, 2015 and the Resolution dated January 12, 2016 of the Court of Appeals in CA-G.R. CV No. 102609 are **AFFIRMED** such that the just compensation for the expropriated property is ₱8,300.00 per square meter, or a total of ₱415,000.00 with **MODIFICATION** as to the reckoning period of the 12% per annum legal interest, and the imposition of additional 6% per annum interest on the total amount of just compensation. Hence, the following amounts are due to the spouses Goloyuco:

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[17] *Evergreen Manufacturing Corporation v. Republic*, *supra* note 14, at 230.

1. The unpaid portion of the just compensation which shall be the difference between the principal amount of just compensation, or ₱415,000.00, and the amount of initial deposit made by petitioner Republic of the Philippines, represented by the Department of Public Works and Highways, or ₱137,500.00; and

2. Interest, which shall accrue as follows:

   (a) The difference between the principal amount of just compensation, or ₱415,000.00, and the amount of initial deposit, or ₱137,500.00, shall earn legal interest of 12% per annum from the date of payment of initial deposit, or on September 24, 2008 until June 30, 2013.

   (b) The difference between the principal amount of just compensation, or ₱415,000.00, and the amount of initial deposit, or ₱137,500.00, shall earn legal interest of 6% per annum from July 1, 2013 until the finality of the Decision.

   (c) The total amount of just compensation, or the sum of legal interest in items (a) and (b) above, plus the unpaid portion of ₱277,500.00 (₱415,000.00 less ₱137,500.00) shall earn legal interest of 6% per annum from the finality of this Decision until full payment thereof.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 222798. June 19, 2019]

ALFREDO PILI, JR., *petitioner, vs.* **MARY ANN RESURRECCION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; IN CRIMINAL CASES, THE PEOPLE IS THE REAL PARTY-IN-INTEREST AND THE PRIVATE OFFENDED PARTY IS BUT A WITNESS IN THE PROSECUTION OF OFFENSES, THE INTEREST OF THE PRIVATE OFFENDED PARTY IS LIMITED ONLY TO THE ASPECT OF CIVIL LIABILITY; CASE AT BAR.—** It has long been settled that "in criminal cases, the People is the real party-in-interest x x x [and] the private offended party is but a witness in the prosecution of offenses, the interest of the private offended party is limited only to the aspect of civil liability." While a judgment of acquittal is immediately final and executory, "either the offended party or the accused may appeal the civil aspect of the judgment despite the acquittal of the accused. x x x The real parties-in-interest in the civil aspect of a decision are the offended party and the accused x x x." [T]here is no doubt that the People is the real party-in-interest in criminal proceedings. As the criminal complaint for violation of B.P. 22 was filed in the MTC, necessarily the criminal case before it was prosecuted "in the name of the People of the Philippines." This very basic understanding of what transpired shows ineluctably the egregious error by the CA in ruling that the Conpil should have been "included in the title of the case."

2. **ID.; PLEADINGS; SHALL BE CONSTRUED LIBERALLY SO AS TO RENDER SUBSTANTIAL JUSTICE TO THE PARTIES AND TO DETERMINE SPEEDILY AND INEXPENSIVELY THE ACTUAL MERITS OF THE CONTROVERSY WITH THE LEAST REGARD TO TECHNICALITIES; CASE AT BAR.—** More importantly, the CA grossly erred when it faulted petitioner for not having included Conpil in the title of the petition for review under Rule 42, given that the criminal case was correctly titled "People of the Philippines *v.* Mary Ann

Resurreccion" and that the title was changed by respondent when she filed her petition for review with the CA, to "*Mary Ann Resurreccion v. Alfredo Pili, Jr.*" The egregious error becomes more manifest if one were to consider that in Paragraph 12 of the Memorandum filed by petitioner on behalf of Conpil, it expressly stated that "Conpil authorized its President x x x to file cases for violation of BP 22 x x x" in order to enforce its right. That the CA closed its eyes to this constitutes not only gross manifest error but grave abuse of discretion. To be sure, the whole matter was exacerbated when the CA senselessly ascribed this mistitling to petitioner and punished Conpil by dismissing the appeal and setting aside the civil liability awarded by both the MTC and the RTC without carefully reviewing the records. But even if the Court were to prescind from the foregoing, the Court cannot but fault the CA for failing to follow a basic rule in the dispensation of justice: that is, "[p]leadings shall be construed liberally so as to render substantial justice to the parties and to determine speedily and inexpensively the actual merits of the controversy with the least regard to technicalities." *Vlason Enterprises Corp. v. Court of Appeals* unequivocally states: The inclusion of the names of all the parties in the title of a complaint is a formal requirement under Section 3, Rule 7. However, the rules of pleadings require courts to pierce the form and go into the substance, and not to be misled by a false or wrong name given to a pleading. The averments in the complaint, not the title, are controlling. Although the general rule requires the inclusion of the names of all the parties in the title of a complaint, the non-inclusion of one or some of them is not fatal to the cause of action of a plaintiff, provided there is a statement in the body of the petition indicating that a defendant was made a party to such action. x x x.

APPEARANCES OF COUNSEL

Benito C. Torralba for petitioner.
Ma. Carmencita C. Obmina-Muaña for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari* (Petition) under Rule 45 of the Rules of Court assailing the May 22, 2015 Decision[1] (assailed Decision) and January 29, 2016 Resolution[2] (assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CR No. 35178. The CA granted the appeal of respondent Mary Ann Resurreccion (respondent) regarding the civil aspect of a criminal case for Batas Pambansa Blg. (B.P.) 22 and reversed and set aside the July 25, 2011 Decision[3] and September 26, 2011 Order[4] of the Regional Trial Court of San Pedro, Laguna Branch 93 (RTC), which affirmed the February 2, 2011 Judgment[5] of the Municipal Trial Court of San Pedro, Laguna, Branch 2 (MTC). The MTC acquitted respondent but nonetheless ordered her to pay ₱500.000 by way of civil indemnity.

The Facts and Antecedent Proceedings

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

Respondent entered into an agreement with Conpil Realty Corporation (Conpil) for the purchase of a house and lot and issued two checks in favor of the latter.[6] When Conpil deposited the checks, the same were dishonored and stamped as "Account Closed." On February 4, 2000, a criminal complaint for violation

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[1] *Rollo*, pp. 26-34. Penned by Associate Justice Noel G. Tijam (now a retired Member of this Court), with Associate Justices Mario V. Lopez and Myra G. Garcia-Fernandez concurring.

[2] *Id*. at 35-36.

[3] *Id*. at 51-53. Penned by Judge Francisco Dizon Paño.

[4] *Id.* at 54.

[5] *Id*. at. 44-50. Penned by Judge Ralph S. Arellano.

[6] *Id*. at 26-27.

of B.P. 22 was filed before the MTC.[7] The criminal case was titled, "People of the Philippines *v.* Mary Ann Resurreccion,"[8] and was docketed as Crim. Case No. 35066.[9] Although the checks were issued in favor of Conpil, the criminal complaint for B.P. 22 was signed by petitioner Alfredo C. Pili, Jr. (petitioner) as "Complainant."[10] Petitioner was, at that time, the President of Conpil.[11]

In support of the criminal complaint for violation of B.P. 22, the prosecution submitted, among others: 1) a Secretary's Certificate, which stated that the Board of Directors of Conpil resolved, at a special meeting on January 21, 2000, to initiate all legal action against respondent and to authorize its President to represent the Corporation in all civil and criminal cases against respondent and to sign the Complaint, Affidavit of Complaint and all necessary pleadings,[12] and 2) an Affidavit of Complaint subscribed before the Office of the Prosecutor in February 1, 2000, which stated that the complaint affidavit was filed because "Conpil Realty Corp. has extended its generosity and kind understanding to the limit and [cannot] anymore extend its patience."[13] Both the Affidavit and the Secretary's Certificate were formally offered as part of the prosecution's evidence[14] for the purpose of proving that petitioner was the authorized representative of the complainant corporation,[15] and that he was authorized to file the instant case, adduce evidence and testify on behalf of Conpil.[16]

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[7] *Id*. at 12 and 27.

[8] *Id*. at 44.

[9] *Id*.

[10] *Id*. at 43.

[11] *Id*. at 100.

[12] *Id*. at 101-102.

[13] *Id*. at 100.

[14] *Id*. at 45.

[15] *Id*. at 18.

[16] *Id*.

After trial, the MTC rendered a Judgment acquitting respondent. However, it ordered respondent to pay the amount of ₱500,000.00 by way of civil indemnity, *viz.*:

> The evidence presented by the prosecution, however, sufficiently established the civil liability of the accused for the amount of ₱500,000.00 as indicated in the subject check. There is no dispute that the accused purchased from Conpil a house and lot with a purchase price of ₱1,011,000.00 x x x. Part of the said purchase price to be paid from the proceeds of the loan of the accused from Pag-ibig and the balance to be paid by the accused herself. Pursuant to the Reservation Agreement x x x, the amount of ₱500,000.00 shall be loaned from Pag-ibig and it is for this amount according to the accused that she drew the subject check which she issued for collateral only. While accused paid a total of ₱456,000.00, the same refers to the amount of the equity on the purchase price of the house and lot. However, the loan amount remained unpaid which the accused is bound to pay Conpil pursuant to the Memorandum of Agreement x x x. Consequently, accused is under obligation to pay complainant the sum of ₱500,000.00 which represents the amount of the face value of the subject check.[17]

Respondent appealed the MTC's ruling on her civil liability to the RTC under Rule 122 in relation to Rule 40 of the Rules of Court. The appeal that respondent filed was titled, "People of the Philippines *v*. Mary Ann Resurreccion" and was docketed as Crim. Case No. 11-7661-SPL.[18] The RTC, however, affirmed the Judgment of the MTC.[19] Respondent filed a motion for reconsideration, which was, however, likewise denied.[20]

Respondent thus filed a petition for review under Rule 122, Section 3(b) in relation to Rule 42 of the Rules of Court with the CA, which was docketed as CA-G.R. CR No. 35178.[21]

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[17] *Id*. at 49.

[18] *Id*. at 51.

[19] *Id*. at 53.

[20] *Id*. at 54.

[21] *Id*. at 26.

While the criminal case was originally captioned, "People of the Philippines *v*. Mary Ann Resurreccion," respondent's petition for review was captioned by her as "Mary Ann Resurreccion *v*. Alfredo Pili, Jr."[22] Nevertheless, Paragraph 12 of petitioner's Memorandum filed with the CA in the petition for review alleged that "Conpil authorized its President x x x to file cases for violation of BP 22 x x x"[23] in order to enforce its right.[24]

In the CA, respondent claimed, among others, that petitioner "is not the real party in interest x x x [and] cannot file the criminal complaint in his personal capacity."[25] On the other hand, petitioner claimed that "he did not sue in his personal capacity but as a President of Conpil."[26]

The Ruling of the CA

In the assailed Decision, the CA found respondent's petition for review under Rule 42 meritorious and set aside the Decision and Order of the RTC, *viz.*:

> **WHEREFORE**, the Petition for Review is hereby **GRANTED**. The Decision dated July 25, 2011 and Order dated September 26, 2011, rendered by the Regional Trial Court of San Pedro, Laguna, Branch 93 in its appellate jurisdiction in Criminal Case No. 11-7661-[SPL] are hereby **REVERSED** and **SET ASIDE**, without prejudice to the filing of an action by the real party in interest against Petitioner-Appellant.
>
> SO ORDERED.[27]

Curiously, the CA held that the criminal case was not prosecuted in the name of the real party in interest[28] as Conpil

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[22] *Id*. at 18.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 30.

[26] *Id*. at 32.

[27] *Id*. at 33.

[28] *Id*. at 30-31.

was not included in the title of the case[29] even if it was the party: 1) that signed the contract and 2) in whose favor the checks were issued.[30] On the other hand, it was petitioner who signed the complaint[31] and it was his name that appeared in the title of the case, even though he was not a party to any of the documents or checks.[32]

Petitioner now claims that the failure to include the name of the principal in the title of the case is not fatal to its cause[33] as "the averments in the complaint, not the title, are controlling."[34] He insists that the records show that: 1) the Memorandum submitted by petitioner before the CA indicates that "petitioner instituted the instant action in his capacity as president of [Conpil],"[35] 2) he was "properly equipped with the required Secretary's Certificate dated 15 May 2000, issued by [Conpil's] Corporate Secretary Vivar Abrigo authorizing the former to represent the corporation in all civil and criminal cases against Resurreccion,"[36] 3) the Secretary's Certificate was formally offered for the purpose of proving petitioner's authority to file the instant criminal complaint,[37] and 4) the title of the case was only changed by respondent (not petitioner) to "Mary Ann Resurreccion *v*. Alfredo Pili, Jr." when respondent (not petitioner) filed her petition for review with the CA.[38]

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[29] *Id*. at 32.

[30] *Id*. at 31.

[31] *Id*.

[32] *Id*.

[33] *Id*. at 17.

[34] *Id*.

[35] *Id*. at 18.

[36] *Id*.

[35] *Id*. at 18.

[38] *Id*. at 17-18.

Issue

Whether the CA erred in granting the appeal.

The Court's Ruling

The Petition has merit.

It has long been settled that "in criminal cases, the People is the real party-in-interest x x x [and] the private offended party is but a witness in the prosecution of offenses, the interest of the private offended party is limited only to the aspect of civil liability."[39] While a judgment of acquittal is immediately final and executory, "either the offended party or the accused may appeal the civil aspect of the judgment despite the acquittal of the accused. x x x The real parties-in-interest in the civil aspect of a decision are the offended party and the accused x x x."[40]

As regards the issue at hand, *Magallanes v. Palmer Asia, Inc.*[41] (*Magallanes*) is instructive. *Magallanes* involved a complaint for violation of B.P. 22, instituted by Andrews International Product, Inc. (Andrews). In the course of the proceedings, it appeared that Andrews transferred its assets and relinquished control of its operations to Palmer Asia, Inc. (Palmer). Although Andrews stopped all operations, it was never liquidated in accordance with the Corporation Code. After trial, the MTC acquitted Gerve Magallanes (accused Magallanes) but found him civilly liable. On appeal, this finding was reversed by the RTC. Palmer (not Andrews) thus filed a Petition for Review before the CA. The CA reversed the RTC and found accused Magallanes civilly liable. The accused thus challenged Palmer's personality to file the suit before this Court. In granting the Petition, this Court categorically held:

x x x The RTC Decision absolving Magallanes from civil liability has attained finality, since no appeal was interposed by the

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[39] *Bumatay v. Bumatay,* 809 Phil. 302, 312 (2017).

[40] *Cruz v. Court of Appeals,* 436 Phil. 641, 652-653 (2002).

[41] 739 Phil. 231 (2014).

private complainant, Andrews. While Palmer filed a petition for review before the CA, it is not the real party in interest; it was never a party to the proceedings at the trial court.

Under our procedural rules, "a case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence grounded on failure to state a cause of action." In the instant case, Magallanes filed a motion to dismiss in accordance with the Rules of Court, wherein he claimed that:

> x x x the obvious and only real party in interest in the filing and prosecution of the civil aspect impliedly instituted with x x x the filing of the foregoing Criminal Cases for B.P. 22 is Andrews International Products, Inc.
>
> The alleged bounced checks issued by x x x Magallanes were issued payable in the name of Andrews International Products, Inc. The [n]arration of [facts] in the several Informations for violation of B.P. 22 filed against Magallanes solely mentioned the name of Andrews International Products, Inc.

The real party in this case is Andrews, not Palmer. Section 2 of Rule 3 of the Rules of Court provides:

> Sec. 2. *Parties in interest*. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

In *Goco v. Court of Appeals*, we explained that:

> This provision has two requirements: 1) to institute an action, the plaintiff must be the real party in interest; and 2) the action must be prosecuted in the name of the real party in interest. Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. One having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action.

Parties who are not the real parties in interest may be included in a suit in accordance with the provisions of Section 3 of Rule 3 of the Rules of Court:

> Sec. 3. *Representatives as parties*. — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

The CA erred in stating that Palmer and Andrews are the same entity. These are two separate and distinct entities claiming civil liability against Magallanes. Andrews was the payee of the bum checks, and the former employer of Magallanes. It filed the complaint for B.P. 22 before MeTC Branch 62. Thus when the MeTC Branch 62 ordered Magallanes to "pay the private complainant the corresponding face value of the checks x x x", it was referring to Andrews, not Palmer.

x x x x x x x x x

Given the foregoing facts, it is clear that the real party in interest here is Andrews. Following the Rules of Court, the action should be in the name of Andrews. As previously mentioned, Andrews instituted the action before the MeTC Branch 62 but it was Palmer which filed a petition for review before the CA x x x.

x x x x x x x x x

x x x The corporation that initiated the complaint for B.P. 22 is different from the corporation that filed the memorandum at the RTC and the petition for review before the CA. It appears that Palmer is suing Magallanes in its own right, not as agent of Andrews, the real party in interest.

Even assuming *arguendo* that Palmer is correct in asserting that it is the agent of Andrews, the latter should have been included in the title of the case, in accordance with procedural rules.[42]

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[42] *Id*. at 238-242. Underscoring supplied.

Based on the foregoing, there is no doubt that the People is the real party-in-interest in criminal proceedings. As the criminal complaint for violation of B.P. 22 was filed in the MTC, necessarily the criminal case before it was prosecuted "in the name of the People of the Philippines."[43] This very basic understanding of what transpired shows ineluctably the egregious error by the CA in ruling that the Conpil should have been "included in the title of the case."[44]

As discussed in *Magallanes*, the private complainant is the real party-in-interest only as regards the civil aspect arising from the crime. A review of the records of the instant case unequivocally shows that the civil aspect of the criminal case was, in fact, appealed by respondent and that it was Conpil, being the victim of the fraud, that was the private complainant therein. This is clear from the following facts: 1) a Secretary's Certificate, which stated that the Board of Directors of Conpil resolved, at a special meeting on January 21, 2000, to initiate all legal action against respondent and to authorize its President to represent the Corporation in all civil and criminal cases against Ms. Mary Ann C. Resurreccion and to sign the Complaint, Affidavit of Complaint and all necessary pleadings,[45] 2) the Affidavit of Complaint subscribed before the Office of the Prosecutor in February of 2000 concludes that the complaint affidavit was filed because "Conpil Realty Corp. has extended its generosity and kind understanding to the limit and cannot anymore extend its patience,"[46] and 3) both the Affidavit and the Secretary's Certificate were formally offered as evidence for the purpose of proving that Alfredo Pili was the authorized representative of the complainant corporation,[47] and that he was authorized to file the instant case, adduce evidence and

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[43] RULES OF COURT, Rule 110, Sec. 2.

[44] *Rollo*, p. 32.

[45] *Id*. at 101.

[46] *Id*. at 100.

[47] *Id*. at 18.

testify on behalf of Conpil.[48] This same set of undisputed and admitted facts totally belies the CA's claim that the criminal complaint was not filed or prosecuted in the name of the real party in interest.[49]

More importantly, theCA grossly erred when it faulted petitioner for not having included Conpil in the title of the petition for review under Rule 42,[50] given that the criminal case was correctly titled "People of the Philippines *v*. Mary Ann Resurreccion" and that the title was changed by respondent when she filed her petition for review with the CA, to "*Mary Ann Resurreccion v. Alfredo Pili, Jr.*"[51] The egregious error becomes more manifest if one were to consider that in Paragraph 12 of the Memorandum filed by petitioner on behalf of Conpil, it expressly stated that "Conpil authorized its President x x x to file cases for violation of BP 22 x x x"[52] in order to enforce its right.[53] That the CA closed its eyes to this constitutes not only gross manifest error but grave abuse of discretion. To be sure, the whole matter was exacerbated when the CA senselessly ascribed this mistitling to petitioner and punished Conpil by dismissing the appeal and setting aside the civil liability awarded by both the MTC and the RTC without carefully reviewing the records.

But even if the Court were to prescind from the foregoing, the Court cannot but fault the CA for failing to follow a basic rule in the dispensation of justice: that is, "[p]leadings shall be construed liberally so as to render substantial justice to the parties and to determine speedily and inexpensively the actual merits of the controversy with the least regard to

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[48] *Id*.

[49] *Id*. at 30-33.

[50] *Id*. at 32.

[51] *Id*. at 17-18.

[52] Memorandum dated October 18, 2012, p. 4.

[53] *Id*.

technicalities."[54] *Vlason Enterprises Corp. v. Court of Appeals*[55] unequivocally states:

> The inclusion of the names of all the parties in the title of a complaint is a formal requirement under Section 3, Rule 7. However, the rules of pleadings require courts to pierce the form and go into the substance, and not to be misled by a false or wrong name given to a pleading. The averments in the complaint, not the title, are controlling. Although the general rule requires the inclusion of the names of all the parties in the title of a complaint, the non-inclusion of one or some of them is not fatal to the cause of action of a plaintiff, provided there is a statement in the body of the petition indicating that a defendant was made a party to such action.
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> x x x x x x x x x
>
> x x x In any event, we reiterate that, as a general rule, mere failure to include the name of a party in the title of a complaint is not fatal by itself.[56]

A more assiduous review of the records would have obviated the instant appeal and more speedily and inexpensively resolved the issues to the benefit of all parties.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals' Decision dated May 22, 2015 and Resolution dated January 29, 2016 in CA-G.R. CR No. 35178 are **REVERSED** and **SET ASIDE**. The CA is hereby ordered to resolve the appeal with dispatch.

SO ORDERED.

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

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[54] *Vlason Enterprises Corp. v. Court of Appeals*, 369 Phil. 269, 304 (1999).

[55] *Id*.

[56] *Id*.

SECOND DIVISION

[G.R. No. 223274. June 19, 2019]

RCBC BANKARD SERVICES CORPORATION, *petitioner, vs.* **MOISES ORACION, JR. and EMILY[*] L. ORACION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; QUESTIONS THAT MAY BE RAISED ON APPEAL; ANY QUESTION OF LAW OR FACT THAT HAS BEEN RAISED IN THE COURT BELOW AND IS WITHIN THE ISSUES FRAMED BY THE PARTIES; CASE AT BAR.— Procedurally, petitioner cannot adopt a new theory in its appeal before the Court and abandon its theory in its appeal before the RTC. Pursuant to Section 15, Rule 44 of the Rules, petitioner may include in his assignment of errors any question of law or fact that has been raised in the court below and is within the issues framed by the parties. In the Memorandum for Appellant which it filed before the RTC, petitioner did not raise the Rules on Electronic Evidence to justify that the so-called "duplicate original copies" of the SOAs and Credit History Inquiry are electronic documents. Rather, it insisted that they were duplicate original copies, being computer-generated reports, and not mere photocopies or substitutionary evidence, as found by the MeTC. As observed by the RTC, petitioner even tried to rectify the attachments (annexes) to its complaint, by filing a Manifestation dated August 9, 2012 wherein it attached copies of the said annexes. Unfortunately, as observed by the RTC, the attachments to the said Manifestation "are merely photocopies of the annexes attached to the complaint, but with a mere addition of stamp marks bearing the same inscription as the first stamp marks" that were placed in the annexes to the complaint. Because petitioner has not raised the electronic document argument before the RTC, it may no longer be raised nor ruled upon on appeal.

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[*] Also stated as "Emy" in some parts of the records.

2. CIVIL LAW; ESTOPPEL; BARS A PARTY FROM RAISING ISSUES, WHICH HAVE NOT BEEN RAISED IN THE PROCEEDINGS BEFORE THE LOWER COURTS, FOR THE FIRST TIME ON APPEAL.— Also, estoppel bars a party from raising issues, which have not been raised in the proceedings before the lower courts, for the first time on appeal. Clearly, petitioner, by its acts and representations, is now estopped to claim that the annexes to its complaint are not duplicate original copies but electronic documents. It is too late in the day for petitioner to switch theories.

3. REMEDIAL LAW; EVIDENCE; RULES ON ELECTRONIC EVIDENCE; ADMISSIBILITY; THE PARTY SEEKING TO INTRODUCE AN ELECTRONIC DOCUMENT IN ANY LEGAL PROCEEDING HAS THE BURDEN OF PROVING ITS AUTHENTICITY IN THE MANNER PROVIDED BY THE RULES; CASE AT BAR.— Even assuming that the Court brushes aside the above-noted procedural obstacles, the Court cannot just concede that the pieces of documentary evidence in question are indeed electronic documents, which according to the Rules on Electronic Evidence are considered functional equivalent of paper-based documents and regarded as the equivalent of original documents under the Best Evidence Rule if they are print-outs or outputs readable by sight or other means, shown to reflect the data accurately. For the Court to consider an electronic document as evidence, it must pass the test of admissibility. According to Section 2, Rule 3 of the Rules on Electronic Evidence, "[a]n electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed by these Rules." Rule 5 of the Rules on Electronic Evidence lays down the authentication process of electronic documents. Section 1 of Rule 5 imposes upon the party seeking to introduce an electronic document in any legal proceeding the burden of proving its authenticity in the manner provided therein. x x x Evidently, petitioner could not have complied with the Rules on Electronic Evidence because it failed to authenticate the supposed electronic documents through the required affidavit of evidence. As earlier pointed out, what petitioner had in mind at the inception (when it filed the complaint) was to have the annexes admitted as duplicate originals as the term is understood in

relation to paper-based documents. Thus, the annexes or attachments to the complaint of petitioner are inadmissible as electronic documents, and they cannot be given any probative value. Even the section on "Business Records as Exception to the Hearsay Rule" of Rule 8 of the Rules on Electronic Evidence requires authentication by the custodian or other qualified witness: x x x In the absence of such authentication through the affidavit of the custodian or other qualified person, the said annexes or attachments cannot be admitted and appreciated as business records and excepted from the rule on hearsay evidence. Consequently, the annexes to the complaint fall within the Rule on Hearsay Evidence and are to be excluded pursuant to Section 36, Rule 130 of the Rules.

4. **ID.; ID.; ID.; BEST EVIDENCE RULE; AN ELECTRONIC DOCUMENT IS REGARDED AS THE FUNCTIONAL EQUIVALENT OF AN ORIGINAL DOCUMENT UNDER THE BEST EVIDENCE RULE IF IT IS A PRINTOUT OR OUTPUT READABLE BY SIGHT OR OTHER MEANS, SHOWN TO REFLECT THE DATA ACCURATELY; ELECTRONIC DOCUMENT, DEFINED.—** With respect to paper-based documents, the original of a document, *i.e*., the original writing, instrument, deed, paper, inscription, or memorandum, is one the contents of which are the subject of the inquiry. Under the Rules on Electronic Evidence, an electronic document is regarded as the functional equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately. As defined, "electronic document" refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically; and it includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. The term "electronic document" may be used interchangeably with "electronic data message" and the latter refers to information generated, sent, received or stored by electronic, optical or similar means.

5. ID.; ID.; BEST EVIDENCE RULE; INSTANCES WHEN COPIES OF A DOCUMENT ARE EQUALLY REGARDED AS ORIGINALS.— Section 4, Rule 130 of the Rules and Section 2, Rule 4 of the Rules on Electronic Evidence identify the following instances when copies of a document are equally regarded as originals: [1] When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals. [2] When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals. [3] When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original. Apparently, "duplicate original copies" or "multiple original copies" wherein two or more copies are executed at or about the same time with identical contents are contemplated in 1 and 3 above. If the copy is generated after the original is executed, it may be called a "print-out or output" based on the definition of an electronic document, or a "counterpart" based on Section 2, Rule 4 of the Rules on Electronic Evidence.

6. ID.; ID.; RELAXATION OF THE RULES THEREON, NOT WARRANTED IN CASE AT BAR.— [P]etitioner begs for the relaxation of the application of the Rules on Evidence and seeks the Court's equity jurisdiction. Firstly, petitioner cannot, on one hand, seek the review of its case by the Court on a pure question of law and afterward, plead that the Court, on equitable grounds, grant its Petition, nonetheless. For the Court to exercise its equity jurisdiction, certain facts must be presented to justify the same. A review on a pure question of law necessarily negates the review of facts. Petitioner has not presented any compelling equitable arguments to persuade the Court to relax the application of elementary evidentiary rules in its cause. Secondly, petitioner has not been candid in admitting its error as pointed out by both the MeTC and the RTC. After being apprised that the annexes to its complaint do not conform to the Best Evidence Rule, petitioner did not

make any effort to comply so that the lower courts could have considered its claim. Rather, it persisted in insisting that the annexes are compliant. **Even before the Court, petitioner did not even attach such documents which would convince the Court that petitioner could adduce the original documents as required by the Best Evidence Rule to prove its claim against respondents**.

7. ID.; RULES OF COURT; COSTS; COSTS WHEN APPEAL IS FRIVOLOUS; IMPOSITION OF TREBLE COSTS ON PETITIONER, TO BE PAID BY ITS COUNSEL, WARRANTED IN CASE AT BAR.— The present Petition is clearly a frivolous appeal. An appeal is frivolous if it presents no justiciable question and is so readily recognizable as devoid of any merit on the face of the record that there is little, if any, prospect that it can ever succeed. The Petition indubitably shows the counsel's frantic search for any ground to resuscitate petitioner's lost cause, which due to the counsel's fault was doomed with the filing of a deficient complaint. Thus, pursuant to Section 3, Rule 142 of the Rules the imposition of treble costs on petitioner, to be paid by its counsel, is justified.

APPEARANCES OF COUNSEL

Cortel Law Office for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is the petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) filed by petitioner RCBC Bankard Services Corporation (petitioner) assailing the Decision[2] dated August 13, 2013 (RTC Decision) and the Order[3] dated March 1, 2016 (RTC Order) of the Regional Trial Court, Branch 71, Pasig City (RTC) in Civil Case No. 73756.

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

[2] *Id.* at 22-25. Penned by Judge Elisa R. Sarmiento-Flores.

[3] *Id.* at 26.

The RTC Decision affirmed *in toto* the Decision[4] dated September 28, 2012 of the Metropolitan Trial Court, Branch 72, Pasig City (MeTC) in Civil Case No. 18629, which dismissed the complaint of petitioner for lack of preponderance of evidence.[5] The RTC Order denied petitioner's Motion for Reconsideration.[6]

The Facts and Antecedent Proceedings

The antecedent facts as gleaned from the MeTC Decision and narrated in the RTC Decision are straightforward.

Respondents Moises Oracion, Jr. (Moises) and Emily L. Oracion (Emily) (collectively, respondents) applied for and were granted by petitioner credit card accommodations with the issuance of a Bankard PESO Mastercard Platinum[7] with Account No. 5243-0205-8171-4007 (credit card) on December 2, 2010.[8] Respondents on various dates used the credit card in purchasing different products but failed to pay petitioner the total amount of ₱117,157.98, inclusive of charges and penalties or at least the minimum amount due under the credit card.[9] Petitioner attached to its complaint against respondents "duplicate original" copies of the Statements of Account from April 17, 2011 to December 15, 2011[10] (SOAs, Annexes "A", "A-l" to "A-8") and the Credit History Inquiry (Annex "B").[11] The SOAs bear the name of Moises as the addressee and the Credit History Inquiry bears the name: "MR ORACION JR M A" on the top portion.[12] Despite the receipt of the SOAs, respondents failed

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[4] *Id*. at 45-47. Penned by Presiding Judge Joy N. Casihan-Dumlao.

[5] *Id*. at 46.

[6] *Id*. at 26.

[7] *Id*. at 27.

[8] *Id*. at 22.

[9] *Id*.

[10] Stated as "December 15, 2012" in the Complaint and in the Petition, *id*. at 9 and 29.

[11] *Rollo*, pp. 22, 29 and 32-41.

[12] *Id*. at 32-41.

and refused to comply with their obligation to petitioner under the credit card.[13] Consequently, petitioner sent a written demand letter (dated January 26, 2012, Annex "C" to the complaint[14]) to respondents but despite receipt thereof, respondents refused to comply with their obligation to petitioner.[15] Hence, petitioner filed a Complaint for Sum of Money[16] dated February 7, 2012 before the MeTC.[17]

Acting on the complaint, the MeTC issued summons on March 13, 2012.[18] Based on the return of the summons dated April 12, 2012 of Sheriff III Inocentes P. Villasquez, the summons was duly effected to respondents through substituted service on April 11, 2012.[19] For failure of respondents to file their answer within the required period, the MeTC *motu proprio*, pursuant to Section 6 of the Rule on Summary Procedure, considered the case submitted for resolution.[20]

Ruling of the MeTC

The MeTC, without delving into the merits of the case, dismissed it on the ground that petitioner, as the plaintiff, failed to discharge the required burden of proof in a civil case, which is to establish its case by preponderance of evidence.[21] The MeTC justified the dismissal in this wise:

Perusal of the records shows that the signature in the attachments in support of the [complaint] are mere photocopies, stamp mark[22] in

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[13] *Id*. at 22-23.

[14] *Id*. at 42.

[15] *Id*. at 23.

[16] *Id*. at 27-44.

[17] *Id*. at 23.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 46.

[22] The stamp appears to the bottom of each page of the SOAs with the following entry:

the instant case. The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as stamp mark, as long as the original evidence can be had. Absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court; the photocopies must be disregarded being unworthy of any probative value and being an inadmissible piece of evidence (PHILIPPINE BANKING CORPORATION, *petitioner, vs*. COURT OF APPEALS and LEONILO MARCOS, *respondents*, G.R. No 127469 2004 Jan 15, 1st Division).[23]

The decretal portion of the MeTC Decision dated September 28, 2012 reads:

WHEREFORE, for lack of [p]reponderance of evidence, herein [complaint] is hereby DISMISSED.

SO ORDERED.[24]

Petitioner filed a Notice of Appeal[25] dated December 17, 2012 on the ground that the MeTC Decision was contrary to the facts and law.[26]

In its Memorandum for Appellant[27] dated February 19, 2012, petitioner argued that what it attached to the complaint were the "duplicate original copies" and not mere photocopies.[28] Petitioner also argued that:

Duplicate Original
(Sgd.)
CHARITO O. HAM
Senior Manager
Collection Support Division Head

Collection group
Bankard Inc. (Records, pp. 5-14.)

[23] *Rollo*, p. 46.

[24] *Id*.

[25] *Id*. at 48-49.

[26] *Id*. at 48.

[27] *Id*. at 56-61.

[28] *Id*. at 58.

x x x [if for] unknown reasons or events the said Duplicate Original Copies were no longer found in the record of the court or that the copy of the Complaint intended for the court, where these Originals were attached, was not forwarded to the x x x MTC, [petitioner] respectfully submits that justice and equity dictates that the x x x MTC should have required [petitioner] to produce or reproduce the same instead of immediately dismissing the case on that ground alone. In which case, a clarificatory hearing for that purpose is proper. This is especially true in the present case considering that there were allegations in the complaint that the Duplicate Original Copies were attached as annexes therein; and that the x x x MTC *motu proprio* submitted the case for decision. Not to mention the fact that these documents are computer generated reports, in which case, [petitioner] could simply present another set of printed Duplicate Original Copies for the x x x MTC['s] perusal.[29]

Ruling of the RTC

The RTC found petitioner's appeal to be without merit.[30] It reasoned out that:

In the instant case, it is up to [petitioner] to prove that the attachments in support of the complaint are originals and not merely substitutionary in nature. Only after submission of such original documents can the court delve into the merit of the case.

[Petitioner's] insistence that it attached Duplicate Original Copies of the [SOAs] and the Credit History Inquiry as Annexes x x x in its complaint is entirely for naught, as such documents could not be considered as original.

A perusal of the said annexes would show that there is a stamp mark at the bottom right portion of each page of the said annexes, with the words "DUPLICATE ORIGINAL (signature) CHARITO O. HAM, Senior Manager, Collection Support Division Head, Collection Group, Bankard Inc."

Further inspection of the said stamp marks would reveal that the signatures appearing at the top of the name CHARITO O. HAM in

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[29] *Id*.

[30] *Id*. at 24.

the respective annexes are not original signatures but are part of the subject stamp marks.

Indeed, Annexes "A", "A-1" to "A-8" and "B", attached to the complaint, cannot be considered as original documents contemplated under Section 3, Rule 130 of the x x x Rules of Court. In fact, even [petitioner] found the need to stamp mark them as "DUPLICATE ORIGINAL" to differentiate them from the original documents.

The Court also noted the fact that [petitioner] filed a MANIFESTATION dated August 9, 2012, attaching therewith as Annexes "A", "A-1" to "A-8" the Duplicate Original Itemized [SOAs], and as Annex "B" the Credit History Inquiry. Upon examination of these latter annexes, the Court observed that they are merely photocopies of the annexes attached to the complaint, but with a mere addition of stamp marks bearing the same inscription as the first stamp marks. These only demonstrate that whenever [petitioner] describes a document as "DUPLICATE ORIGINAL", it only refers to a copy of the document and not necessarily the original thereof. Such substitutionary documents could not be given probative value and are inadmissible pieces of evidence.[31]

The dispositive portion of the RTC Decision dated August 13, 2013 reads:

WHEREFORE, premises considered, and finding no cogent reason to disturb the Decision of the [MeTC] dated September 28, 2012, said DECISION is hereby ***AFFIRMED IN TOTO***.

SO ORDERED.[32]

Petitioner filed a Motion for Reconsideration[33] dated August 29, 2013, which was denied by the RTC in its Order[34] dated March 1, 2016.

Hence, the instant Rule 45 Petition. The Court in its Resolution[35] dated June 27, 2016 required respondents to

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

[32] *Id*. at 25.

[33] *Id*. at 52-55.

[34] *Id*. at 26.

[35] *Id*. at 71-72.

comment on the Petition and directed the Branch Clerk of Court of the RTC to elevate the complete records of Civil Case No. 73756, which were subsequently received by the Court. In view of the returned and unserved copy of the Resolution dated June 27, 2016, the Court in its Resolution[36] dated June 6, 2018 dispensed with respondents' comment.

The Issues

Petitioner raises the following issues:

1. on pure question of law, whether the RTC erred in affirming the MeTC's dismissal of petitioner's complaint in that pursuant to Section 1, Rule 4 of the Rules on Electronic Evidence (A.M. No. 01-7-01-SC), an electronic document is to be regarded as an original thereof under the Best Evidence Rule and thus, with the presented evidence in "original duplicate copies," petitioner has preponderantly proven respondents' unpaid obligation; and

2. in any event, invoking the rule that technicalities must yield to substantial justice, whether petitioner must be afforded the opportunity to rectify its mistake, offer additional evidence and/or present to the court another set of direct print-outs of the electronic documents.

The Court's Ruling

On the first issue, petitioner invokes ***for the first time on appeal*** the Rules on Electronic Evidence to justify its position that it has preponderantly proven its claim for unpaid obligation against respondents because it had attached to its complaint electronic documents. Petitioner argues that since electronic documents, which are computer-generated, accurately representing information, data, figures and/or other modes of written expression, creating or extinguishing a right or obligation, when directly printed out are considered original reproductions of the same, they are admissible under the Best Evidence Rule.[37]

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[36] *Id*. at 104-105.

[37] *Id*. at 15.

Petitioner explains that since the attachments to its complaint are wholly computer-generated print-outs which it caused to be reproduced directly from the computer, they qualify as electronic documents which should be regarded as the equivalent of the original documents pursuant to Section 1, Rule 4 of the Rules on Electronic Evidence.[38]

Procedurally, petitioner cannot adopt a new theory in its appeal before the Court and abandon its theory in its appeal before the RTC. Pursuant to Section 15, Rule 44 of the Rules, petitioner may include in his assignment of errors any question of law or fact that has been raised in the court below and is within the issues framed by the parties.

In the Memorandum for Appellant which it filed before the RTC, petitioner did not raise the Rules on Electronic Evidence to justify that the so-called "duplicate original copies" of the SOAs and Credit History Inquiry are electronic documents. Rather, it insisted that they were duplicate original copies, being computer-generated reports, and not mere photocopies or substitutionary evidence, as found by the MeTC. As observed by the RTC, petitioner even tried to rectify the attachments (annexes) to its complaint, by filing a Manifestation dated August 9, 2012 wherein it attached copies of the said annexes. Unfortunately, as observed by the RTC, the attachments to the said Manifestation "are merely photocopies of the annexes attached to the complaint, but with a mere addition of stamp marks bearing the same inscription as the first stamp marks"[39] that were placed in the annexes to the complaint. Because petitioner has not raised the electronic document argument before the RTC, it may no longer be raised nor ruled upon on appeal.

Even in the complaint, petitioner never intimated that it intended the annexes to be considered as electronic documents as defined in the Rules on Electronic Evidence. If such were petitioner's intention, then it would have laid down in the complaint the basis for their introduction and admission as electronic documents.

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

[39] *Id*. at 25.

Also, estoppel bars a party from raising issues, which have not been raised in the proceedings before the lower courts, for the first time on appeal.[40] Clearly, petitioner, by its acts and representations, is now estopped to claim that the annexes to its complaint are not duplicate original copies but electronic documents. It is too late in the day for petitioner to switch theories.

Thus, procedurally, the Court is precluded from resolving the first issue.

Even assuming that the Court brushes aside the above-noted procedural obstacles, the Court cannot just concede that the pieces of documentary evidence in question are indeed electronic documents, which according to the Rules on Electronic Evidence are considered functional equivalent of paper-based documents[41] and regarded as the equivalent of original documents under the Best Evidence Rule if they are print-outs or outputs readable by sight or other means, shown to reflect the data accurately.[42]

For the Court to consider an electronic document as evidence, it must pass the test of admissibility. According to Section 2, Rule 3 of the Rules on Electronic Evidence, "[a]n electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed by these Rules."

Rule 5 of the Rules on Electronic Evidence lays down the authentication process of electronic documents. Section 1 of Rule 5 imposes upon the party seeking to introduce an electronic document in any legal proceeding the burden of proving its authenticity in the manner provided therein. Section 2 of Rule 5 sets forth the required proof of authentication:

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[40] *See Imani v. Metropolitan Bank & Trust Company*, 649 Phil. 647, 661-662 (2010).

[41] RULES ON ELECTRONIC EVIDENCE, Rule 3, Sec. 1.

[42] *Id*., Rule 4, Sec. 1.

SEC. 2. *Manner of authentication*. — Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:

(a) by evidence that it had been digitally signed by the person purported to have signed the same;

(b) by evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic documents were applied to the document; or

(c) by other evidence showing its integrity and reliability to the satisfaction of the judge.

As to method of proof, Section 1, Rule 9 of the Rules on Electronic Evidence provides:

SECTION 1. *Affidavit of evidence*. — All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein.

Evidently, petitioner could not have complied with the Rules on Electronic Evidence because it failed to authenticate the supposed electronic documents through the required affidavit of evidence. As earlier pointed out, what petitioner had in mind at the inception (when it filed the complaint) was to have the annexes admitted as duplicate originals as the term is understood in relation to paper-based documents. Thus, the annexes or attachments to the complaint of petitioner are inadmissible as electronic documents, and they cannot be given any probative value.

Even the section on "Business Records as Exception to the Hearsay Rule" of Rule 8 of the Rules on Electronic Evidence requires authentication by the custodian or other qualified witness:

SECTION 1. *Inapplicability of the hearsay rule*. — A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by electronic, optical or other similar means at

or near the time of or from transmission or supply of information by a person with knowledge thereof, and kept in the regular course or conduct of a business activity, and such was the regular practice to make the memorandum, report, record, or data compilation by electronic, optical or similar means, all of which are shown by the testimony of the custodian or other qualified witnesses, is excepted from the rule on hearsay evidence.

In the absence of such authentication through the affidavit of the custodian or other qualified person, the said annexes or attachments cannot be admitted and appreciated as business records and excepted from the rule on hearsay evidence. Consequently, the annexes to the complaint fall within the Rule on Hearsay Evidence and are to be excluded pursuant to Section 36, Rule 130 of the Rules.

In fine, both the MeTC and the RTC correctly applied the Best Evidence Rule. They correctly regarded the annexes to the complaint as mere photocopies of the SOAs and the Credit History Inquiry, and not necessarily the original thereof. Being substitutionary documents, they could not be given probative value and are inadmissible based on the Best Evidence Rule.

The Best Evidence Rule, which requires the presentation of the original document, is unmistakable:

SEC. 3. *Original document must be produced; exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office. (2a)[43]

With respect to paper-based documents, the original of a document, *i.e.*, the original writing, instrument, deed, paper, inscription, or memorandum, is one the contents of which are the subject of the inquiry.[44] Under the Rules on Electronic Evidence, an electronic document is regarded as the functional equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.[45] As defined, "electronic document" refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically; and it includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document.[46] The term "electronic document" may be used interchangeably with "electronic data message"[47] and the latter refers to information generated, sent, received or stored by electronic, optical or similar means.[48]

Section 4, Rule 130 of the Rules and Section 2, Rule 4 of the Rules on Electronic Evidence identify the following instances when copies of a document are equally regarded as originals:

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[43] RULES OF COURT, Rule 130.

[44] *Id*. Rule 130, Sec. 4(a).

[45] RULES ON ELECTRONIC EVIDENCE, Rule 4, Sec. 1 in relation to Rule 3, Sec. 1.

[46] *Id*., Rule 2, Sec. 1(h).

[47] *Id*.

[48] *Id*., Rule 2, Sec. l(g).

[1] When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals.

[2] When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals.[49]

[3] When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.[50]

Apparently, "duplicate original copies" or "multiple original copies" wherein two or more copies are executed at or about the same time with identical contents are contemplated in 1 and 3 above. If the copy is generated after the original is executed, it may be called a "print-out or output" based on the definition of an electronic document, or a "counterpart" based on Section 2, Rule 4 of the Rules on Electronic Evidence.

It is only when the original document is unavailable that secondary evidence may be allowed pursuant to Section 5, Rule 130 of the Rules, which provides:

SEC. 5. *When original document is unavailable*. — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (4a)

Going back to the documents in question, the fact that a stamp with the markings:

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[49] RULES OF COURT, Rule 130, Sec. 4(b) and (c).

[50] RULES ON ELECTRONIC EVIDENCE, Rule 4, Sec. 2, first paragraph.

DUPLICATE ORIGINAL

(Sgd.
CHARITO O. HAM
Senior Manager
Collection Support Division Head

Collection group
Bankard Inc.[51]

was placed at the right bottom of each page of the SOAs and the Credit History Inquiry **did not make them** "duplicate original copies" as described above. The necessary allegations to qualify them as "duplicate original copies" **must be stated in the complaint and duly supported by the pertinent affidavit of the qualified person**.

The Court observes that based on the records of the case, only the signature in the stamp at the bottom of the Credit History Inquiry appears to be original. The signatures of the "certifying" person in the SOAs are not original but part of the stamp. Thus, even if all the signatures of Charito O. Ham, Senior Manager, Collection Support Division Head of petitioner's Collection Group are original, the required authentication so that the annexes to the complaint can be considered as "duplicate original copies" will still be lacking.

If petitioner intended the annexes to the complaint as electronic documents, then the proper allegations should have been made in the complaint and the required proof of authentication as "print-outs", "outputs" or "counterparts" should have been complied with.

The Court is aware that the instant case was considered to be governed by the Rule on Summary Procedure, which does not expressly require that the affidavits of the witness must accompany the complaint or the answer and it is only after the receipt of the order in connection with the preliminary conference and within 10 days therefrom, wherein the parties are required

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[51] Records, pp. 5-14.

to submit the affidavits of the parties' witnesses and other evidence on the factual issues defined in the order, together with their position papers setting forth the law and the facts relied upon by them.[52]

Given the nature of the documents that petitioner needed to adduce in order to prove its cause of action, it would have been prudent on the part of its lawyer, to make the necessary allegations in the complaint and attach thereto the required accompanying affidavits to lay the foundation for their admission as evidence in conformity with the Best Evidence Rule.

This prudent or cautionary action may avert a dismissal of the complaint for insufficiency of evidence, as what happened in this case, when the court acts pursuant to Section 6 of the Rule on Summary Procedure, which provides:

> SEC. 6. *Effect of failure to answer.* — Should the defendant fail to answer the complaint within the period above provided, the court, *motu proprio*, or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein: *Provided, however,* That the court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable. This is without prejudice to the applicability of Section 4, Rule 18 of the Rules of Court, if there are two or more defendants.

As provided in the said Section, the judgment that is to be rendered is that which is "warranted by the facts alleged in the complaint" and such facts must be duly established in accordance with the Rules on Evidence.

Upon a perusal of the items in the SOAs, the claim of petitioner against respondents is less than ₱100,000.00,[53] if the late charges and interest charges are deducted from the total claim of ₱117,157.98. Given that the action filed by petitioner is for

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[52] The 1991 REVISED RULE ON SUMMARY PROCEDURE, Sec. 9.

[53] Total amount of claim inclusive of charges and penalties (based on the complaint) of ₱117,157.98 less total late charges and interest charges of ₱25,747.20 equals ₱91,410.78.

payment of money where the value of the claim does not exceed ₱100,000.00 (the jurisdictional amount when the complaint was filed in January 2013), exclusive of interest and costs, petitioner could have opted to prosecute its cause under the Revised Rules of Procedure for Small Claims Cases (Revised Rules for Small Claims).

Section 6 of the Revised Rules for Small Claims provides: "A small claims action is commenced by filing with the court an accomplished and verified Statement of Claim (*Form 1-SCC*) in duplicate, accompanied by a Certification Against Forum Shopping, Splitting a Single Cause of Action, and Multiplicity of Suits (*Form 1-A-SCC*), and two (2) duly certified photocopies of the actionable document/s subject of the claim, as well as the affidavits of witnesses and other evidence to support the claim. No evidence shall be allowed during the hearing which was not attached to or submitted together with the Statement of Claim, unless good cause is shown for the admission of additional evidence."

If petitioner took this option, then it would have been incumbent upon it to attach to its Statement of Claim even the affidavits of its witnesses. If that was the option that petitioner took, then maybe its complaint might not have been dismissed for lack of preponderance of evidence. Unfortunately, petitioner included the late and interest charges in its claim and prosecuted its cause under the Rule on Summary Procedure.

Proceeding to the second issue, petitioner begs for the relaxation of the application of the Rules on Evidence and seeks the Court's equity jurisdiction.

Firstly, petitioner cannot, on one hand, seek the review of its case by the Court on a pure question of law and afterward, plead that the Court, on equitable grounds, grant its Petition, nonetheless. For the Court to exercise its equity jurisdiction, certain facts must be presented to justify the same. A review on a pure question of law necessarily negates the review of facts.

Petitioner has not presented any compelling equitable arguments to persuade the Court to relax the application of elementary evidentiary rules in its cause.

Secondly, petitioner has not been candid in admitting its error as pointed out by both the MeTC and the RTC. After being apprised that the annexes to its complaint do not conform to the Best Evidence Rule, petitioner did not make any effort to comply so that the lower courts could have considered its claim. Rather, it persisted in insisting that the annexes are compliant. **Even before the Court, petitioner did not even attach such documents which would convince the Court that petitioner could adduce the original documents as required by the Best Evidence Rule to prove its claim against respondents.**

A Final Note

The present Petition is clearly a frivolous appeal. An appeal is frivolous if it presents no justiciable question and is so readily recognizable as devoid of any merit on the face of the record that there is little, if any, prospect that it can ever succeed.[54] The Petition indubitably shows the counsel's frantic search for any ground to resuscitate petitioner's lost cause, which due to the counsel's fault was doomed with the filing of a deficient complaint.[55] Thus, pursuant to Section 3, Rule 142 of the Rules the imposition of treble costs on petitioner, to be paid by its counsel, is justified.

WHEREFORE, the Petition is hereby **DENIED**. The Decision dated August 13, 2013 and the Order dated March 1, 2016 of the Regional Trial Court, Branch 71, Pasig City in Civil Case No. 73756 are **AFFIRMED**. Treble costs are hereby charged against the counsel for petitioner RCBC Bankard Services Corporation. Let a copy of this Decision be attached to the

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[54] *See De la Cruz v. Blanco*, 73 Phil. 596, 597 (1942).

[55] *See Maglana Rice and Corn Mill, Inc. v. Spouses Tan*, 673 Phil. 532, 544 (2011).

personal records of Atty. Xerxes E. Cortel in the Office of the Bar Confidant.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 224753. June 19, 2019]

JOSE ASPIRAS MALICDEM, *petitioner, vs.* **ASIA BULK TRANSPORT PHILS., INC., INTER-OCEAN COMPANY LIMITED (formerly OCEAN SHIPPING COMPANY) and ERNESTO T. TUVIDA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (2010 POEA-SEC); COMPENSABILITY OF ILLNESS OR INJURY; REQUISITES; WORK-RELATED ILLNESS, DEFINED.— For disability to be compensable under Section 20(A) of the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on-Board Ocean-Going Ships issued on October 26, 2010 (2010 POEA-SEC), two (2) elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. Relevantly, the 2010 POEA-SEC defines "[w]ork-[r]elated illness" as "any sickness as a result of an occupational disease listed under Section 32-A of [the] Contract with the conditions set therein satisfied." As for those diseases not listed as occupational diseases,

jurisprudence mandates that the same may be compensated if it is shown that they are work-related and the conditions for compensability are satisfied. Moreover, Section 20(A)(3) of the POEA-SEC commands that the employee seeking disability benefits submit himself to post-employment medical examination by a company-designated physician within three (3) working days from his repatriation. Thus, in situations where the seafarer seeks to claim the compensation and benefits that Section 20(A) of the POEA-SEC grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20(A)(3); (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32(A) for an occupational disease or a disputably-presumed work-related disease to be compensable.

2. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; DEGREE OF PROOF REQUIRED IN COMPENSATION CASES; CASE AT BAR.—** The degree of proof required in compensation cases is substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify the conclusion. Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent. The rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence. Applying the foregoing guidelines, the Court cannot grant Malicdem's Petition. He failed to discharge his burden to prove, by substantial evidence, satisfaction of items (3), (4) and (5) of the above mandatory requirements for compensability.

3. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSABILITY OF ILLNESS OR INJURY; FAILURE TO SUBMIT TO THE COMPANY BY THE SEAFARER FOR POST-EMPLOYMENT MEDICAL EXAMINATION WITHIN THREE (3) WORKING DAYS FROM REPATRIATION RESULTS IN THE FORFEITURE OF THE RIGHT TO CLAIM COMPENSATION AND DISABILITY**

BENEFITS OF A SEAFARER; CASE AT BAR.— The LA found that Malicdem failed to report to ABPTI within three (3) working days from his repatriation for post-employment medical examination by ABPTI's designated physician. This does not appear to be contested by Malicdem, despite his contrary narration of facts in the present Petition; instead, he brings to the court the legal question of whether such failure to comply with the POEA-SEC's reporting requirement results in the forfeiture of his claim for disability benefits. Section 20(A)(3) of the POEA-SEC requires a claiming seafarer to submit himself for medical examination within a three-day period post-repatriation. x x x Malicdem posits in his Petition that, assuming he failed to report to ABPTI for the mandatory post-employment medical examination within three (3) working days from repatriation, such does not prejudice his claim for disability benefits. This is because the mandatory post-employment medical examination pertains only to the entitlement of the seafarer to sickness allowances and nothing more. This argument is untenable. Jurisprudence abounds holding that failure to comply with the mandatory reporting requirement under the POEA-SEC results in the forfeiture of the right to claim compensation and disability benefits of a seafarer. x x x In fact, a belated submission of the seafarer to the company for post-employment medical examination has been held to be insufficient compliance with the reporting requirement and, hence, fatal to the seafarer's case. x x x Notably, the mandatory requirement does admit of exceptions, namely: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician. None of these, however, is proven or even alleged to obtain in the present case.

4. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS, SUPPORTED BY SUBSTANTIAL EVIDENCE, OF ADMINISTRATIVE OR QUASI-JUDICIAL BODIES, INCLUDING LABOR TRIBUNALS, ARE BINDING AND ACCORDED MUCH RESPECT BY THE SUPREME COURT AS THEY ARE SPECIALIZED TO RULE ON MATTERS FALLING WITHIN THEIR JURISDICTION; CASE AT BAR.— [T]he issue of whether Malicdem's illnesses are work-related

and compensable is essentially factual and not reviewable by the Court on Rule 45 petitions, save for some exceptions. However, inasmuch as factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction, these findings are only binding when supported by substantial evidence. On this note, the Court confirms that the findings of the herein labor tribunals, as affirmed by the CA, that Malicdem's illnesses — hypertension and glaucoma — are not compensable under the POEA-SEC are correct and properly supported by substantial evidence on record. Ho ever, a number of clarifications must be made.

5. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); CONDITIONS FOR COMPENSABILITY UNDER SECTION 32 (A) THEREOF; ILLNESSES NOT LISTED AS AN OCCUPATIONAL DISEASE IN SECTION 32 MAY BE WORK-RELATED AND COMPENSABLE; CLAIMANT-SEAFARER MUST PROVE BY SUBSTANTIAL EVIDENCE THAT HIS WORK CONDITIONS CAUSED OR, AT LEAST, INCREASED THE RISK OF CONTRACTING THE DISEASE, AS AWARDS OF COMPENSATION CANNOT REST ENTIRELY ON BARE ASSERTIONS AND PRESUMPTIONS.— Section 20(A)(4) of the 2010 POEA-SEC creates a disputable presumption that illnesses not listed as an occupational disease in Section 32 are work-related. This disputable presumption is made in the law to signify that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits. At the same time, however, this disputable presumption does not signify an automatic grant of compensation and/or benefits claim. Hence, despite the presumption, the Court has held that, on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease, as awards of compensation cannot rest entirely on bare assertions and presumptions. In this light, the claimant must prove, not that his illness is work-related, but that the same is ultimately compensable by satisfying the

conditions for compensability under Section 32(A) of the 2000 POEA-SEC, *to wit*: For an occupational disease and the resulting disability or death to be compensable, **all** of the following conditions must be satisfied: 1) The seafarers 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. Applying the foregoing, the Court finds that the CA, NLRC, and LA were correct in finding that Malicdem is not entitled to disability benefits for his hypertension and glaucoma. On his hypertension, Malicdem failed to substantially prove that the same was contracted due to, or aggravated by, the conditions of his work on board the vessel. As found by the LA, NLRC and CA, the bare allegations of Malicdem that the sodium-rich food, physical and psychological stress and other emergencies on board the ship caused the exacerbation of his hypertension, is insufficient. The Court likewise notes that the opinion of Dr. Casison, Malicdem's private doctor, did not even explain the cause of Malicdem's hypertension or attempt to connect the same to his work conditions. Moreover, there is no showing that he suffered hypertension while on board the vessel. x x x As for Malicdem's glaucoma, he claims that his duties and responsibilities as Chief Engineer, his exposure to the sea breeze and other elements of nature while the vessel is in open seas, the stress from his strenuous job and his emotional strain from homesickness aggravated his glaucoma. These propositions were rejected by the labor tribunals and the CA. As factually found by the NLRC, Malicdem presented no competent medical history, records or physician's report to objectively substantiate the claim that there is a reasonable connection between his work and his glaucoma. What he has are bare allegations which fall far short of the substantial evidence required of him by law.

6. ID.; ID.; ID.; ID.; IT IS THE COMPANY-DESIGNATED PHYSICIAN WHO IS ENTRUSTED WITH THE TASK OF ASSESSING A SEAFARER'S ILLNESS FOR PURPOSES OF CLAIMING DISABILITY BENEFITS; CASE AT BAR.— Notably, while Dr. Salvador's findings in 2011 pertain to Malicdem's glaucoma during his previous employment with

ABPTI, and, hence, not binding in the present case, the same must nevertheless be given reasonable weight and credence in light of the settled jurisprudence that it is the company-designated physician who is entrusted with the task of assessing a seafarer's illness for purposes of claiming disability benefits. Jurisprudence is likewise replete with cases where the Court upheld the findings of the company-designated physicians as against those of the private physician hired by the seafarer-claimant, because the former devoted more attention and time in observing and treating the claimant's condition. In this case, Malicdem was assessed by the company-designated physician on his glaucoma immediately after his first repatriation. He was not, however, assessed by ABPTI's doctors after his latest repatriation because, as found by the labor tribunals and the CA, he failed to report to ABPTL Instead, Malicdem sought the advice of a private physician, but only after more than a year from his latest arrival in the country. He likewise failed to show that his private doctor's findings were reached based on an extensive or comprehensive examination of his condition.

7. ID.; ID.; ID.; ID.; REPATRIATION FOR AN EXPIRED CONTRACT BELIES A SEAFARER'S SUBMISSION THAT HIS AILMENT WAS AGGRAVATED BY HIS WORKING CONDITIONS AND THAT IT WAS EXISTING DURING HIS TERM OF EMPLOYMENT; CASE AT BAR.— [A]s found by the LA, when Malicdem was repatriated, his contract with ABPTI was already finished. This already weighs strongly against his claims. The Court had, in the past, ruled that repatriation for an expired contract belies a seafarer's submission that his ailment was aggravated by his working conditions and that it was existing during his term of employment.

APPEARANCES OF COUNSEL

Arthur Amansec for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

CAGUIOA, *J.*:

This Petition for Review on *Certiorari*[1] (Petition) assails the Decision[2] dated December 17, 2015 and Resolution[3] dated May 13, 2016, both of the Court of Appeals (CA) in CA-G.R. SP No. 140137, which affirmed the Decision[4] dated December 29, 2014 and Resolution[5] dated February 24, 2015, both of the National Labor Relations Commission (NLRC). The latter issuances of the NLRC, in turn, affirmed the Decision[6] dated September 25, 2014 of the Labor Arbiter (LA), dismissing the complaint filed by petitioner Jose Aspiras Malicdem (Malicdem) against respondents.

The Facts

The following facts are settled:

On June 1, 2011, Malicdem was hired by respondent local manning agent Asia Bulk Transport Phils, Inc. (ABTPI), in behalf of its foreign principal, SKM Korea Co., Ltd.,[7] to board the vessel MV Yushio Princess II for a period of three (3) months. Prior to embarkation, Malicdem underwent a Pre-Employment Medical Examination (PEME) where it was noted that he had a medical history of high blood pressure and hypertension.[8] Nevertheless, he was declared "fit to work."[9]

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[1] *Rollo*, pp. 26-65.

[2] *Id*. at 67-77. Penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court) with Associate Justices Nina G. Antonio-Valenzuela and Jhosep Y. Lopez, concurring.

[3] *Id*. at 79-80.

[4] *Id*. at 244-254. Penned by Commissioner Romeo L. Go with Presiding Commisioner Gerardo C. Nograles and Commissioner Perlita B. Velasco, concurring.

[5] *Id*. at 256-257.

[6] *Id*. at 221-243. Penned by Labor Arbiter Marita V. Padolina.

[7] *Id*. at 245.

[8] *Id*. at 283.

[9] *Id*. at 245.

On the second week of his duty on board MV Yushio Princess II, Malicdem suffered from blurring vision and headache. He reported his condition to the Ship Captain and was eventually seen by a doctor in Japan. Upon the doctor's recommendation, Malicdem was repatriated to Manila on October 16, 2011. The following day, he was referred to a company-designated hospital, Sachly International Health Partners, particularly to a company-designated physician, Dr. Susannah Ong-Salvador (Dr. Salvador) who eventually issued a medical report[10] dated October 17, 2011 that Malicdem was suffering from glaucoma.[11] On October 22, 2011, another medical report[12] was issued by Dr. Salvador stating that Malicdem was under medical treatment and recommending surgical procedure. However, the report clarified that Malicdem's glaucoma was not work-related.[13]

In December 2011, Malicdem underwent a PEME and was eventually issued a medical certification with recommendation that he was fit to work. He was given maintenance medicines for his hypertension.[14]

On December 21, 2011, Malicdem and respondents signed an employment contract with a duration of nine (9) months. On December 31, 2011, Malicdem embarked on MV Nord Liberty as Chief Engineer. On October 12, 2012, he was repatriated to the Philippines.[15]

According to Malicdem, while on board MV Nord Liberty, he was exposed to psychological stress for being away from his family for months; to consumption of fatty, cholesterol and sodium rich food which were part of the provisions in the vessel; to heat in the engine room emitted by ship equipment; and to

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[10] *Id*. at 206-207.

[11] *Id*. at 283-284.

[12] *Id*. at 208.

[13] *Id*. at 284.

[14] *Id*. at 68.

[15] *Id*.

frequent inhalation of diesel and hydrocarbons used as fuel for the vessel.[16] In October, 2012, he suffered episodes of dizziness and blurring vision. He reported these ailments to the Ship Captain but was not referred to a doctor because the vessel was then at sea. Allegedly, on October 12, 2012, Malicdem saw a doctor in Japan.[17] On the same day, Malicdem was repatriated to the Philippines.[18]

Malicdem likewise alleges that on October 15, 2012, he reported to respondents' office and asked for referral to a company-designated physician for post-employment medical examination.[19] However, he was not given any referral. His medical expenses were shouldered by him without any help from respondents.[20] After several days of rest and medication, he re-applied for deployment with ABTPI but was no longer rehired. He remained unemployed for months.[21]

On March 12, 2014, Malicdem consulted a private doctor, Dr. Liberato Casison (Dr. Casison), who assessed him as "[disabled] for any work" due to his conditions.[22] On March 25, 2014, Malicdem filed a complaint[23] for disability benefits,[24] claiming that he is entitled to permanent and total disability benefits because his illnesses, which consist of hypertension and glaucoma, are work-related, as he was exposed to risk factors that aggravated these conditions while on-board respondents' vessel.[25]

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[16] *Id*.

[17] *Id*.

[18] *Id*. at 31.

[19] *Id*.

[20] *Id*. at 68.

[21] *Id*. at 68-69.

[22] *Id*. at 32.

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

[24] *Id*. at 69.

[25] *Id*.

On May 29, 2014, the company-designated physician, Dr. Salvador, issued a "Reply to Medical Query" listing down the risk factors of glaucoma and reiterating her findings in 2011, during Malicdem's first repatriation, that the latter's glaucoma was not work-related.[26]

On the other hand, respondents essentially aver that the conditions suffered by Malicdem are not work-related.[27] His glaucoma, specifically, had been found by the company-designated physician as being not work- related and the physician is in the best position to determine Malicdem's condition because of their expertise and the amount of time and attention devoted to his examination.[28] Moreover, Malicdem failed to comply with the mandatory reporting to a company-designated physician within three (3) days from disembarkation, thus, resulting to forfeiture of his claims.[29]

Ruling of the LA

In a Decision dated September 25, 2014, the LA dismissed Malicdem's complaint for lack of merit, disposing of the case in the following manner:

> **WHEREFORE, premises considered**, the instant complaint is **DISMISSED** for lack of merit. However, respondents Asia Bulk Transport Phils, Inc. and Inter Ocean Company Limited (formerly Ocean Shipping Company) is ordered to give complainant financial assistance in the amount of Fifty Thousand Pesos (₱50,000.00) for humanitarian consideration.
>
> **SO ORDERED.**[30]

The LA held that Malicdem failed to substantiate his allegations that he suffered hypertension while on board MV Nord Liberty; hence, said illness cannot be compensable for failing to satisfy

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[26] *Id*. at 76.

[27] *Id*. at 287.

[28] *Id*. at 227.

[29] *Id*. at 304.

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

the conditions under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC).[31] As for his glaucoma, the LA held that Malicdem failed to prove that said illness was directly caused or aggravated by his employment.[32] The LA likewise noted that Malicdem failed to comply with the three (3)-day mandatory reportorial requirement under Section 20(A)(3) of the POEA-SEC.[33] For humanitarian considerations, however, the LA awarded Malicdem financial assistance in the amount of ₱50,000.00.[34]

Malicdem appealed to the NLRC.

Ruling of the NLRC

In a Decision dated December 29, 2014, the NLRC affirmed the LA's Decision and dismissed Malicdem's petition for lack of merit, disposing of the case as follows:

> **WHEREFORE**, the labor arbiter's Decision dated September 25, 2014 is affirmed and the instant appeal dismissed for lack of merit.
>
> **SO ORDERED**.[35]

The NLRC ruled that Malicdem failed to adduce proof of reasonable connection between his work as a chief engineer and the glaucoma he had contracted.[36] According to the NLRC, there is all the more a need for proof of work-connection because relevant medical literature suggests that glaucoma is brought about by several factors other than the purported "physical and emotional" strains, such as aging, race and family history. To easily attribute glaucoma to Malicdem's physical and emotional

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

[32] *Id*. at 239.

[33] *Id*. at 241.

[34] *Id*. at 242.

[35] *Id*. at 254.

[36] *Id*. at 251.

strains at work is to oversimplify the matter.[37] Anent Malicdem's hypertension, the NLRC ruled that he failed to satisfy the requirements for compensability of this disease under Section 32(A)(20) of the POEA-SEC.[38]

Malicdem filed a Motion for Reconsideration which was, however, denied in a Resolution of the NLRC dated February 24, 2015.[39] This prompted Malicdem to file a Petition for *Certiorari*[40] before the CA.

Ruling of the CA

In the assailed Decision, the CA dismissed Malicdem's petition for *certiorari*, thereby finding no grave abuse of discretion on the part of the NLRC for affirming the LA's ruling, to wit:

> In view of these considerations, the Court finds no grave abuse [of discretion] on the part of the NLRC in affirming the Labor Arbiter's ruling and in subsequently denying petitioner's motion for reconsideration.
>
> **WHEREFORE**, the petition is **DISMISSED** for lack of merit.
>
> **SO ORDERED**.[41]

According to the CA, the LA's and the NLRC's findings are supported by substantial evidence. The records are bereft of any showing that the documents required to be presented in compensation cases for hypertension under Section 32(A)(20) of the POEA-SEC were presented by Malicdem.[42] His bare claim that the food provisions on board the vessel exacerbated his hypertension is insufficient.[43] As for his glaucoma, the CA

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[37] *Id* at 251-252, citing *Debaudin v. Social Security System*, 560 Phil. 72, 81-82 (2007).

[38] *Id*. at 253.

[39] *Id*. at 286.

[40] *Id*. at 259-277.

[41] *Id*. at 20-21.

[42] *Id*. at 75.

[43] *Id*.

held that Malicdem cannot rely merely on the disputable presumption of work-relatedness provided under Section 20(B). He still had the burden to present substantial evidence that his working conditions caused or increased the risk of contracting the disease.[44] Malicdem failed to discharge this burden. On the contrary, the company-designated physician, Dr. Salvador, issued findings during Malicdem's first repatriation and after examining his condition, that his glaucoma is a non-work related condition.[45]

Malicdem filed a Motion for Reconsideration[46] which was denied in the assailed Resolution dated May 13, 2016.

Refusing to concede and after filing a *Motion for Extension of Time to File Petition for Review on Certiorari*,[47] Malicdem filed the present *Petition*, raising the following **issues**:

1. **WHETHER OR NOT THE HONORABLE COURT OF APPEALS 5TH DIVISION COMMITTED A REVERSIBLE ERROR IN AFFIRMING THE DECISION OF THE HONORABLE NLRC 1ST DIVISION;**
2. **WHETHER OR NOT FAILURE TO COMPLY WITH THE MANDATORY THREE [3] DAY REPORTORIAL REQUIREMENT UNDER SECTION 20 [A] [3] OF THE 2010 POEA-SEC WILL RESULT IN THE FORFEITURE OF DISABILITY CLAIMS;**
3. **WHETHER OR NOT THE DISPUTABLE PRESUMPTION UNDER SECTION 20 [A] [4] OF THE 2010 POEA-SEC WORKS IN THE SEAFARER'S FAVOR;**
4. **WHETHER OR NOT PETITIONER IS TOTALLY AND PERMANENTLY DISABLED; and**

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[44] *Id*. at 76.

[45] *Id*.

[46] *Id*. at 81-89.

[47] *Id*. at 3-9.

5. WHETHER OR NOT PETITIONER IS ENTITLED TO SICKNESS ALLOWANCE, DAMAGES AND ATTORNEY'S FEE.[48]

The Court's Ruling

The fundamental issue that the Court must resolve is whether Malicdem is entitled to total and permanent disability benefits.

He is not.

For disability to be compensable under Section 20(A) of the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on-Board Ocean-Going Ships issued on October 26, 2010 (2010 POEA-SEC),[49] two (2) elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[50] Relevantly, the 2010 POEA-SEC defines "[w]ork-[r]elated illness" as "any sickness as a result of an occupational disease listed under Section 32-A of [the] Contract with the conditions set therein satisfied."[51] As for those diseases not listed as occupational diseases, jurisprudence mandates that the same may be compensated if it is shown that they are work-related and the conditions for compensability are satisfied.[52]

Moreover, Section 20(A)(3)[53] of the POEA-SEC commands that the employee seeking disability benefits submit himself to

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[48] *Id*. at 33-34.

[49] 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 (Emphasis supplied)

[50] *De Leon v. Maunlad Trans, Inc.*, 805 Phil. 531, 539 (2017).

[51] 2010 POEA-SEC, Definition of Terms (16).

[52] *See Romana v. Magsaysay Maritime Corporation*, G.R. No. 192442, August 9, 2017, 836 SCRA 151.

[53] A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

post-employment medical examination by a company-designated physician within three (3) working days from his repatriation.

Thus, in situations where the seafarer seeks to claim the compensation and benefits that Section 20(A) of the POEA-SEC grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he complied with the procedures prescribed under Section 20(A)(3); (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Section 32(A) for an occupational disease or a disputably-presumed work-related disease to be compensable.[54]

The degree of proof required in compensation cases is substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify the conclusion.[55] Substantial evidence is more than a mere scintilla.

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 x x x

x x x x x x x x x

For this purpose, the seafarer shall submit himself to 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 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. (Emphasis and underscoring supplied)

[54] *Aldaba v. Career Philippines Ship-Management, Inc.*, 811 Phil. 486, 498 (2017).

[55] *Legal Heirs of the Late Edwin B. Deauna v. Fil-Star Maritime Corp.*, 688 Phil. 582, 591 (2012).

The evidence must be real and substantial, and not merely apparent.[56] The rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence.[57]

Applying the foregoing guidelines, the Court cannot grant Malicdem's Petition. He failed to discharge his burden to prove, by substantial evidence, satisfaction of items (3), (4) and (5) of the above mandatory requirements for compensability.

Malicdem reneged on his duty to submit to a post-employment medical examination within three (3) working days from his repatriation. As a consequence, he effectively forfeited his right to claim disability benefits under the POEA-SEC.

The LA found that Malicdem failed to report to ABPTI within three (3) working days from his repatriation for post-employment medical examination by ABPTI's designated physician.[58] This does not appear to be contested by Malicdem, despite his contrary narration of facts in the present Petition; instead, he brings to the court the legal question of whether such failure to comply with the POEA-SEC's reporting requirement results in the forfeiture of his claim for disability benefits.

Section 20(A)(3) of the POEA-SEC requires a claiming seafarer to submit himself for medical examination within a three-day period post- repatriation, to wit:

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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[56] See *id*. at 592.

[57] *Jebsens Maritime, Inc. and/or Alliance Marine Services, Ltd. v. Undag*, 678 Phil. 938, 946-947 (2011), citing *Cootauco v. MMS Phil. Maritime Services, Inc*., 629 Phil. 506, 519 (2010); *Wallem Maritime Services, Inc. v. Tanawan*, 693 Phil. 416, 430 (2012); *Andrada v. Agemar Manning Agency, Inc.*, 698 Phil. 170, 184 (2012).

[58] *Rollo*, p. 241.

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. 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. (Emphasis and underscoring supplied)

Malicdem posits in his Petition that, assuming he failed to report to ABPTI for the mandatory post-employment medical examination within three (3) working days from repatriation, such does not prejudice his claim for disability benefits. This is because the mandatory post-employment medical examination pertains only to the entitlement of the seafarer to sickness allowances and nothing more.[59]

[59] *Id*. at 48-49.

This argument is untenable. Jurisprudence[60] abounds holding that failure to comply with the mandatory reporting requirement under the POEA-SEC results in the forfeiture of the right to claim compensation and disability benefits of a seafarer. This is the categorical ruling of the Court in *Coastal Safeway Marine Services, Inc. v Esguerra*,[61] thus:

x x x Anent a seafarer's entitlement to compensation and benefits for injury and illness, Section 20-B (3) thereof provides as follows:

x x x x x x x x x

The foregoing provision has been interpreted to mean that it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. **For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC**.[62] (Emphasis supplied)

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[60] See *Jebsens Maritime, Inc. and/or Alliance Marine Services, Ltd. v. Undag*, *supra* note 57; *Crew and Ship Management International, Inc. v. Soria*, 700 Phil. 598, 610 (2012); *Loadstar International Shipping Inc. v. The Heirs of the Late Enrique C. Calawigan*, 700 Phil. 419, 430-431 (2012); *Ricasata v. Cargo Safeway Inc*., 784 Phil. 158, 169 (2016); *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.*, G.R. No. 217345, July 12, 2017, 831 SCRA 129; *Musnit v. Sea Star Shipping Corporation*, 622 Phil. 772 (2009); *Cootauco v. MMS Phil. Maritime Services, Inc*., *supra* note 57.

[61] 671 Phil. 56 (2011).

[62] *Id*. at 65-66.

In fact, a belated submission of the seafarer to the company for post- employment medical examination has been held to be insufficient compliance with the reporting requirement and, hence, fatal to the seafarer's case. In *Musnit v. Sea Star Shipping Corporation*,[63] the seafarer reported to the company for medical examination only after seven (7) months from repatriation. Similarly, in *Cootauco v. MMS Phil. Maritime Services, Inc.*,[64] the seafarer-claimant submitted himself to the company for post- employment examination only after fifteen (15) months after arrival in the Philippines. In both cases, the Court denied the claim for disability benefits for failure to comply with the mandatory three (3) working days period.

In *Jebsens Maritime, Inc. and/or Alliance Marine Services, Ltd. v. Undag*,[65] the Court explained the rationale for the three-day mandatory requirement, thus:

> x x x The rationale behind the rule can easily be divined. **Within three days from repatriation, it would be fairly easier for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness.**
>
> **To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits.** It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.[66] (Emphasis and underscoring supplied)

Likewise, reporting to the company within three (3) days from repatriation is required so that the company-designated physician can promptly arrive at a medical diagnosis, considering

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[63] *Supra* note 60, at 780.

[64] *Supra* note 57.

[65] *Id.*

[66] *Id.* at 948-949.

that he has either 120 or 240 days,[67] depending on the circumstances, within which to complete the assessment of the seafarer; otherwise, the disability claim should be granted.[68]

Hence, it is clear that the reporting requirement is indispensable, not only in claiming sickness allowance, as Malicdem suggests, but likewise in claiming compensation and disability benefits under the POEA-SEC. Stated otherwise, non-submission to the company by the seafarer for post- employment medical examination within three (3) working days from repatriation results in the forfeiture of his compensation and disability claims.

Notably, the mandatory requirement does admit of exceptions, namely: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician.[69] None of these, however, is proven or even alleged to obtain in the present case.

Hence, for failing to comply with the three-day reporting requirement, Malicdem had forfeited his right to claim disability

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[67] Under Article 192(c)(1) of the Labor Code, permanent total disability includes temporary total disability lasting continuously for more than one hundred twenty (120) days, except as otherwise provided in the Rules. The rule adverted to is Section 2, Rule X of the Amended Rules on Employees' Compensation, implementing Book IV of the Labor Code, which states:

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. (Underscoring supplied)

[68] *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.*, *supra* note 60, at 144.

[69] *Id*. at 146-147.

benefits as expressly provided under Section (20)(A)(3) of the POEA-SEC.

Malicdem failed to present substantial evidence that his glaucoma and hypertension are compensable.

At any rate, even if the Court excuses Malicdem's failure to comply with the reporting requirement as discussed above, the petition must still fail because he failed to substantially prove that his illnesses are compensable.

At the outset, it must be stated that the issue of whether Malicdem's illnesses are work-related and compensable is essentially factual[70] and not reviewable by the Court on Rule 45 petitions, save for some exceptions.[71] However, inasmuch as factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction, these findings are only binding when supported by substantial evidence.[72]

On this note, the Court confirms that the findings of the herein labor tribunals, as affirmed by the CA, that Malicdem's illnesses — hypertension and glaucoma — are not compensable under the POEA-SEC are correct and properly supported by substantial evidence on record. However, a number of clarifications must be made.

First of all, both the NLRC and the CA treated Malicdem's hypertension as a listed occupational disease, citing Section 32(A)(20) of the 2000 POEA-SEC which provides:

20. Essential Hypertension.

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[70] *See Montoya v. Transmed Manila Corp.*, 613 Phil. 696 (2009).

[71] *See De Leon v. Maunlad Trans, Inc.*, *supra* note 50, at 538-539.

[72] *See Skippers United Pacific, Inc. v. NLRC*, 527 Phil. 248, 256-257 (2006).

Hypertension classified as primary or essential is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability; Provided, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report, (c) blood chemistry report, (d) funduscopy report, and (e) C-T scan.

However, the foregoing provision no longer appears in the 2010 POEA-SEC which applies in the present case. In other words, under the 2010 POEA-SEC, Malicdem's hypertension is no longer a listed occupational disease.

In this light, both of Malicdem's claimed illnesses — hypertension and glaucoma — are non-listed occupational diseases under the applicable contract, *i.e.*, the 2010 POEA-SEC. Nevertheless, they may be compensable subject to the parameters laid down by jurisprudence and the POEA-SEC.

Section 20(A)(4) of the 2010 POEA-SEC creates a disputable presumption that illnesses not listed as an occupational disease in Section 32 are work-related. This disputable presumption is made in the law to signify that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits. At the same time, however, this disputable presumption does not signify an automatic grant of compensation and/or benefits claim.[73]

Hence, despite the presumption, the Court has held that, on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease, as awards of compensation cannot rest entirely on bare assertions and presumptions.[74] In this light, the claimant must prove, not that his illness is work-related, but that the same is ultimately compensable by satisfying the conditions for compensability under Section 32(A) of the 2000 POEA-SEC, *to wit*:

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[73] *See Jebsen Maritime, Inc. v. Ravena*, 743 Phil. 371, 388 (2014).

[74] *De Leon v. Maunlad Trans, Inc.*, *supra* note 50, at 540.

> For an occupational disease and the resulting disability or death to be compensable, **all** of the following conditions must be satisfied:
>
> 1) The seafarers 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.
>
> (Emphasis and underscoring supplied)

Applying the foregoing, the Court finds that the CA, NLRC, and LA were correct in finding that Malicdem is not entitled to disability benefits for his hypertension and glaucoma.

On his hypertension, Malicdem failed to substantially prove that the same was contracted due to, or aggravated by, the conditions of his work on board the vessel. As found by the LA, NLRC and CA, the bare allegations of Malicdem that the sodium-rich food, physical and psychological stress and other emergencies on board the ship caused the exacerbation of his hypertension, is insufficient.[75] The Court likewise notes that the opinion of Dr. Casison, Malicdem's private doctor, did not even explain the cause of Malicdem's hypertension or attempt to connect the same to his work conditions.[76] Moreover, there is no showing that he suffered hypertension while on board the vessel.[77] These are factual findings of the labor tribunals and the CA which appear to be supported by substantial evidence; hence must be accorded not only respect but finality.[78]

As for Malicdem's glaucoma, he claims that his duties and responsibilities as Chief Engineer,[79] his exposure to the sea

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[75] *Rollo*, p. 75.

[76] *Id*. at 297-298.

[77] *Id*. at 297.

[78] *See Nahas v. Olarte*, 734 Phil. 569, 580 (2014).

[79] *Rollo*, pp. 40-41.

breeze and other elements of nature while the vessel is in open seas, the stress from his strenuous job and his emotional strain from homesickness aggravated his glaucoma.[80] These propositions were rejected by the labor tribunals and the CA. As factually found by the NLRC, Malicdem presented no competent medical history, records or physician's report to objectively substantiate the claim that there is a reasonable connection between his work and his glaucoma.[81] What he has are bare allegations which fall far short of the substantial evidence required of him by law.[82] The Court finds no cause to overturn such findings. Factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are accorded not only respect but even finality, and bind the Court when supported by substantial evidence.[83]

Likewise weighing against Malicdem's case is the medical report of the company-designated physician, Dr. Salvador, issued soon after Malicdem's first repatriation in 2011, that **his glaucoma was not work related.**[84] Dr. Salvador subsequently issued another report,[85] in reply to a query arising from Malicdem's latest repatriation (which is the subject of the present case), listing down the major risk factors for glaucoma. These factors do not include exposure to sea breeze and the other matters alleged by Malicdem to have aggravated his condition. **In the latter report, Dr. Salvador reiterated her 2011 opinion that Malicdem's glaucoma is not work-related.**[86]

Notably, while Dr. Salvador's findings in 2011 pertain to Malicdem's glaucoma during his previous employment with

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[80] *Id.* at 251.

[81] *Id.*

[82] *See Maersk-Filipinas Crewing, Inc. v. Malicse*, G.R. Nos. 200576 & 200626, November 20, 2017, 845 SCRA 69.

[83] *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212 (2005).

[84] *Rollo*, p. 76.

[85] *Id.* at 211.

[86] *Id.*

ABPTI, and, hence, not binding in the present case, the same must nevertheless be given reasonable weight and credence in light of the settled jurisprudence that it is the company-designated physician who is entrusted with the task of assessing a seafarer's illness for purposes of claiming disability benefits.[87] Jurisprudence is likewise replete with cases where the Court upheld the findings of the company-designated physicians as against those of the private physician hired by the seafarer-claimant, because the former devoted more attention and time in observing and treating the claimant's condition.[88]

In this case, Malicdem was assessed by the company-designated physician on his glaucoma immediately after his first repatriation. He was not, however, assessed by ABPTI's doctors after his latest repatriation because, as found by the labor tribunals and the CA, he failed to report to ABPTI. Instead, Malicdem sought the advice of a private physician, but only after more than a year from his latest arrival in the country. He likewise failed to show that his private doctor's findings were reached based on an extensive or comprehensive examination of his condition.[89]

Finally, as found by the LA, when Malicdem was repatriated, his contract with ABPTI was already finished.[90] This already weighs strongly against his claims. The Court had, in the past, ruled that repatriation for an expired contract belies a seafarer's submission that his ailment was aggravated by his working conditions and that it was existing during his term of employment.[91]

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[87] See *Coastal Safeway Marine Services Inc. v. Esguerra*, *supra* note 61, at 65.

[88] See *Espere v. NFD International Manning Agents, Inc.*, G.R. No. 212098, July 26, 2017, 833 SCRA 156, 173; *Magsaysay Maritime Corp. and/or Dela Cruz v. Velasquez,* 591 Phil. 839, 850 (2008).

[89] *Rollo*, p. 69.

[90] *Id.* at 233.

[91] *Villanueva, Sr. v. Baliwag Navigation, Inc.*, 715 Phil. 299, 303 (2013).

In sum, Malicdem cannot be awarded the total and permanent disability benefits that he seeks. He breached his contractual obligation to submit to a company-designated physician within the required period and failed to prove, by substantial evidence, the compensability of his illnesses. In this light, the Court finds no further need to discuss the other issues raised in the Petition.

As a final word, it is true that the beneficent provisions of the POEA- SEC are liberally construed in favor of seafarers.[92] This exhortation cannot, however, be taken to sanction the award of compensation and disability benefits in the face of evident failure to substantially establish compensability and unjustified non-compliance with the mandatory reporting requirement under the POEA-SEC. Hence, while the Court commiserates with Malicdem, it cannot grant his claims, lest a clear injustice be caused to ABPTI.

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED**. The Decision dated December 17, 2015 and the Resolution dated May 13, 2016 of the Court of Appeals in CA-G.R. SP No. 140137 are **AFFIRMED**.

SO ORDERED.

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

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[92] See *Hermogenes v. Osco Shipping, Services, Inc.*, 504 Phil. 564, 572 (2005).

[*] Designated Additional Member per Raffle dated March 13, 2019.

SECOND DIVISION

[G.R. No. 225075. June 19, 2019]

ARNULFO M. FERNANDEZ, *petitioner, vs.* **KALOOKAN SLAUGHTERHOUSE INCORPORATED*/ERNESTO CUNANAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; AS A RULE, ONLY QUESTIONS OF LAW MAY BE REVIEWED; AN EXCEPTION IS WHEN THE LABOR ARBITER'S FACTUAL FINDINGS ARE IN CONFLICT WITH THAT OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) AND THE COURT OF APPEALS.—** The conflicting factual findings of the LA *vis-a-vis* the NLRC and the CA warrant a review of the factual findings of the labor tribunals and the CA. As the Court ruled in *Cariño v. Maine Marine Phils., Inc*. As a rule, "[i]n appeals by *certiorari* under Rule 45 of the Rules of Court, the task of the Court is generally to review only errors of law since it is not a trier of facts, a rule which definitely applies to labor cases." As the Court ruled in *Scanmar Maritime Services, Inc. v. Conag:* "But while the NLRC and the LA are imbued with expertise and authority to resolve factual issues, the Court has in exceptional cases delved into them where there is insufficient evidence to support their findings, or too much is deduced from the bare facts submitted by the parties, or the LA and the NLRC came up with conflicting findings x x x."

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** It is settled that "[t]o determine the existence of an employer--employee relationship, four elements generally need to be considered, namely: (1) the selection and engagement of the employee; (2) the payment

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* Also appears as "Kalookan Slaughterhouse"and "Kalookan Slaughter House, Inc." in some parts of the records.

of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct. These elements or indicators comprise the so-called 'four-fold' test of employment relationship." Similar to the facts of this case, the Court in *Masonic Contractor, Inc. v. Madjos* (*Masonic Contractor*) ruled that the fact that the company provided identification cards and uniforms and the vague affidavit of the purported employer were sufficient evidence to prove the existence of employer-employee relationship. x x x Here, the totality of petitioner's evidence and the admissions of Kalookan Slaughterhouse convinces the Court that petitioner was indeed an employee of Kalookan Slaughterhouse. Petitioner was able to present an I.D., gate passes, log sheets, and a trip ticket. Kalookan Slaughterhouse even admitted through De Guzman that uniforms were given to all personnel, including petitioner. x x x All the foregoing show that Kalookan Slaughterhouse, through Tablit, was the one who engaged petitioner, paid for his salaries, and in effect had the power to dismiss him. Further, Kalookan Slaughterhouse exercised control over petitioner's conduct through De Guzman. To the mind of the Court, Kalookan Slaughterhouse was petitioner's employer and it exercised its rights as an employer through Tablit and De Guzman, who were its employees.

3. REMEDIAL LAW; PLEADINGS; ALLEGATIONS NOT SPECIFICALLY DENIED ARE DEEMED ADMITTED; CASE AT BAR.— The LA ruled that petitioner's allegation of dismissal was unrebutted as De Guzman only attested to several instances where petitioner was reprimanded for his failure to comply with the slaughterhouse's policy. For the LA, De Guzman did not state that on July 22, 2014 he had barred petitioner from entering for his failure to comply with the policies. x x x Indeed, Kalookan Slaughterhouse failed to specifically deny that on July 22, 2014, petitioner was informed that he could no longer report for work. De Guzman only alleged that he merely barred petitioner from entering the slaughterhouse in several instances because of his failure to wear his I.D. and uniform but he failed to state that this was done on July 22, 2014. De Guzman's silence on this matter is deemed as an admission by Kalookan Slaughterhouse that petitioner was indeed dismissed on July 22, 2014. As the Court held in Masonic Contractors: x x x By their silence, petitioners are deemed to have admitted the same.

Section 11 of Rule 8 of the Rules of Court, which supplements the NLRC Rules, provides that an allegation not specifically denied is deemed admitted. x x x

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Inventor Calma and Partners Law Firm 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 assailing the Decision[2] dated March 29, 2016 and Resolution[3] dated May 30, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 141852. The CA denied the petition for *certiorari* assailing the Decision[4] dated April 30, 2015 and Resolution[5] dated June 22, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03- 000666-15, which reversed the Labor Arbiter's (LA) Decision[6] dated January 27, 2015 finding that petitioner Arnulfo M. Fernandez (petitioner) was illegally dismissed.

Facts

According to petitioner, he was hired in 1994 as a butcher by Kalookan Slaughterhouse, Inc. (Kalookan Slaughterhouse), a single proprietorship owned by respondent Ernesto Cunanan

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[1] *Rollo*, pp. 11-30.

[2] *Id*. at 194-208. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonia-Valenzuela concurring.

[3] *Id*. at 221.

[4] *Id*. at 121-131. Penned by Commissioner Pablo C. Espiritu, Jr., with Presiding Commissioner Alex A. Lopez concurring.

[5] *Id*. at 162-163.

[6] *Id*. at 97-105. Penned by Labor Arbiter Jose Antonio C. Ferrer.

(Cunanan).[7] He claimed that he worked from Monday to Sunday, from 6:30P.M. to 7:30A.M., with a daily wage of ₱700.00, which was later reduced to ₱500.00.[8] He further claimed that he met an accident while driving Kalookan Slaughterhouse's truck in December 2013 and that deductions were made from his wages.[9] He questioned these deductions in July 2014, and thereafter he was treated unreasonably.[10] Petitioner further claimed that on July 21, 2014, he suffered from a headache and did not report for work.[11] The next day, however, he was shocked when he only received ₱200.00 due to his previous undertime and was informed that he could no longer report for work due to his old age.[12]

Kalookan Slaughterhouse, on the other hand, asserted that petitioner is an independent butcher working under its Operation Supervisor, Cirilo Tablit (Tablit).[13] He received payment based on the number of hogs he butchered and was only required to be in the slaughterhouse when customers brought hogs to be slaughtered.[14] Kalookan Slaughterhouse alleged that it imposed policies on the entry to the premises, which applied to employees, dealers, independent butchers, hog and meat dealers and trainees.[15] According to Kalookan Slaughterhouse, petitioner violated the policies and he misconstrued the disallowance to enter the slaughterhouse as an act of dismissal. [16]

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[7] *Id*. at 76, and 195.

[8] *Id*. at 195-196.

[9] *Id*. at 195, 196.

[10] *Id*. at 196.

[11] *Id*.

[12] *Id*. at 55 and 196.

[13] *Id*. at 196.

[14] *Id*.

[15] *Id*.

[16] *Id*.

LA Decision

On August 5, 2014, petitioner filed the complaint for illegal dismissal before the LA. After the exchange of pleadings, the LA ruled that petitioner was illegally dismissed. The dispositive portion of the LA Decision states:

> **WHEREFORE**, premises considered, judgment is hereby rendered declaring the complainant to have been illegally dismissed by the respondents as a regular employee. Conformably, respondent Kalookan Slaughter House and its owner, respondent Ernesto N. Cunanan, are hereby ordered, jointly and severally, to pay the complainant backwages computed from [the] time of dismissal until finality of this Decision and separation pay, which equivalent (*sic*) to one (1) month salary per year of service, counted from time of engagement until finality of this Decision.
>
> As of this date, complainant's backwages and separation pay are tentatively computed at ₱84,500.00 and ₱260,000.00, respectively.
>
> Respondents Kalookan Slaughter House and Ernesto N. Cunanan are further ordered, jointly and severally, to pay the complainant the following:
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> | | | |
> |---|---|---|
> | Service Incentive Leave Pay | - | ₱ 7,500.00 |
> | 13th Month Pay | - | 39,000.00 |
> | Night Shift Differential | - | 1,462.50 |
> | Attorney's Fees | - | 39,246.25 |
>
> All other claims are denied.
>
> **SO ORDERED**.[17]

The LA found that the requisites of an employer-employee relationship were established as follows: petitioner was hired by Kalookan Slaughterhouse through Tablit and petitioner was paid his daily wage for his butchering services.[18] Further, Kalookan Slaughterhouse had authority to discipline petitioner as regards his work activities through Kalookan Slaughterhouse's

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[17] *Id*. at 104-105.

[18] *Id*. at 101.

personnel named Noelberto De Guzman (De Guzman).[19] Kalookan Slaughterhouse also exercised control over the conduct of petitioner in the performance of his work and implemented policies regulating his rendition of services. In fact, De Guzman admitted to the strict policies imposed by Kalookan Slaughterhouse such as the requirement of I.D.s, uniforms, and even where butchering knives are inserted. According to De Guzman, petitioner violated all of these.[20] The policies implemented showed that petitioner could not render butchering services following his own ways and means. The LA also found that petitioner presented his I.D. issued by Kalookan Slaughterhouse, which proved that he was an employee of Kalookan Slaughterhouse.[21]

The LA also ruled that Kalookan Slaughterhouse failed to prove its claim that petitioner was not its employee. The LA ruled that Kalookan Slaughterhouse failed to prove that Tablit, who was its employee, was an independent or job contractor. As its Operations Supervisor, Tablit was deemed to have acted in the interest of Kalookan Slaughterhouse. And since Tablit engaged petitioner, petitioner is deemed an employee of Kalookan Slaughterhouse.[22]

The LA thus found that petitioner was illegally dismissed when he was told on July 22, 2014 that he could no longer work due to his old age. For the LA, this was not a just or valid cause to terminate petitioner's employment and it was an arbitrary and whimsical act of Kalookan Slaughterhouse.[23] Given the foregoing, petitioner was entitled to backwages and separation pay. Petitioner was also entitled to service incentive leave pay, 13th month pay, and night shift differential pay as

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[19] *Id*.

[20] *Id*.

[21] *Id*. at 102.

[22] *Id*. at 100-101.

[23] *Id*. at 103.

Kalookan Slaughterhouse failed to prove that petitioner was paid the foregoing.[24]

NLRC Decision

Aggrieved, Kalookan Slaughterhouse appealed to the NLRC, which reversed the LA. The dispositive portion of the NLRC Decision states:

> WHEREFORE, premised on all the foregoing considerations, the Decision appealed from is hereby **REVERSED** and **SET ASIDE** and a new one is entered **DISMISSING** the above-entitled case for lack of employer-employee relationship.
>
> SO ORDERED.[25]

The NLRC ruled that although there was a semblance of employer-employee relationship as the work of a butcher is necessary and desirable in the usual trade and business of a slaughterhouse, the facts and circumstances in this case showed that there was no employer-employee relationship.[26] The NLRC ruled that it was normal and usual practice in slaughterhouses to engage the services of butchers on a contractual or per piece basis.[27] Petitioner was an independent contractor and not an employee of Kalookan Slaughterhouse because there was no regular payroll showing his name and the legal deductions made from his salary. There were also no pay slips, and the money he received from Tablit showed that he was an independent butcher and not an employee of Kalookan Slaughterhouse.[28] The NLRC found that the *Sinumpaang Salaysay* of Tablit tends to show that there was no employer-employee relationship between petitioner and Kalookan Slaughterhouse.[29] The NLRC also ruled that petitioner failed

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[24] *Id*. at 103-104.

[25] *Id*. at 130.

[26] *Id*. at 127.

[27] *Id*.

[28] *Id*. at 128.

[29] *Id*. at 129.

to prove any dismissal as he was only barred from entering the premises for his failure to follow the slaughterhouse's policies,[30] but nonetheless ruled that there was just cause to dismiss petitioner as he was found sleeping on duty.[31]

CA Decision

Petitioner questioned the NLRC Decision to the CA through a petition for *certiorari*. The CA, however, denied the petition. The dispositive portion of the CA Decision states:

> **WHEREFORE**, the petition is denied for lack of merit.
>
> **SO ORDERED**.[32]

The CA ruled that petitioner's claim of the existence of an employer- employee relationship is not supported by substantial evidence as he failed to submit salary vouchers, pay slips, daily work schedule and even a certificate of withholding tax on compensation income.[33] The CA found that the gate passes and log sheets that petitioner submitted were not sufficient as the gate passes specifically state that they do not qualify the holder as an employee of Kalookan Slaughterhouse and the log sheets were only for services from September 24 and 28, 2012.[34]

The CA also ruled that petitioner failed to disprove the *Sinumpaang Salaysay* of Tablit that petitioner was one of the butchers that Tablit personally hired and paid when there were too many hogs to be butchered at the slaughterhouse.[35]

Petitioner moved for reconsideration but the CA denied this. Hence, this Petition.

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[30] *Id*. at 129-130.

[31] *Id*. at 129.

[32] *Id*. at 208.

[33] *Id*. at 203.

[34] *Id*.

[35] *Id*. at 204.

Issues

The issues raised in the Petition are as follows:

I

WHETHER THE [CA] COMMITTED A REVERSIBLE ERROR IN AFFIRMING THE NLRC DECISION AND RESOLUTION WHICH FAILED TO RECOGNIZE THAT THERE WAS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PETITIONER AND THE RESPONDENTS.

II

WHETHER THE [CA] COMMITTED A REVERSIBLE ERROR IN AFFIRMING THE NLRC DECISION AND RESOLUTION WHICH FAILED TO RECOGNIZE THAT THERE WAS AN ILLEGAL DISMISSAL IN THE INSTANT CASE.[36]

The Court's Ruling

The Petition is granted.

The conflicting factual findings of the LA *vis-a-vis* the NLRC and the CA warrant a review of the factual findings of the labor tribunals and the CA. As the Court ruled in *Cariño v. Maine Marine Phils., Inc.*:[37]

> As a rule, "[i]n appeals by *certiorari* under Rule 45 of the Rules of Court, the task of the Court is generally to review only errors of law since it is not a trier of facts, a rule which definitely applies to labor cases." As the Court ruled in *Scanmar Maritime Services, Inc. v. Conag:* "But while the NLRC and the LA are imbued with expertise and authority to resolve factual issues, the Court has in exceptional cases delved into them where there is insufficient evidence to support their findings, or too much is deduced from the bare facts submitted by the parties, or the LA and the NLRC came up with conflicting findings x x x."[38]

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[36] *Id*. at 18.

[37] G.R. No. 231111, October 17, 2018.

[38] *Id*. at 5; citations omitted.

Petitioner was an employee of Kalookan Slaughterhouse.

Petitioner submitted the following:

(a) log sheets for three days in September 2012 where it was shown that he reported for work;[39]

(b) three gate passes and one identification card all of which state that he was a butcher;[40] and

(c) a trip ticket showing that on December 30, 2007, petitioner was part of a group who went to Bataan. The trip ticket had a notation that petitioner was a captain of the trip and the truck with Plate Number CJH 377 was driven by a certain Peter.[41]

On the other hand, Kalookan Slaughterhouse presented the following pieces of evidence:

(a) *Sinumpaang Salaysay*[42] of Tablit alleging that he has been an employee of Kalookan Slaughterhouse for more or less 20 years, he was given authority by Cunanan to hire people as hog butchers when the need arose but he himself would be responsible for paying them, and that one of those hog butchers was petitioner, **he did not exercise control over the means and methods of the butchers and he only monitored if they finished their work**, and that Kalookan Slaughterhouse strictly implemented the "No ID, No Entry" Policy, "No Uniform, No Entry" Policy, "No Gate Pass, No Entry" Policy, and that those under the influence of alcohol were prohibited from entering the premises;

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[39] *Rollo*, pp. 64-66.

[40] *Id*. at 89.

[41] *Id*. at 90.

[42] *Id*. at 79.

(b) Photographs of petitioner sleeping in the premises of Kalookan Slaughterhouse;[43]

(c) Photographs of policies implemented by Kalookan Slaughterhouse as listed by Tablit;[44] and,

(d) *Sinumpaang Salaysay*[45] of De Guzman where he alleged that he is a caretaker of Kalookan Slaughterhouse and he knew of petitioner as one of the butchers hired by Tablit; he would often reprimand petitioner for failing to follow Kalookan Slaughterhouse's policies such as when petitioner failed to wear his ID, wear his uniform, and properly store his knives used for butchering. Petitioner would also sometimes come to work with dirty clothes, and there was one time he caught petitioner sleeping. He also alleged that petitioner is Tablit's employee, and that he would only see petitioner when there were many hogs to, be butchered, thus petitioner would not report for work every day.

It is settled that "[t]o determine the existence of an employer--employee relationship, four elements generally need to be considered, namely: (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. These elements or indicators comprise the so-called 'four-fold' test of employment relationship."[46]

From the foregoing, it is undisputed that petitioner rendered butchering services at Kalookan Slaughterhouse. The LA found that petitioner was engaged by Kalookan Slaughterhouse itself since petitioner submitted log sheets and gate passes. The NLRC and the CA, however, ruled that petitioner was only engaged by Tablit, Kalookan Slaughterhouse's Operation

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[43] *Id*. at 80.

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

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

[46] *David v. Macasio*, 738 Phil. 293, 307 (2014).

Supervisor, and he was Tablit's own employee. This was supported by Tablit's *Sinumpaang Salaysay*.

The Court finds that the NLRC and the CA committed a grave error and agrees with the LA.

Similar to the facts of this case, the Court in *Masonic Contractor, Inc. v. Madjos*[47] (*Masonic Contractor*) ruled that the fact that the company provided identification cards and uniforms and the vague affidavit of the purported employer were sufficient evidence to prove the existence of employer-employee relationship. Thus:

> Petitioners' defense that they merely contracted the services of respondents through Malibiran fails to persuade us. The facts of this case show that respondents have been under the employ of MCI as early as 1991. They were hired not to perform a specific job or undertaking. Instead, they were employed as all-around laborers doing varied and intermittent jobs, such as those of drivers, sweepers, gardeners, and even undertakers or *tagalibing*, until they were arbitrarily terminated by MCI in 2004. Their wages were paid directly by MCI, as evidenced by the latter's payroll summary, belying its self-serving and unsupported contention that it paid directly to Malibiran for respondents' services. Respondents had identification cards or gate passes issued not by Malibiran, but by MCI, and were required to wear uniforms bearing MCI's emblem or logo when they reported for work.
>
> It is common practice for companies to provide identification cards to individuals not only as a security measure, but more importantly to identify the bearers thereof as *bona fide* employees of the firm or institution that issued them. The provision of company-issued identification cards and uniforms to respondents, aside from their inclusion in MCI's summary payroll, indubitably constitutes substantial evidence sufficient to support only one conclusion: that respondents were indeed employees of MCI.
>
> Moreover, as correctly observed by the CA, petitioners failed to show that it was Malibiran who exercised control over the means and methods of the work assigned to respondents. Interestingly,

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[47] 620 Phil. 737 (2009).

Malibiran's affidavit is silent on the aspect of control over respondents' means and methods of work. Rather than categorically stating that she was the one who directly employed respondents to render work for MCI, Malibiran merely implies that, like respondents, she was just a co-worker. Malibiran's statement that the work for MCI was merely in the nature of accommodation to help respondents earn a living, in effect, impliedly admits the fact that she did not have the capacity to engage in the independent job-contracting business, and that, therefore, she was not respondents' employer.[48]

Here, the totality of petitioner's evidence and the admissions of Kalookan Slaughterhouse convinces the Court that petitioner was indeed an employee of Kalookan Slaughterhouse. Petitioner was able to present an I.D., gate passes, log sheets, and a trip ticket. Kalookan Slaughterhouse even admitted through De Guzman that uniforms were given to all personnel, including petitioner.

The CA, however, disregarded the gate passes, as it claimed that the gate pass had a note that such did not qualify the holder as an employee.[49] This is an error as this only applied to one of the gate passes and the other gate passes did not have this notation.

Further, petitioner was able to submit an I.D. in addition to the gate passes. The trip ticket and the log sheets also showed that Kalookan Slaughterhouse engaged petitioner. These are sufficient to prove that petitioner was engaged by Kalookan Slaughterhouse.[50]

Kalookan Slaughterhouse, however, attempts to show that even if petitioner worked in the slaughterhouse, he was Tablit's employee. Tablit claims to be an employee of the slaughterhouse for more or less 20 years and that he has engaged petitioner as one of his butchers. Kalookan Slaughterhouse further alleged

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[48] *Id*. at 742-743; citations omitted.

[49] *Rollo*, p. 203.

[50] See *Domasig v. National Labor Relations Commission*, 330 Phil. 518, 524 (1996).

that petitioner's salaries were paid by Tablit. Kalookan Slaughterhouse, however, failed to prove this. In fact, Tablit was not shown to possess substantial capital and investment to have an independent business, be petitioner's employer and pay his salaries. Other than Tablit's *Sinumpaang Salaysay*, no document was presented to show that he paid petitioner's salaries.

Further, by denying that petitioner was its employee but alleging that he rendered services as Tablit's employee, Kalookan Slaughterhouse effectively admitted the substantial fact that petitioner has been rendering butchering services for 20 years from the filing of the complaint on August 5, 2014. As the Court held in *Pamplona Plantation Company v. Acosta*:[51]

> x x x Petitioner is estopped from denying that respondents worked for it. In the first place, it never raised this defense in the proceedings before the Labor Arbiter. Notably, the defense it raised pertained to the nature of respondents' employment, *i.e.*, whether they are seasonal employees, contractors, or worked under the *pakyaw* system. Thus, in its Position Paper, petitioner alleged that some of the respondents are coconut filers and copra hookers or *sakadors*; some are seasonal employees who worked as scoopers or *lugiteros*; some are contractors; and some worked under the *pakyaw* system. In support of these allegations, petitioner even presented the company's payroll, which will allegedly prove its allegations.
>
> By setting forth these defenses, petitioner, in effect, admitted that respondents worked for it, albeit in different capacities. Such allegations are negative pregnants — **denials pregnant with the admission of the substantial facts in the pleading responded to which are not squarely denied, and amounts to an acknowledgement that respondents were indeed employed by petitioner.**[52]

Even worse for Kalookan Slaughterhouse, while Tablit claimed to be petitioner's employer, he also admitted that he did not exercise any control over the means and methods of petitioner in rendering butchering services. If he was indeed petitioner's

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[51] 539 Phil. 305 (2006).

[52] *Id*. at 311; emphasis and underscoring supplied.

employer, he should have control over petitioner's means and methods for doing his job.

It, however, appears on record that De Guzman, who is also an employee of Kalookan Slaughterhouse, was the one who exercised control over petitioner's means and methods as he reprimanded petitioner for his failure to properly store his butchering knives, coming to Kalookan Slaughterhouse with dirty clothes, reporting for work drunk, and not having an I.D. before going to the slaughterhouse.

All the foregoing show that Kalookan Slaughterhouse, through Tablit, was the one who engaged petitioner, paid for his salaries, and in effect had the power to dismiss him. Further, Kalookan Slaughterhouse exercised control over petitioner's conduct through De Guzman. To the mind of the Court, Kalookan Slaughterhouse was petitioner's employer and it exercised its rights as an employer through Tablit and De Guzman, who were its employees.

Petitioner was illegally dismissed and entitled to his money claims.

Petitioner claims that on July 22, 2014 he was callously informed that he could no longer report for work because of his old age.[53] Kalookan Slaughterhouse, however, claims that petitioner was not dismissed but was only barred from entering as he failed to comply with the "No I.D., No Entry" Policy and the "No Uniform, No Entry" Policy.[54]

The LA ruled that petitioner's allegation of dismissal was unrebutted as De Guzman only attested to several instances where petitioner was reprimanded for his failure to comply with the slaughterhouse's policy.[55] For the LA, De Guzman did not state that on July 22, 2014 he had barred petitioner from entering for his failure to comply with the policies.[56]

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[53] *Rollo*, p. 55.

[54] *Id*. at 71.

[55] See *id*. at 103.

[56] See *id*.

The NLRC believed Kalookan Slaughterhouse that petitioner was not allowed to enter since he failed to comply with the slaughterhouse's policy.[57] The CA did not discuss the issue of dismissal as it ruled that petitioner was not an employee of Kalookan Slaughterhouse.[58] The Court finds that the LA was correct in ruling that petitioner was illegally dismissed.

Indeed, Kalookan Slaughterhouse failed to specifically deny that on July 22, 2014, petitioner was informed that he could no longer report for work. De Guzman only alleged that he merely barred petitioner from entering the slaughterhouse in several instances because of his failure to wear his I.D. and uniform but he failed to state that this was done on July 22, 2014. De Guzman's silence on this matter is deemed as an admission by Kalookan Slaughterhouse that petitioner was indeed dismissed on July 22, 2014. As the Court held in *Masonic Contractors*:

> x x x By their silence, petitioners are deemed to have admitted the same. Section 11 of Rule 8 of the Rules of Court, which supplements the NLRC Rules, provides that an allegation not specifically denied is deemed admitted. x x x[59]

Having been illegally dismissed, the LA was correct in awarding backwages and separation pay.

The LA's award of service incentive leave pay, night shift differential pay, and 13th month pay is also proper as Kalookan Slaughterhouse failed to prove that it had paid petitioner such benefits under the law.[60] Such award should be limited to three years prior to the filing of the complaint in August 5, 2014 in accordance with Article 306 of the Labor Code.[61]

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[57] *Id*. at 130.

[58] *Id*. at 203-207.

[59] *Masonic Contractor, Inc. v. Madjos*, *supra* note 47, at 744; citations omitted.

[60] *Rollo*, p. 104.

[61] ART. 306. [291] *Money Claims*. — All money claims arising from employer-employee relations accruing during the effectivity of this Code

Finally, Kalookan Slaughterhouse is likewise liable for legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full satisfaction.

The Court, however, notes that petitioner's counsel manifested that it was informed of petitioner's death but that his heirs failed to provide a death certificate. Petitioner's counsel also sought to request a death certificate from the Philippine Statistics Authority, which in turn, issued a certificate that it had no record of death of any person under the name of petitioner.[62]

Generally, the computation of backwages and separation pay is computed until the finality of the decision that awarded them. However, given the foregoing, the LA and petitioner's counsel are directed to confirm petitioner's death, and if confirmed, the LA is directed to compute petitioner's backwages and separation pay only until his death.[63]

WHEREFORE, premises considered, the Petition is **GRANTED.** The Decision dated March 29, 2016 and Resolution dated May 30, 2016 of the Court of Appeals in CA-G.R. SP No. 141852 are **REVERSED** and **SET ASIDE**. The January 27, 2015 Decision of the Labor Arbiter in NLRC NCR Case No. 08-09779-14 is **REINSTATED**, and the Labor Arbiter is **DIRECTED** to recompute the backwages and separation pay following the above guidelines.

Kalookan Slaughterhouse Incorporated is likewise liable for legal interest of six percent (6%) per annum on the award of backwages and separation pay computed from the finality of this Decision until full satisfaction.

SO ORDERED.

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

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shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

[62] *Rollo*, p. 257.

[63] See *Divine Word College of Laoag v. Mina*, 784 Phil. 546, 559 (2016).

THIRD DIVISION

[G.R. No. 225710. June 19, 2019]

RICARDO VERIÑO *y* PINGOL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165, AS AMENDED (COMPREHENSIVE DANGEROUS DRUGS ACT); ILLEGAL POSSESSION OF DANGEROUS DRUG; ELEMENTS.—** To substantiate an accusation of illegal possession of a dangerous drug, the prosecution must show that: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.

2. **ID.; ID.; REQUIREMENTS UNDER SECTION 21 THEREOF; STRICT COMPLIANCE THEREWITH MUST BE OBSERVED BY THE HANDLING OFFICERS TO GUARANTEE THE INTEGRITY AND IDENTITY OF SEIZED DRUGS.—** As to the *corpus delicti*, Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, imposes x x x requirements for the manner of custody and disposition of confiscated, seized, and/or surrendered drugs, and/or drug paraphernalia prior to the filing of a criminal case. x x x These established precautions in the handling of seized dangerous drugs are needed since narcotic substances are not easily identifiable and are prone to alteration or tampering. The chain of custody, as a method of authenticating a dangerous drug presented as evidence, ensures that the identity of the seized drugs will not be put in doubt. When it comes to Section 21, this Court has repeatedly stated that the handling officers must observe strict compliance to guarantee the integrity and identity of seized drug. Thus, acts that "approximate compliance but do not strictly comply with Section 21 have been considered insufficient."

3. ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS UNDER JUSTIFIABLE GROUNDS SHALL NOT RENDER VOID AND INVALID THE SEIZURES AND CUSTODY OVER THE SEIZED ITEMS AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— Nonetheless, while strict compliance is the expected standard, the Comprehensive Dangerous Drugs Act recognized that it may not always be possible in every situation. Hence, the law's Implementing Rules and Regulations introduced a saving clause, which was eventually incorporated in Section 21 when the law was amended by Republic Act No. 10640. x x x The saving clause may be appreciated in the prosecution's favor if noncompliance with Section 21 was justified and the integrity and evidentiary value of the seized dangerous drug were preserved. Thus, the prosecution has the burden of explaining why Section 21 was not strictly complied with and proving its proffered justifiable ground during trial. Here, an inventory of the items seized from petitioner was prepared by SPO3 Sanchez, the investigating officer. However, despite the clear requirements under Section 21, the inventory was only witnessed by an elected public official. The prosecution failed to explain why the inventory was not signed by petitioner or his representative and a representative of the National Prosecution Service or the media, as mandated by law. x x x Another lapse was the prosecution's failure to present a photograph of the inventory, despite PO1 Verde's testimony that at least two (2) people took photos during the inventory. Again, the prosecution failed to explain this blatant noncompliance with Section 21.

4. ID.; ID.; ID.; WHEN THE AMOUNT OF DANGEROUS DRUG SEIZED IS MINISCULE, THE PROBABILITY OF TAMPERING, PLANTING, OR CONTAMINATING THE EVIDENCE IS GREATEST, THUS, EXACTING COMPLIANCE WITH SECTION 21 IS NECESSARY; UNJUSTIFIED NON-COMPLIANCE WITH SECTION 21 CREATES A SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY AND CASTS DOUBT ON THE IDENTITY OF THE *CORPUS DELICTI*; CASE AT BAR.— *People v. Holgado* warns that the danger of tampering with and planting evidence is inversely proportional to the amount of dangerous drug seized. A minescule amount of dangerous drug magnifies the probability of planting, tampering, or contaminating evidence, which explains the need for exacting

compliance with Section 21: 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." Here, the prosecution claimed that the police officers recovered three (3) sachets of *shabu* from petitioner, with one (1) sachet containing 0.02 gram and the other two (2) sachets containing 0.05 gram each. These minuscule amounts should have prompted the lower courts to demand from the police officers strict compliance with the legal safeguards under Section 21, instead of allowing the prosecution to misguidedly seek refuge under the saving clause and the presumption of regularity accorded to State agents. It has not escaped this Court's attention that the prosecution did not even bother to proffer a justifiable cause for the lapses. Nonetheless, its indifference to the legal safeguards was rewarded by the lower courts, which ruled that despite noncompliance, the prosecution proved the integrity and identity of the seized sachets. The lower courts are mistaken. The unjustified noncompliance with Section 21 creates a substantial gap in the chain of custody and casts doubt on the identity of the *corpus delicti*.

5. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT REMEDY THE GAPS IN THE CHAIN OF CUSTODY CREATED BY THE UNEXPLAINED LAPSES AS THE LAPSES THEMSELVES ARE CLEAR PROOF OF IRREGULARITY; NOT STRONGER THAN THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED.— The gaps in the chain of custody created by the unexplained lapses cannot be remedied by a presumption of regularity in the performance of official duties, as the lapses themselves are clear proof of irregularity. The presumption of regularity in the performance of official duty "stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused."

6. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; CALLS FOR MORAL CERTAINTY, NOT ABSOLUTE CERTAINTY, SINCE THE CONSCIENCE MUST BE SATISFIED THAT THE ACCUSED IS RESPONSIBLE FOR THE OFFENSE CHARGED; CASE AT BAR.— Notably, there were noticeable discrepancies between the prosecution witnesses' testimonies and the prosecution's documentary evidence. PO1 Verde testified that at around 5:00 p.m. of April 4, 2014, he received a tip from a concerned citizen about petitioner's illegal activities in Marulas Public Market. Yet, the Coordination Form filled out by PO3 Fabreag for the surveillance on petitioner was prepared at 3:20 p.m. that same day, a good two (2) hours before PO1 Verde supposedly received the information on petitioner. PO3 Fabreag was not presented to explain this discrepancy. Similarly, the April 4, 2014 Pre-Operation Report signed by Chief Inspector Ruba had Prudencio Jun Cuabo *alias* Madonna or Bunso as its target. The prosecution, likewise, failed to explain why petitioner was not indicated as the target in the Pre-Operation Report. x x x However, despite PO1 Verde's statement that only Chief Inspector Ruba could explain why petitioner's name was not indicated as a target in the Pre-Operation Report, the prosecution did not present him as its witness. These discrepancies, coupled with the flagrant noncompliance with Section 21, create reasonable doubt as to whether PO1 Verde received a tip regarding petitioner, whether a surveillance was conducted on him, and ultimately, whether he was caught possessing dangerous drugs. A conviction in criminal proceedings requires proof beyond reasonable doubt, as defined under Rule 133, Section 2 of the Revised Rules on Evidence. x x x The quantum of proof beyond reasonable doubt springs from no less than the Bill of Rights, which recognizes every person's right to be presumed innocent until proven otherwise. Proof beyond reasonable doubt does not require absolute certainty; rather, it calls for moral certainty since "[t]he conscience must be satisfied that the accused is responsible for the offense charged." The prosecution is tasked with establishing an accused's guilt purely on the strength of its own evidence, not on the weakness of the accused's defense. The prosecution failed in its task. Petitioner, then, must be acquitted.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONEN, *J.*:

State agents are expected to strictly comply with the legal safeguards under Section 21 of Republic Act No. 9165, as amended. Should there be noncompliance,the prosecution must prove that a justifiable cause existed and that the integrity and evidentiary value of the seized item were preserved for the saving clause in Section 21 to be appreciated in favor of State agents.

This Court resolves the Petition for Review on *Certiorari*[1] assailing the January 6, 2016 Decision[2] and June 28, 2016 Resolution[3] of the Court of Appeals in CA-G.R. CR No. 36796. The Court of Appeals affirmed the conviction of accused-appellant Ricardo Veriño *y* Pingol @ "Ricky" (Veriño) for violating Section 11 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

On April 7, 2014, Veriño was charged with violating Section 11 of the Comprehensive Dangerous Drugs Act. The accusatory portion of the Information[4] read:

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[1] *Rollo*, pp. 12-39.

[2] *Id*. at 41-51. The Decision was penned by Associate Justice Noel G. Tijam (now a retired member of this Court), and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. of the Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 53-54. The Resolution was penned by Associate Justice Noel G. Tijam (now a retired member of this Court), and concurred in by Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr. of the Fourth Division, Court of Appeals, Manila.

[4] *Id*. at 55.

On or about April 4, 2014, in Valenzuela City and within the jurisdiction of this Honorable Court, the accused, without any authority of law, did then and there willfully, unlawfully and knowingly have in his possession and control three (3) heat-sealed transparent plastic sachets each containing zero point zero two (0.02) gram, zero point zero five (0.05) gram and zero point zero five (0.05) gram of white crystalline substance found to be methamphetamine hydrochloride (*shabu*), knowing them to be dangerous drugs.

CONTRARY TO LAW.[5]

When arraigned, Veriño pleaded not guilty to the crime charged. Trial on the merits soon followed.[6]

The prosecution presented Police Officer 1 Harison T. Verde (PO1 Verde)[7] and Police Chief Inspector Lourdeliza G. Cejes[8] (Chief Inspector Cejes) as its witnesses. The defense had Veriño[9] as its sole witness.

The facts for the prosecution showed that at around 5:00 p.m. on April 4, 2014, PO1 Verde of the Station Anti-Illegal Drugs of the Valenzuela Police Station received a phone call tagging Veriño as a dangerous drugs seller in Marulas Public Market, Valenzuela City. The informant also described Veriño's hair and mustache.[10]

PO1 Verde informed Police Chief Inspector Allan R. Ruba (Chief Inspector Ruba) of the tip. In turn, Chief Inspector Ruba created a group composed of PO1 Verde, SPO3 Ronald Sanchez (SPO3 Sanchez), PO3 Fabreag, and PO3 Hernandez to conduct the buy-bust operation.[11]

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[5] *Id*.

[6] *Id*. at 42.

[7] *Id*. at 81-83.

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

[9] *Id*. at 84.

[10] *Id*. at 42.

[11] *Id*.

At around 9:00 p.m., the team went to Marulas Public Market, parked about five (5) meters away from Veriño's reported store, and from their service vehicle, surveyed the area. Around an hour later, the police officers saw Veriño come out a store and meet a man, with whom he showed a plastic sachet.[12] The officers slowly walked toward them, but the unidentified man saw them and shouted, "*Mga pulis*!" before running away.[13]

PO1 Verde managed to grab Veriño, while PO1 Verde seized two (2) plastic sachets from his hand and another sachet from his pocket. PO1 Verde also retrieved four (4) ₱50.00 bills, two (2) ₱100.00 bills, and a cellphone from Veriño's pocket.[14]

PO1 Verde then placed the three (3) seized sachets "in two (2) small brown envelope bags, marked with his initials 'HTV-1[,]' 'HTV-2[,]' and 'HTV-3[,]'"[15] before sealing and signing the envelopes in the other officers' presence.[16] The whole team then went to Barangay Marulas and inventoried the seized items in the presence of Barangay Kagawad Ivan Viray (Barangay Kagawad Viray).[17]

PO1 Verde turned the seized items over to SPO3 Sanchez, who then prepared the Request for Laboratory Examination[18] and Request for Drug Test.[19] PO3 Juanito Macaraeg (PO3 Macaraeg) received the requests, and forwarded them to Chief Inspector Cejes for laboratory examination.[20]

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[12] *Id*. at 43.

[13] *Id*.

[14] *Id*. at 92-93.

[15] *Id*. at 43.

[16] *Id*.

[17] *Id*. at 95.

[18] *Id*. at 101.

[19] Id. at 103.

[20] *Id*. at 104-105.

The pertinent portions of Chemistry Report No. D-212-14 submitted by Chief Inspector Cejes read:

SPECIMEN SUBMITTED:

A — One (1) tape-sealed brown evidence envelope with markings "SAID-SOTG, VCPS "A" 4/4/14 with signature" further contains one (1) heat-sealed transparent plastic sachet with markings "HTV-1 04/04/14 with signature" containing 0.02 gram of white crystalline substance and marked as A-1.

B — One (1) tape-sealed brown evidence envelope with markings "SAID-SOTG, VCPS "B" 4/4/14 with signature" further contains two (2) heat-sealed transparent plastic sachet with markings "HTV-2 and 3 04/04/14 with signature" containing 0.05 gram of white crystalline substance and marked as B-1 and B-2.

PURPOSE OF LABORATORY EXAMINATION:

. . . . . .

To determine the presence of dangerous drugs....

FINDINGS:

Qualitative examination conducted on the above stated specimens A-1, B-1 and B-2 gave POSITIVE result to the tests for the presence of Methamphetamine Hydrochloride, a dangerous drugs. (*sic*)

CONCLUSION:

Specimens A-1, B-1 and B-2 contain Methamphetamine Hydrochloride, a dangerous drug.[21]

In the Initial Laboratory Report,[22] Chief Inspector Cejes found that the urine sample taken from Veriño tested positive for the presence of methamphetamine hydrochloride or *shabu*.

In his defense, Veriño stated that he was closing his store at the market when he was suddenly arrested by police officers, who then planted sachets of *shabu* in his pocket.[23]

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[21] *Id*. at 102.

[22] *Id*. at 104.

[23] *Id*. at 84.

Veriño also claimed that the police officers had originally intended to arrest a different person, but arrested him instead after that person escaped.[24]

In its July 25, 2014 Decision,[25] the Regional Trial Court found Veriño guilty of the crime charged against him. It ruled that all the elements for illegal possession of a dangerous drug were present and proven by the prosecution. Furthermore, PO1 Verde was able to identify the seized evidence when they were presented in court.[26]

The Regional Trial Court also noted the police officers' compliance with the Comprehensive Dangerous Drugs Act when they prepared an inventory of the seized items in the presence of a Barangay Kagawad Viray, an elected public official. It stressed that minor deviations from the legally mandated procedure were not fatal to the prosecution's case, when the lapses could be explained by justifiable grounds. It, likewise, underscored that without contrary evidence, police officers enjoyed the presumption of regularity in the performance of their duties.[27]

The dispositive portion of the Regional Trial Court Decision read:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding accused RICARDO VERIÑO *y* PINGOL @ RICKY guilty beyond reasonable doubt of the crime charged of possession of three (3) plastic sachets of *shabu*, with a total weight of 0.12 grams, and he is hereby sentenced to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum to fourteen (14) years, as maximum, and to pay a **FINE** of Three Hundred Thousand Pesos (Php300,000.00). With costs. His preventive imprisonment shall be credited in full to his favor.

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[24] *Id*.

[25] *Id*. at 79-91. The Decision, in Crim. Case No. 419-V-14, was penned by Presiding Judge Evangeline M. Francisco of Branch 270, Regional Trial Court, Valenzuela City.

[26] *Id*. at 84-89.

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

Upon finality of this judgment, the OIC/Branch Clerk of Court is directed to turn-over (*sic*) the subject sachets of *shabu* to PDEA for proper disposal.

SO ORDERED.[28] (Emphasis in the original)

On July 30, 2014, Veriño filed a Notice of Appeal.[29] The Regional Trial Court found the appeal to be in order and directed that the case records be transmitted to the Court of Appeals.[30]

On January 6, 2016, the Court of Appeals rendered a Decision[31] affirming the findings of the Regional Trial Court.

The Court of Appeals confirmed that the prosecution successfully proved all the elements of illegal possession of dangerous drugs under Article II, Section 11 of the Comprehensive Dangerous Drugs Act.[32] It also held that the police officers' failure to strictly comply with Article II, Section 21 of the same law was not fatal to their case because they had preserved the integrity and evidentiary value of the seized sachet by presenting an unbroken chain of custody.[33]

The Court of Appeals saw no reason to doubt the veracity of the prosecution witnesses' testimonies, underscoring the presumption of regularity in the police officers' performance of their duties.[34]

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, the Decision dated July 25, 2014 of the Regional Trial Court of Valenzue1a City, Branch 270, in Criminal Case

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[28] *Id*. at 91.

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

[30] *Id*. at 110.

[31] *Id*. at 41-51.

[32] *Id*. at 46.

[33] *Id*. at 49.

[34] *Id*. at 49-50.

No. 419-V-14, finding Accused-Appellant Ricardo Veriño *y* Pingol@ "Ricky", guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs of Section 11, Article II of Republic Act No. 9165, and sentenced him to suffer the indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum to fourteen (14) years, as maximum and to pay a fine of Three Hundred Thousand Pesos (Php300,000.00) is hereby **AFFIRMED**.

SO ORDERED.[35] (Emphasis in the original)

Veriño moved for reconsideration, but his Motion[36] was denied in the Court of Appeals' June 28, 2016 Resolution.[37]

Hence, Veriño filed this Petition for Review on *Certiorari*.[38]

Petitioner claims that the police officers failed to comply with Article II, Section 21 of the Comprehensive Dangerous Drugs Act.[39] He pointed out that he did not sign the inventory, and no representative from the Department of Justice or the media was present when the inventory was conducted. Furthermore, the prosecution allegedly failed to present as evidence the photographs that were allegedly taken when the seized sachets were being inventoried.[40] Petitioner maintains that the prosecution failed to proffer any justifiable ground for the procedurallapses.[41]

Claiming that the prosecution failed to show an unbroken chain of custody in the seized sachets, petitioner points out the inconsistency between the officers' testimonies. PO1 Verde testified that after turning the sachets over to SPO3 Sanchez, he saw the latter hand the sachets over to Chief Inspector Cejes. On the other hand, Chief Inspector Cejes testified that

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

[36] *Id*. at 138-145.

[37] *Id*. at 53-54.

[38] *Id*. at 12-39.

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

[40] *Id*. at 20-24.

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

she received the sachets from PO3 Macaraeg, who was not presented as a witness.[42]

Petitioner, likewise, points out that the Pre-Operation Report,[43] which was prepared by Chief Inspector Ruba, did not refer to him, but to a certain Prudencio Jun Cuabo *alias* Madonna or Bunso, as the operation's target.[44]

In its Comment,[45] respondent People of the Philippines, represented by the Office of the Solicitor General, submits that the Petition should be dismissed outright for raising questions of fact in a Rule 45 petition. Moreover, it asserts that this Court should respect the consistent factual findings of the Regional Trial Court and the Court of Appeals.[46]

Nonetheless, respondent insists that the prosecution proved the identity and integrity of the three (3) sachets seized from petitioner through an unbroken chain of custody.[47] It also asserts that the prosecution proved petitioner's guilt beyond reasonable doubt.[48]

The sole issue for this Court's resolution is whether or not the prosecution proved petitioner Ricardo Veriño y Pingol @ "Ricky"'s guilt beyond reasonable doubt despite its failure to show strict compliance with the required procedure under Section 21 of the Comprehensive Dangerous Drugs Act, as amended.

To substantiate an accusation of illegal possession of a dangerous drug, the prosecution must show that:

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[42] *Id*. at 25-27.

[43] *Id*. at 97.

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

[45] *Id*. at 155-184.

[46] *Id*. at 160-163.

[47] *Id*. at 168-174.

[48] *Id*. at 178-180.

(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond reasonable doubt.[49]

As to the *corpus delicti*, Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, imposes the following requirements for the manner of custody and disposition of confiscated, seized, and/or surrendered drugs, and/or drug paraphernalia prior to the filing of a criminal case:

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

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

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[49] *People v. Morales*, 630 Phil. 215, 228 (2010) [Per *J.* Del Castillo, Second Division] *citing People v. Darisan*, 597 Phil. 479, 485 (2009) [Per *J.* Corona, First Division] and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per *J.* Tinga, Second Division].

apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items[;]

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

These established precautions in the handling of seized dangerous drugs are needed since narcotic substances are not easily identifiable and are prone to alteration or tampering. The chain of custody, as a method of authenticating a dangerous drug presented as evidence, ensures that the identity of the seized drugs will not be put in doubt.[50]

When it comes to Section 21, this Court has repeatedly stated that the handling officers must observe strict compliance[51] to

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[50] *People v. Jaafar*, 803 Phil. 582 (2017) [Per J. Leonen, Second Division].

[51] *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 (2013) [Per J. Bersamin,

guarantee the integrity and identity of seized drug. Thus, acts that "approximate compliance but do not strictly comply with Section 21 have been considered insufficient."[52]

Nonetheless, while strict compliance is the expected standard, the Comprehensive Dangerous Drugs Act recognized that it may not always be possible in every situation. Hence, the law's Implementing Rules and Regulations introduced a saving clause, which was eventually incorporated in Section 21 when the law was amended by Republic Act No. 10640. The saving clause reads:

> *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.

The saving clause may be appreciated in the prosecution's favor if noncompliance with Section 21 was justified and the integrity and evidentiary value of the seized dangerous drug were preserved. Thus, the prosecution has the burden of explaining why Section 21 was not strictly complied with[53] and proving its proffered justifiable ground during trial.[54] In *People v. Umipang*:[55]

> Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or

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First Division]; and *People v. Carin*, 645 Phil. 560 (2010) [Per *J.* Carpio Morales, Third Division].

[52] *People v. Que*, G.R. No. 212994, January 31, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/63900> [Per *J.* Leonen, Third Division].

[53] *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].

[54] *People v. De Guzman*, 630 Phil. 637, 660 (2010) [Per *J.* Nachura, Third Division].

[55] 686 Phil. 1024 (2012) [Per *J.* Sereno, Second Division].

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.[56] (Citations omitted)

Here, an inventory[57] of the items seized from petitioner was prepared by SPO3 Sanchez, the investigating officer.[58] However, despite the clear requirements under Section 21, the inventory was only witnessed by an elected public official. The prosecution failed to explain why the inventory was not signed by petitioner or his representative and a representative of the National Prosecution Service or the media, as mandated by law.

When the Regional Trial Court asked why only the elected public official signed the inventory, PO1 Verde explained that he did not prepare the inventory and was in no position to know the protocol behind the inventory of items seized from operations. He added that SPO3 Sanchez should know the protocol for inventory-taking since he prepared the inventory.[59] However, the prosecution never presented SPO3 Sanchez as its witness.

Another lapse was the prosecution's failure to present a photograph of the inventory, despite PO1 Verde's testimony

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[56] *Id*. at 1053-1054.

[57] *Rollo*, p. 95.

[58] *Id*. at 22.

[59] *Id*. at 21-24.

that at least two (2) people took photos during the inventory.[60] Again, the prosecution failed to explain this blatant noncompliance with Section 21.

Nonetheless, despite the glaring lapses committed by the police officers, the Court of Appeals,[61] as well as the Regional Trial Court,[62] did not deem them fatal to the prosecution's case, reasoning that the prosecution has established all the links in the chain of custody, and that the police officers enjoyed the presumption of regularity in the performance of their duties.

The Court of Appeals is mistaken.

People v. Holgado[63] warns that the danger of tampering with and planting evidence is inversely proportional to the amount of dangerous drug seized. A minuscule amount of dangerous drug magnifies the probability of planting, tampering, or contaminating evidence, which explains the need for exacting compliance with Section 21:

> 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."[64]

Here, the prosecution claimed that the police officers recovered three (3) sachets of shabu from petitioner, with one (1) sachet containing 0.02 gram and the other two (2) sachets containing 0.05 gram each. These minuscule amounts should have prompted

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[60] *Id*. at 22.

[61] *Id*. at 49-50.

[62] *Id*. at 90.

[63] 741 Phil. 78 (2014) [Per *J*. Leonen, Third Division].

[64] *Id*. at 99 *citing Mallillin v. People*, 576 Phil. 576, 588 (2008) [Per *J*. Tinga, Second Division].

the lower courts to demand from the police officers strict compliance with the legal safeguards under Section 21, instead of allowing the prosecution to misguidedly seek refuge under the saving clause and the presumption of regularity accorded to State agents.

It has not escaped this Court's attention that the prosecution did not even bother to proffer a justifiable cause for the lapses. Nonetheless, its indifference to the legal safeguards was rewarded by the lower courts, which ruled that despite noncompliance, the prosecution proved the integrity and identity of the seized sachets.

The lower courts are mistaken. The unjustified noncompliance with Section 21 creates a substantial gap in the chain of custody and casts doubt on the identity of the *corpus delicti*. *Mariñas v. People*[65] explained:

> 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.[66] (Emphasis supplied)

The gaps in the chain of custody created by the unexplained lapses cannot be remedied by a presumption of regularity in the performance of official duties, as the lapses themselves are clear proof of irregularity.[67] The presumption of regularity

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[65] G.R. No. 232891, July 23, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64388> [Per J. Reyes, Jr., Second Division].

[66] *Id*.

[67] *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, 770 [Per J. Bersamin, First Division].

in the performance of official duty "stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused."[68]

Notably, there were noticeable discrepancies between the prosecution witnesses' testimonies and the prosecution's documentary evidence. PO1 Verde testified that at around 5:00 p.m. of April 4, 2014, he received a tip from a concerned citizen about petitioner's illegal activities in Marulas Public Market. Yet, the Coordination Form[69] filled out by PO3 Fabreag for the surveillance on petitioner was prepared at 3:20 p.m. that same day, a good two (2) hours before PO1 Verde supposedly received the information on petitioner. PO3 Fabreag was not presented to explain this discrepancy.

Similarly, the April 4, 2014 Pre-Operation Report[70] signed by Chief Inspector Ruba had Prudencio Jun Cuabo *alias* Madonna or Bunso as its target. The prosecution, likewise, failed to explain why petitioner was not indicated as the target in the Pre-Operation Report:

Q By the way, Mr. witness, what is the *alias* of the accused?
A (PO1 Verde) Ricky, Ma'am.

Q Not Bunso?
A No Ma'am.

Q Not Madonna?
A No Ma'am.

Q It is not Prudencio Jun Curabo (*sic*)?
A No Ma'am.

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[68] *People v. Mendoza*, 736 Phil. 749, 770 (2014) [Per *J.* Bersamin, First Division].

[69] *Rollo*, p. 96.

[70] *Id*. at 97.

Q You identified earlier the Pre-Operation Report, Exhibit "E" for the prosecution. **Can you point to me as to where in this Pre-Operation Report is the name of the accused?**

A It was indicated here, Ma'am, along the Marulas area. **Hindi po nailagay ni Sir yung pangalan niya.**

The Court:

Sa Marulas lang?

Witness:

Yes, Your Honor.

The Court:

Why did you not put the name of the target?

Witness:

[no answer]

The Court:

Or you are not in a position to know that?

Witness:

Yes, Your Honor. I am not the one who made coordination.

The Court:

He is not in the position to know that, counsel. He cannot testify on that.[71] (Emphasis in the original)

However, despite PO1 Verde's statement that only Chief Inspector Ruba could explain why petitioner's name was not indicated as a target in the Pre-Operation Report, the prosecution did not present him as its witness.

These discrepancies, coupled with the flagrant noncompliance with Section 21, create reasonable doubt as to whether PO1 Verde received a tip regarding petitioner, whether a surveillance was conducted on him, and ultimately, whether he was caught possessing dangerous drugs.

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

A conviction in criminal proceedings requires proof beyond reasonable doubt, as defined under Rule 133, Section 2 of the Revised Rules on Evidence:

SECTION 2. *Proof beyond reasonable doubt*. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

The quantum of proof beyond reasonable doubt springs from no less than the Bill of Rights, which recognizes every person's right to be presumed innocent until proven otherwise.[72] Proof beyond reasonable doubt does not require absolute certainty; rather, it calls for moral certainty since "[t]he conscience must be satisfied that the accused is responsible for the offense charged."[73]

The prosecution is tasked with establishing an accused's guilt purely on the strength of its own evidence, not on the weakness of the accused's defense. The prosecution failed in its task. Petitioner, then, must be acquitted.

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[72] CONST., Art. III, Sec. 14(2) provides:

. . . . . .

(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.

[73] *People v. Ganguso*, 320 Phil. 324, 335 (1995) [Per *J*. Davide, Jr., First Division] *citing People v. Casinillo*, 288 Phil. 688 (1992) [Per *J*. Davide, Jr., Third Division].

WHEREFORE, the Petition is **GRANTED**. The January 6, 2016 Decision and June 28, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 36796 are **REVERSED and SET ASIDE**. Petitioner Ricardo Veriño *y* Pingol @"Ricky" 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 New Bilibid Superintendent of the Bureau of Corrections for immediate implementation. The 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 the seized sachet of *shabu* over to the Dangerous Drugs Board for destruction in accordance with law.

SO ORDERED.

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

Peralta (*Chairperson*) and *Hernando, JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 227748. June 19, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDDIE VERONA,** *accused,* **EFREN VERONA and EDWIN VERONA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; FACT OF THE CRIME AND THE FACT THAT THE ACCUSED IS THE

PERPETRATOR OF THE CRIME MUST BE PROVEN BY THE PROSECUTION WITH PROOF BEYOND REASONABLE DOUBT TO CONVICT AN ACCUSED.— Every criminal conviction requires the prosecution to prove two things with the same quantum of evidence of proof beyond reasonable doubt: (1) the fact of the crime, *i.e.*, the presence of all of the elements of the crime for which the accused stands charged; and (2) the fact that the accused is the perpetrator of the crime. It is basic that when a crime is committed, the first duty of the prosecution is to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the crime is established.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURT AS TO THE CREDIBILITY OF WITNESSES ARE ACCORDED GREAT WEIGHT AND RESPECT WHEN NO GLARING ERRORS, GROSS MISAPPREHENSION OF FACTS, AND SPECULATIVE, ARBITRARY AND UNSUPPORTED CONCLUSIONS CAN BE GATHERED FROM SUCH FINDINGS; INCONSISTENCIES MAY BE DISREGARDED IF THEY DO NOT IMPAIR THE ESSENTIAL VERACITY OF THE TESTIMONY OF A WITNESS.— Efren and Edwin put much weight on the inconsistent testimony given by Eva Castaño regarding the first time she saw Efren and Edwin. In her sworn affidavit, she recounted that she first saw Efren and Edwin *before* the jeepney left. On the other hand, in her direct testimony, she testified that she first saw them *after* the jeepney had left. Finally, on cross-examination, she admitted that she knew Efren and Edwin even before the incident happened because she was a member of the cooperative in Brgy. Cansamada, a barangay Efren and Edwin frequented. The above inconsistencies are minor details which do not detract from Eva Castaño's credibility. These inconsistencies may be disregarded if they do not impair the essential veracity of the testimony of a witness. The eyewitness's confusion regarding the first time she saw Efren and Edwin does not affect in any manner the facts constituting the commission of the crime. The inconsistencies in her sworn affidavit and in-court testimonies were minimal and immaterial. Even if she was approximately 12 meters away from the *locus criminis* and considering that she testified in court three years after the incident, Eva Castaño was still categorical and

consistent in the material details of her affidavit and testimony, that is, the identities of Efren and Edwin and the commission of the crime of murder. Furthermore, we agree with the Office of the Solicitor General that "findings of fact of the trial court as to the credibility of witnesses are accorded great weight and respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions can be gathered from such findings." This is because the trial court is in a better position to decide the question of credibility of witnesses, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has overlooked certain facts of substance and value.

3. **ID.; ID.; ID.; ALIBI AND DENIAL; WHERE THE PROSECUTION EYEWITNESS WAS FAMILIAR WITH THE ACCUSED, WHERE THE *LOCUS CRIMINIS* AFFORDED GOOD VISIBILITY AND WHERE NO IMPROPER MOTIVE CAN BE ATTRIBUTED TO THE WITNESS FOR TESTIFYING AGAINST THE ACCUSED, THEN THE VERSION OF THE STORY OF THE WITNESSES PREVAILS OVER ALIBI AND DENIAL AND DESERVES MUCH WEIGHT; CASE AT BAR.—** Weighing the versions of the prosecution and the defense, the Regional Trial Court found that Efren and Edwin's defenses of alibi and denial did not prove the impossibility of their physical presence at the time and scene of the crime. We agree with the Regional Trial Court that the testimony of the sole eyewitness, Eva Castaño, was credible and straightforward. x x x Where the prosecution eyewitness was familiar with the accused, where the *locus criminis* afforded good visibility and where no improper motive can be attributed to the witness for testifying against the accused; then the witness's version of the story prevails over alibi and denial and deserves much weight.

4. **CRIMINAL LAW; MURDER; ELEMENTS.—** The following elements were proven to sustain the conviction for murder: (1) that a person was killed; (2) that the accused killed said person; (3) that the killing was attended by the qualifying circumstances in Article 248 of the Revised Penal Code, such as treachery; and (4) that the killing is not parricide or infanticide.

5. **ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; A SUDDEN AND UNEXPECTED ATTACK BY THE**

AGGRESSORS ON THE UNSUSPECTING VICTIM, DEPRIVING THE LATTER OF ANY REAL CHANCE TO DEFEND HIMSELF, THEREBY ENSURING ITS COMMISSION WITHOUT RISK TO THE AGGRESSORS, AND WITHOUT THE SLIGHTEST PROVOCATION ON THE PART OF THE VICTIM; ESTABLISHED IN CASE AT BAR.— Manuel's killing in this case was attended with treachery — a sudden and unexpected attack by the aggressors on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victim. In this case, the qualifying circumstance of treachery was correctly appreciated by the lower courts given the manner by which Efren and Edwin killed Manuel. x x x The sudden attack by Efren and Edwin with stab blows and 33-cm. long *bolos* against an unsuspecting Manuel while he was riding the jeepney caught the victim by surprise. Manuel was clearly unprepared and had no means to put up a defense. Such aggression ensured the commission of the crime without risk on Efren and Edwin. Treachery was attendant not only because of the suddenness of the attack but also due to the absence of opportunity to repel the aggression.

6. **ID.; ID.; ABUSE OF SUPERIOR STRENGTH; NECESSARILY INCLUDED IN TREACHERY; CASE AT BAR.—** Regarding the qualifying circumstance of abuse of superior strength, we agree with Efren and Edwin and the finding of the Court of Appeals that abuse of superior strength is deemed absorbed in treachery. Since treachery qualifies the crime of murder, the generic aggravating circumstance of abuse of superior strength is necessarily included in the former.

7. **ID.; CONSPIRACY; WHEN PRESENT; DIRECT PROOF IS NOT ESSENTIAL TO PROVE CONSPIRACY FOR IT MAY BE DEDUCED FROM THE ACTS OF THE ACCUSED BEFORE, DURING, AND AFTER THE COMMISSION OF THE CRIME CHARGED, FROM WHICH IT MAY BE INDICATED THAT THERE IS COMMON PURPOSE TO COMMIT THE CRIME; CASE AT BAR.—** Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Direct proof is not essential to prove

conspiracy for it may be deduced from the acts of the accused before, during, and after the commission of the crime charged, from which it may be indicated that there is common purpose to commit the crime. In this case, the hacking acts of Efren and Edwin, when taken together with the stabbing act of Efren, reveal a commonality and unity of criminal design. The defense cannot aver that Dioscoro and Eddie's mere act of carrying a weapon is not an overt act reflective of conspiracy because clearly, such act is in line with the crime of murder. Regardless of the extent and character of Dioscoro and Eddie's respective active participation, once conspiracy is proved, all of the conspirators are liable as co-principals. The act of one is the act of all.

8. ID.; MURDER; PENALTY IN CASE AT BAR.— Under Article 248 of the Revised Penal Code, the penalty for the crime of murder qualified by treachery is *reclusion perpetua* to death. However, pursuant to Republic Act No. 9346 proscribing the imposition of death penalty, and there being no aggravating circumstance that attended the commission of the crime, the penalty to be imposed on Efren and Edwin should be *reclusion perpetua*.

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

CARPIO, *J.*:

The Case

This is an ordinary appeal to reverse the 1 August 2016 Decision[1] of the Court of Appeals in CA-G.R. CEB-CR HC No. 01481 which affirmed with modification the 20 February

[1] *Rollo*, pp. 4-15. Penned by Associate Justice Germano Francisco D. Legaspi, with Executive Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap concurring.

2012 Judgment[2] of the Regional Trial Court of Tacloban City, Branch 6, in Criminal Case No. 99-01-42, finding accused Eddie Verona (Eddie) and accused-appellants Efren and Edwin Verona (Efren and Edwin) guilty beyond reasonable doubt of the crime of murder for the death of Manuel Tingoy (Manuel).

The Charge

In an Information signed by Provincial Prosecutor Teresita S. Lopez, Eddie, Efren, and Edwin were charged with the crime of murder penalized under Article 248 of the Revised Penal Code. The accusatory portion of the Information reads:

> That on or about the 27th day of October, 1998, in the Municipality of Tanauan, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to kill, with treachery and abuse of superior strength, did then and there wil[l]fully, unlawfully and feloniously performed the following acts, to wit: accused Dioscoro Verona and Eddie Verona flagged down the passenger jeepney driven by Romeo Ortega and when the vehicle stopped, accused Efren Verona, Edwin Verona and Edgar Verona suddenly and unexpectedly took turns in hacking and stabbing Manuel Tingoy with the use of short *bolos* and a long *bolo* which the said accused provided themselves for the purpose while accused Rogelio Verona who was also armed with a *bolo*, stood on guard, thereby inflicting multiple incised and stab wounds on the different parts of the body of Manuel Tingoy which were the direct and immediate cause of his death.
>
> CONTRARY TO LAW.[3]

During their arraignment on 22 November 1999, Dioscoro Verona, the father of Eddie and Edgar Verona, Efren and Edwin pleaded not guilty. A pre- trial conference was conducted on 7 December 1999. Trial on the merits of the case ensued thereafter.

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[2] CA *rollo*, pp. 13-25. Penned by Assisting Judge Lauro A.P. Castillo, Jr.

[3] *Rollo*, p. 6.

The prosecution presented two witnesses: (1) Ms. Eva Castaño, a passerby riding a motorcyle; and (2) Dr. Nemia Yebron-Sangrano, the Municipal Health Officer of Dagami, Leyte. The prosecution also formally offered in evidence documentary Exhibit "A" and series, the medico-legal necropsy report issued on 28 October 1998 by Dr. Nemia Yebron-Sangrano, and Exhibit "B" and series, a sketch of the human anatomy with printed name and signature of Dr. Nemia Yebron-Sangrano.[4]

The defense presented the testimonies of the following witnesses: (1) Edwin Verona, (2) Efren Verona, and (3) Dioscoro Verona.

Dioscoro Verona died while under detention.[5] Eddie Verona remains at large.[6]

Version of the Prosecution

Below is the version of facts of the prosecution as cited in the Decision of the Court of Appeals:

Around 8:40 in the morning of October 27, 1998, Romeo Ortega (Ortega) was driving his passenger jeepney known as "Valizing" along the highway in Barangay Guingauan, Tanauan, Leyte. The "Valizing" which was plying the Burauen-Tacloban City route, had Manuel [Tingoy] as conductor. The jeepney came from Burauen, Leyte and was on its way to Tacloban City.

Dioscoro and Eddie flagged down the jeepney and Ortega stopped to let them aboard. Suddenly Edgar, who was then standing on the left side of the jeepney, tried to stab Ortega with a "pisao" (short *bolo*). However, it was the right hand of Arlene Yepes, the passenger seated on the left side of Ortega, that was hit. Seeing Arlene Yepes wounded, Ortega immediately drove off.

Ortega knew Edgar as the conductor of "7 Brothers," a competitor transportation company plying the same route-Burauen-Tacloban City.

As the "Valizing" left, Eva Castaño, who was then riding a

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[4] CA *rollo*, p. 5.

[5] *Id*. at 16.

[6] *Rollo*, p. 4.

motorcycle twelve meters behind the said jeepney saw Dioscoro, Eddie, Edwin, Edgar and Efren. Dioscoro, Eddie and Edwin carried long bolos, about 70 em. in length, while Edgar and Efren carried short bolos, about 33-34 em. in length. Eva Castaño also saw Rogelio Verona standing near a barangay tanod outpost, about six meters away from the "Valizing."

Eva Castaño knew Efren, Edwin and Eddie even before the October 27, 1998 incident because she used to go to Cansamada, Dagami, Leyte where said accused lived and had seen them in the place.

Manuel, the conductor, was then holding on with both hands on the "Valizing" and was standing on its rear step board. Suddenly, Efren and Eddie stabbed Manuel at the back, causing the latter to fall on the ground. As Manuel lay flat on the ground, Edwin hacked Manuel on the head and many times on the body. Edgar also hacked Manuel. Dioscoro was seen holding a *bolo* as he stood near Manuel.

Dr. Nemia Yebron Sangrano, Municipal Health Officer of Dagami, Leyte, examined the dead body of Manuel. In her Medico- Legal Necropsy Report, she determined the death of Manuel as severe hemorrhage due to multiple stab wounds. The wounds sustained by the victim were:

x x x x x x x x x

Dr. Sangrano identified wounds numbers 1, 2, 3 and 6 as fatal because such wounds injured vital organs and major blood vessels. She opined that the incised and stab wounds could have been inflicted by a sharp-edged instrument, such as a *bolo*.[7]

Version of the Defense

On the other hand, the version of facts of the defense as cited in the same Decision is as follows:

The defense presented appellants Edwin, Efren and Dioscoro.

Appellant Edwin declared that he was in Barangay Guingauan, Tanauan, Leyte on October 27, 1998 and was waiting for the results of the Jai-Alai game. After an hour, his brother Edgar and Manuel, the victim, were fighting. He ran inside the house of a certain person

[7] *Id*. at 6-8.

nicknamed "Caradol" to get a long *bolo*. His house was 30 meters away from the place where Edgar and Manuel were fighting. At the time he saw them, Edgar and Manuel were delivering stab thrusts at each other. Edgar, who was smaller than Manuel, was armed with a long *bolo*, while Manuel was armed with a short *bolo*. After about 20 minutes of fighting, Manuel fell down because he sustained wounds on his head and nape. Edgar was wounded on the finger of his left hand. [After] Manuel fell down, Edwin left and went to his nipa hut in his ricefield in Barangay Cansamada, Dagami, Leyte. Edgar remained in the place. At the time that Edgar and Manuel were fighting, Efren did not get involved. Edwin did not know where Dioscoro was during the fight and he does not know Eva Castaño.

The second defense witness was Efren. On October 27, 1998, he was in the house of his uncle, Manuel Manubay, in Barangay Cansamada East and was watching television. The night before, he also watched television and went to bed at nine o' clock in the evening. Most of the time, he spends his evenings in said house since it is big and he can watch television. The house of his father is located from the house of his uncle Manuel Manubay. He stayed in the house of his uncle until noontime of October 27, 1998 and left for home. After the incident, he just stayed in Barangay Cansamada until he was arrested by the police [i]n September 1999. He does not know Manuel.

Dioscoro was the last defense witness. He died during the pendency of the case but after he testified in court. He testified that he was in the barangay hall of Barangay Cansamada East on October 27, 1998 and was on duty as a barangay councilor. He was implicated in the case and came to know that he was included three months after the incident. During those three months, he stayed in their house and did what he customarily does. The distance from Barangay Cansamada East and Barangay Guingauan, Tanauan, Leyte is about two kilometers. Edwin and Efren are his sons. He did not know about what the prosecution witnesses testified against them.[8]

The Ruling of the Regional Trial Court

In its Judgment dated 20 February 2012, the Regional Trial Court found Efren and Edwin guilty beyond reasonable doubt of the crime of murder with the presence of the aggravating

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

circumstances of treachery, abuse of superior strength, intent to kill, and conspiracy attending the commission of the crime. The Regional Trial Court held that the version of the prosecution was more "credible and believable and in accord with ordinary human experience."[9] The dispositive portion of the Judgment reads:

> WHEREFORE, premises considered, Judgment is hereby rendered, finding the accused EFREN VERONA and EDWIN VERONA, Guilty beyond reasonable doubt of Murder in Criminal Case No. 99-01-42 and each one of them is hereby sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole. They are also hereby ORDERED to jointly and severally indemnify the Heirs of Manuel Tingoy, the sum of Php75,000.00 for civil indemnity *ex delict[o]*; Php75,000.00 for moral damages; and Php30,000.00 for exemplary damages.
>
> Both accused EFREN VERONA and EDWIN VERONA are however ACQUITTED from the charge for Attempted Murder in Criminal Case No. 99-0l-40 due to insufficiency of evidence.
>
> No pronouncement as to costs.
>
> SO ORDERED.[10]

The Ruling of the Court of Appeals

In its Decision dated 1 August 2016, the Court of Appeals affirmed with modification the Judgment of the Regional Trial Court, stating that "a trial court's findings of fact are entitled to great weight and will not be disturbed on appeal," especially if no facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal. The Court of Appeals thus held:

> WHEREFORE, this appeal is DENIED. The *Judgment* dated 20 February 2012 of Branch 6 of the Regional Trial Court of Tacloban City in Crim. Case No. 99-01-42 is AFFIRMED with MODIFICATION. The phrase "without eligibility for parole" in the penalty is DELETED.

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

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

SO ORDERED.[11]

The Issue

Whether or not Eddie (at large), Efren, and Edwin are guilty of the crime of murder penalized under Article 248 of the Revised Penal Code.

The Ruling of the Court

The appeal is unmeritorious. Efren and Edwin's defenses of alibi and denial deserve no credence since they were not able to prove the impossibility of their physical presence at the time and scene of the incident.

Efren and Edwin alleged the following grounds in their appeal:

1. Prosecution witness, Eva Castaño, was not credible and reliable, thus, the guilt of appellants [was] not proven beyond reasonable doubt;

2. The trial court erred in finding that conspiracy attended the commission of the crime despite the prosecution's failure to establish and prove it;

3. The trial court erred in appreciating the aggravating circumstance of treachery despite the failure of the prosecution to establish and prove it; and

4. The trial court erred in appreciating the qualifying circumstance of abuse of superior strength when it should have been absorbed in treachery.

Inconsistencies may be disregarded if they do not impair the essential veracity of a witness's testimony.

Every criminal conviction requires the prosecution to prove two things with the same quantum of evidence of proof beyond reasonable doubt: (1) the fact of the crime, *i.e.*, the presence of all of the elements of the crime for which the accused stands

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[11] *Rollo*, p. 15.

charged; and (2) the fact that the accused is the perpetrator of the crime.[12] It is basic that when a crime is committed, the first duty of the prosecution is to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the crime is established.[13]

Efren and Edwin allege that the prosecution eyewitness, Eva Castaño, was not credible and reliable because *first*, there were material inconsistencies and substantial contradictions in her statements, and *second*, her relative position from the crime scene did not possibly afford her good visibility for her to recognize the faces of the assailants.[14]

Efren and Edwin put much weight on the inconsistent testimony given by Eva Castaño regarding the first time she saw Efren and Edwin. In her sworn affidavit, she recounted that she first saw Efren and Edwin *before* the jeepney left. On the other hand, in her direct testimony, she testified that she first saw them *after* the jeepney had left. Finally, on cross-examination, she admitted that she knew Efren and Edwin even before the incident happened because she was a member of the cooperative in Brgy. Cansamada, a barangay Efren and Edwin frequented.[15]

The above inconsistencies are minor details which do not detract from Eva Castaño's credibility. These inconsistencies may be disregarded if they do not impair the essential veracity of the testimony of a witness.[16] The eyewitness's confusion regarding the first time she saw Efren and Edwin does not affect in any manner the facts constituting the commission of the crime. The inconsistencies in her sworn affidavit and in-court testimonies were minimal and immaterial. Even if she

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[12] *People v. Ayola*, 416 Phil. 861, 871 (2001).

[13] *People v. Sinco*, 408 Phil. 1, 12 (2001).

[14] CA *rollo*, p. 62.

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

[16] *People v. Ramos*, 315 Phil. 435, 443 (1995).

was approximately 12 meters away from the *locus criminis* and considering that she testified in court three years after the incident, Eva Castaño was still categorical and consistent in the material details of her affidavit and testimony, that is, the identities of Efren and Edwin and the commission of the crime of murder.

Furthermore, we agree with the Office of the Solicitor General that "findings of fact of the trial court as to the credibility of witnesses are accorded great weight and respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions can be gathered from such findings."[17] This is because the trial court is in a better position to decide the question of credibility of witnesses, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has overlooked certain facts of substance and value.[18]

Weighing the versions of the prosecution and the defense, the Regional Trial Court found that Efren and Edwin's defenses of alibi and denial did not prove the impossibility of their physical presence at the time and scene of the crime. We agree with the Regional Trial Court that the testimony of the sole eyewitness, Eva Castaño, was credible and straightforward:

> [T]he Court has found the version of the prosecution to be credible[,] believable [and] in accord with ordinary human experience. The eyewitness, Eva Castaño is also a resident of Dagami, Leyte and it was reasonable to believe her claim that she personally knows the accused. Her narration of the incident was clear, categorical and consistent in their material points. x x x. Certainly, a person witnessing something as gruesome as the killing of a man by several men acting in concert with one another is something which is not easily erased in one's memory. Here in this case, the said eyewitness took the witness stand in the year 2001 or 3 years after the killing of the victim. Despite the lapse of said period of time, she was able to accurately describe what she saw. x x x. Moreover, not anyone among the accused

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[17] CA *rollo*, p. 116.

[18] *People v. Quijon*, 382 Phil. 339, 347 (2000).

ascribed any ill-will or ill-motive on her part as reason for her testimony.[19]

Where the prosecution eyewitness was familiar with the accused, where the *locus criminis* afforded good visibility and where no improper motive can be attributed to the witness for testifying against the accused, then the witness's version of the story prevails over alibi and denial and deserves much weight.[20]

The elements of murder and of conspiracy were proven.

Both the Regional Trial Court and the Court of Appeals correctly held that the prosecution sufficiently proved Efren and Edwin's guilt beyond reasonable doubt. The following elements were proven to sustain the conviction for murder: (1) that a person was killed; (2) that the accused killed said person; (3) that the killing was attended by the qualifying circumstances in Article 248 of the Revised Penal Code, such as treachery; and (4) that the killing is not parricide or infanticide.[21]

Manuel's killing in this case was attended with treachery - a sudden and unexpected attack by the aggressors on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victim.[22]

In this case, the qualifying circumstance of treachery was correctly appreciated by the lower courts given the manner by which Efren and Edwin killed Manuel. The Regional Trial Court, being in the best position to have assessed the evidence on record and heard the testimony of Eva Castaño, held that:

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

[20] *People v. Quijon*, *supra* note 18, at 348.

[21] *People v. Sally*, G.R. No. 232616, 21 January 2019.

[22] *People v. Punzalan, Jr.*, 700 Phil. 793, 811 (2012).

The evidence very clearly established that the victim was stabbed immediately after the Jeepney he was riding — the victim then was positioned at the rear, standing on the stepboard of the vehicle — was stopped by the accused. Prosecution eyewitness Eva Castaño categorically and in simple terms described the manner in which the accused killed the victim: Efren Verona delivered the first stab blow on the victim. After Manuel Tingoy fell to the ground, Edwin Verona hacked the victim on the head and the body using his weapon; Edgar Verona also hacked the victim using his own 33 cms[.] long bolo; Efren Verona utilized his own 33 cms[.] long bolo to stab the victim at the back of his body; and Efren first stabbed the victim, and followed by Edwin. At the time he was first stabbed, Manuel Tingoy was standing on the step board of the Jeepney [and] was holding on the bars.[23]

The sudden attack by Efren and Edwin with stab blows and 33-cm. long *bolos* against an unsuspecting Manuel while he was riding the jeepney caught the victim by surprise. Manuel was clearly unprepared and had no means to put up a defense. Such aggression ensured the commission of the crime without risk on Efren and Edwin. Treachery was attendant not only because of the suddenness of the attack but also due to the absence of opportunity to repel the aggression.

Regarding the qualifying circumstance of abuse of superior strength, we agree with Efren and Edwin and the finding of the Court of Appeals that abuse of superior strength is deemed absorbed in treachery. Since treachery qualifies the crime of murder, the generic aggravating circumstance of abuse of superior strength is necessarily included in the former.[24]

As for the issue of conspiracy, Efren and Edwin alleged in their Brief that "the facts of the case were wanting of any overt acts that are reflective of any conspiracy amongst the five accused."[25] However, in the same Brief, Efren and Edwin cited the direct testimony of Eva Castaño which revealed that

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[23] CA *rollo*, p. 22.

[24] *People v. Manzano*, G.R. No. 217974, 5 March 2018.

[25] *CA rollo*, p. 70.

"after the victim was first stabbed at the back by accused-appellant Efren, the other accused Edwin did the hacking thrust, followed by Edgar; while the other two accused, Dioscoro and Eddie, were merely described x x x as being there carrying a weapon."[26]

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during, and after the commission of the crime charged, from which it may be indicated that there is common purpose to commit the crime.[27]

In this case, the hacking acts of Efren and Edwin, when taken together with the stabbing act of Efren, reveal a commonality and unity of criminal design. The defense cannot aver that Dioscoro and Eddie's mere act of carrying a weapon is not an overt act reflective of conspiracy because clearly, such act is in line with the crime of murder. Regardless of the extent and character of Dioscoro and Eddie's respective active participation, once conspiracy is proved, all of the conspirators are liable as co-principals. The act of one is the act of all.[28]

Thus, considering all of the foregoing, Efren and Edwin's conviction for the crime of murder must stand.

Under Article 248 of the Revised Penal Code, the penalty for the crime of murder qualified by treachery is *reclusion perpetua* to death. However, pursuant to Republic Act No. 9346[29] proscribing the imposition of death penalty, and there being no aggravating circumstance that attended the commission of the crime, the penalty to be imposed on Efren and Edwin should be *reclusion perpetua*.

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[26] *Id*. at 69.

[27] *People v. Callao*, G.R. No. 228945, 14 March 2018.

[28] *Id*.

[29] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

With respect to the award of damages, we affirm and find in accordance with prevailing jurisprudence[30] the amounts adjudged by the Regional Trial Court, which were affirmed by the Court of Appeals, that must be awarded to the heirs of Manuel Tingoy, to wit: (1) civil indemnity at Seventy-Five Thousand Pesos (₱75,000.00); (2) moral damages at Seventy-Five Thousand Pesos (₱75,000.00); and (3) exemplary damages at Thirty Thousand Pesos (₱30,000.00). All these monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals in CA-G.R. CEB-CR HC No. 01481, which affirmed with modification the 20 February 2012 Judgment of the Regional Trial Court of Tacloban City, Branch 6, in Criminal Case No. 99-01-42, is **AFFIRMED** with the **MODIFICATION** that all 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.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

SECOND DIVISION

[G.R. No. 228822. June 19, 2019]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CCC,**[1] *appellant.*

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[30] *People v. Roxas*, 780 Phil. 874, 887-888 (2016).

[1] In accordance with Amended Administrative Circular No. 83-2015, the identities of the parties, records and court proceedings are kept

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— The elements of qualified rape are as follows: (1) sexual congress; (2) with a woman; (3) done by force, threat, or intimidation and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree of the victim, or the common-law spouse of the parent of the victim. The actual force, threat, or intimidation that is an element of rape under Article 266-A, paragraph (1) (a) is no longer required to be present because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. In this case, we find that the prosecution was not able to sufficiently prove all the elements of qualified rape. The age of AAA was proven by the Certificate of Live Birth, which was identified by AAA's mother BBB in open court. According to her Certificate of Live Birth, AAA was born on 13 May 1991. Thus, when the first alleged incident happened in January of 2004, AAA was only twelve (12) years and seven (7) months old. As to the relationship of AAA and CCC, BBB testified that CCC was indeed the father of AAA, and that AAA was using her maiden name because she gave birth to AAA before she married CCC. During the preliminary conference, CCC admitted that he is the father of AAA. However, CCC argues that the prosecution failed to prove beyond reasonable doubt that there was sexual intercourse between him and AAA because AAA's testimony was expunged from the records; and thus, there was no basis to find him guilty of the crime of rape. We agree. x x x To be convicted of rape under Article 266-A, paragraph (1) of the Revised Penal Code (RPC), it must be proven that CCC had carnal knowledge of AAA, and that it had been done by force, threat, or intimidation. While it can be argued that the moral ascendancy of CCC over AAA can sufficiently substitute for force, threat, or intimidation, the prosecution still failed to prove the sexual intercourse between AAA and CCC as an element of qualified rape.

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confidential by replacing their names and other personal circumstances with fictitious initials, and by blotting out the specific geographical location that may disclose the identities of the victims.

2. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; TESTIMONIAL KNOWLEDGE; A WITNESS MAY NOT TESTIFY ON WHAT HE/SHE MERELY LEARNED, READ, OR HEARD FROM OTHERS BECAUSE SUCH TESTIMONY IS CONSIDERED HEARSAY AND MAY NOT BE RECEIVED AS PROOF OF TRUTH OF WHAT HE/SHE HAS LEARNED, READ, OR HEARD; CASE AT BAR.— We find that the CA was correct in not appreciating the testimony of BBB in relation to what AAA allegedly told her about the instances of rape by CCC. The Revised Rules on Evidence provide: Section 36. *Testimony generally confined to personal knowledge; hearsay excluded*. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules. A witness may not testify on what she merely learned, read, or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what she has learned, read, or heard. Thus, her testimony as to what AAA told her has no probative value for being merely hearsay.

3. ID.; ID.; ID.; OPINION OF ORDINARY WITNESSES; TESTIMONY OF A WITNESS ON THE HANDWRITING WITH WHICH HE/SHE HAS SUFFICIENT FAMILIARITY MAY BE RECEIVED IN EVIDENCE; CASE AT BAR.— The CA mainly relied on the handwritten letter of AAA, which was identified by her mother BBB in open court, to find that CCC is guilty of the crimes of rape. BBB was familiar with her daughter's handwriting; and thus, she was able to identify the penmanship of her daughter. Under the Rules of Court, BBB's opinion is admissible in evidence: Rule 130, Section 50. *Opinion of ordinary witnesses*. — The opinion of a witness for which proper basis is given, may be received in evidence regarding - (a) the identity of a person about whom he has adequate knowledge; (b) a handwriting with which he has sufficient familiarity; and (c) the mental sanity of a person with whom he is sufficiently acquainted. The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person. The letter was left by AAA when she ran away from home sometime after the alleged incidents, which began on the wake of BBB's mother as referred to by AAA in the letter. BBB herself testified that she noticed a change in behavior in AAA.

4. ID.; ID.; ID.; TESTIMONIAL KNOWLEDGE; A MEDICO-LEGAL WHO DID NOT WITNESS THE ACTUAL INCIDENT, CANNOT TESTIFY ON WHAT HAD HAPPENED TO THE VICTIM BECAUSE SUCH TESTIMONY WOULD NOT BE BASED ON PERSONAL KNOWLEDGE OR DERIVED FROM HIS/HER OWN PERCEPTION; CASE AT BAR.— [T]he testimony of Dr. Dianco does not prove that CCC raped his daughter. We have consistently held that a medico-legal, who did not witness the actual incident, cannot testify on what had happened to the victim because such testimony would not be based on personal knowledge or derived from his own perception. At most, such findings are corroborative and the testimony of the medico-legal can only suggest what most likely happened but does not establish facts. While Dr. Dianco examined the physical state of AAA, she did not witness CCC raping his daughter. Thus, the findings of Dr. Dianco still are insufficient to hold CCC guilty of the crimes charged.

5. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; CONVICTION IN A CRIMINAL CASE MUST BE SUPPORTED BY PROOF BEYOND REASONABLE DOUBT THAT THE ACCUSED IS INDEED GUILTY OF THE CRIME CHARGED; ACQUITTAL OF THE ACCUSED, PROPER IN CASE AT BAR.— A conviction in a criminal case must be supported by proof beyond reasonable doubt that the accused is indeed guilty of the crime charged. The prosecution has the primordial duty to present a detailed account of every alleged crime as it is given ample resources of the government to present a logical and realistic account of every alleged crime. To repeat, in criminal litigation, the evidence of the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the defense. In this case, we are constrained to reverse the RTC and the CA rulings because the prosecution failed to prove the guilt of CCC beyond reasonable doubt. While the prosecution was given ample time and opportunity to present the testimony of AAA, it failed to do so, partly because of AAA's and BBB's refusal to attend the hearings. While unfortunate, we cannot uphold the conviction of CCC as there were no admissible testimonies or evidence to prove that CCC committed the crimes charged against him. The circumstantial evidence in this case — the change in behavior of AAA and CCC, the handwritten letter of AAA, and the

medico-legal report - are insufficient to prove the guilt of CCC beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

On appeal is the 22 June 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06686 which affirmed with modification the 20 August 2013 Consolidated Decision[3] of Branch 81 of the Regional Trial Court (RTC) of Romblon, Romblon, in Criminal Case Nos. 2566, 2567, 2568 and 2569, finding appellant CCC guilty beyond reasonable doubt of four (4) counts of rape.

The Facts

CCC was charged with the crime of rape in four Informations, as follows:

Criminal Case No. 2566

That on or about the 7th day of January 2004, at around 10:00 o'clock in the evening, in x x x, province of Romblon, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously had [*sic*] carnal knowledge of her [*sic*] own daughter, AAA, being then 12 years of age at the time of the rape incident, without her consent and against her will.

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[2] *Rollo*, pp. 2-23. Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios concurring.

[3] CA *rollo*, pp. 18-29. Penned by Judge Designate Jose M. Madrid.

That the aggravating/qualifying circumstance that the above-named accused is the ascendant or the father of the victim, AAA, is attendant to this crime of rape.

Contrary to law.[4]

Criminal Case No. 2567

That on or about the 9th day of January 2004, at around 10:00 o'clock in the evening, in x x x, province of Romblon, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously had [sic] carnal knowledge of her [sic] own daughter, AAA, being then 12 years of age at the time of the rape incident, without her consent and against her will.

That the aggravating circumstance that the above-named accused is the ascendant or the father of the victim, AAA, is attendant to this crime of rape.

[Contrary to law].[5]

Criminal Case No. 2568

That on or about the 27th day of January 2004, at around 11:00 o'clock in the evening, in x x x, province of Romblon, Philippines and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously had [sic] carnal knowledge of her [sic] own daughter, AAA, being then 12 years of age at the time of the rape incident, without her consent and against her will.

That the aggravating circumstance that the above-named accused is the ascendant or the father of the victim, AAA, is attendant to this crime of rape.

[Contrary to law].[6]

Criminal Case No. 2569

That on or about the 3rd day of February 2004, at around 10:00 o'clock in the evening, in x x x, province of Romblon, Philippines

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

[5] *Id*. at 18.

[6] *Id*. at 18-19.

and within the jurisdiction of this Honorable Court, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously had [sic] carnal knowledge of her [sic] own daughter, AAA, being then 12 years of age at the time of the rape incident, without her consent and against her will.

That the aggravating circumstance that the above-named accused is the ascendant or the father of the victim, AAA, is attendant to this crime of rape.

[Contrary to law].[7]

The prosecution presented as its first witness the Municipal Health Officer of Rural Health Unit of Romblon, Dr. Rowena R. Dianco (Dr. Dianco), who testified that on 19 March 2004 she conducted a physical and genital examination on AAA and observed that AAA's hymen was no longer intact and that it had been ruptured but healed. Dr. Dianco opined that the possible penetration had happened about a month prior. She also identified the Medico-Legal Certification dated 19 March 2004.

On 13 June 2006, the prosecution presented its second witness BBB, the mother of AAA. BBB claimed that CCC was the father of AAA. BBB explained that AAA used the maiden name of BBB because at the time when BBB gave birth to AAA, she and CCC were not yet married. BBB and CCC married only on 17 June 2002. BBB identified AAA's Certificate of Live Birth in open court which stated that AAA was born on 13 May 1991. AAA was only twelve (12) years old when the alleged incidents happened.

Sometime after the alleged incidents of rape, BBB noticed that AAA had a sudden change in attitude, who became very quiet and aloof, and also in a periodic state of shock. BBB also noticed a sudden change in the behavior of CCC who could no longer stay at home.

BBB testified that AAA ran away from home, leaving behind a handwritten letter. BBB identified the handwritten letter of

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[7] *Id*. at 19.

AAA in open court, which she left when she ran away from home. The undated letter of AAA reads:

Front Page

MAHAL KONG MAGULANG SANA MAUNAWAAN NINYO AKO KUNG ANo ang aking NARARAMDAMAN NAIS KO SANANG MALAMAN NINYO ANG SINASABI KUnG MANYAK. YUN AY WALA NG IBA KUNDI x x x AY ANG WALA KUNG ~~KWENT~~ HIYANG AMA.

Back Page

GINAWA NYA YON SA AKIN AY NG UMALIS KAYO Ni ONYOT 7 Bises NiYA iYON GINAWA SA Akin SIMULA NG NAMATAY SI LOLA.

Hang[g]ang dito nalang an[g] sulat kamay kung pangit: Good By[e]! MAMA I LOVE [YOU].[8]

When BBB found AAA, she confronted her daughter as to why she ran away from home. AAA revealed that she had been raped by CCC seven (7) times, the first incident happening during the wake of BBB's mother. AAA also revealed to BBB that CCC tied a piece of cloth around her mouth to prevent her from shouting and that he also threatened and overpowered her. BBB asked AAA if she wanted to file a criminal case against CCC. When AAA expressed her willingness to do so, they went to the police station and went to see Dr. Dianco.

On the same day that BBB's testimony was terminated, the prosecution presented its last witness, the complainant AAA. For lack of material time, she was not able to testify. The following hearing was cancelled due to inclement weather, but was noted in the return by SPO2 Pacifico A. Caleja. Jr. that AAA and BBB refused to sign the subpoena because they were uncertain whether they could attend the scheduled hearing due to financial problem. On 22 November 2006, AAA was able to testify under the same oath. However, for lack of material time, her testimony was again suspended. AAA and BBB were not duly notified of the 18 April 2007 hearing because the notice

[8] *Id*. at 25-26.

of hearing remained unclaimed. On 17 July 2008 and 19 February 2009 the hearings were cancelled at the instance of CCC while on 17 June 2009, the hearing was cancelled because AAA was not duly notified. On 20 August 2009, the subpoena reached BBB but not AAA because BBB refused to sign as AAA was out of the locality. Nonetheless, the hearing was cancelled at the instance of CCC. On 23 October 2009, BBB again refused to sign the subpoena as AAA was out of the locality. On 19 January 2010, the similar thing happened except that CCC's counsel, who only filed motions for postponement, was terminated and CCC's defense was turned over to the Public Attorney's Office. The hearing was cancelled at the instance of the government prosecutor for the unavailability of the witness. On 16 March 2010, BBB again refused to sign the subpoena because AAA was out of the locality. The hearing on that day was nonetheless cancelled due to a provincial holiday. On 21 September 2010 and 15 February 2011, BBB continued to refuse to sign the subpoena; and thus, the RTC gave the prosecution one last chance to present its evidence.

On 24 June 2011, the RTC issued an Order directing BBB to explain in writing why she should not be cited for contempt of court for her failure to accept and acknowledge the receipt of the subpoena. On 15 August 2011, the RTC Judge was unavailable, but BBB still refused to sign the subpoena. The same happened on 14 November 2011 and 19 January 2012. On 22 June 2012, the Court issued an order for the issuance of a subpoena to AAA and BBB through the Department of Social Welfare and Development Office of Magdiwang, requesting the latter to provide financial assistance for their expenses in coming to court and back to their place of origin. However, AAA and BBB refused to sign the subpoena for the hearing on 24 August 2012, and also, the Municipal Social Welfare Officer was out of the locality. For the hearing on 18 October 2012, the Municipal Social Welfare Officer refused to sign the subpoena while AAA and BBB were outside of the locality.

The case was reset to 22 January 2013 where the prosecution made its formal offer of evidence. Ultimately, AAA's testimony

was expunged from the records due to the lack of cross-examination.

On 22 January 2013, the prosecution offered the following exhibits through a verbal formal offer of evidence: (1) certified "xerox" copy of the Medico-Legal Certification dated 19 March 2004, issued by Dr. Dianco; (2) Certificate of Live Birth of AAA; and (3) the handwritten letter of AAA.

On the other hand, CCC manifested through his counsel that he was waiving his right to present evidence.

The Ruling of the RTC

In a Consolidated Decision dated 20 August 2013, the RTC found CCC guilty beyond reasonable doubt in all four counts of rape. The RTC found the testimony of BBB to be reliable and credible — in fact, BBB's testimony was never challenged or questioned by the defense. The RTC found the testimony of BBB which was within her knowledge, such as what AAA confided to her that she was raped by her own father, and her observations as to the demeanor of AAA and CCC after the alleged incidents, to be convincing. Together with the testimony of Dr. Dianco finding that the hymen of AAA to be no longer intact which indicated possible penetration, and the undated letter of AAA which was positively identified by BBB in open court, the RTC found the evidence to be adequate and convincing to find CCC guilty. This was despite the fact that the RTC did not rely on AAA's testimony, which was expunged from the records due to the lack of cross-examination.

The RTC found that the failure of AAA to appear in court to continue her testimony — despite the issuance of several subpoenas — was because of lack of finances or poverty. The RTC stated that regrettably, in Romblon, a litigant must have at least One Thousand Three Hundred Pesos (₱1,300.00), which includes the fare for the boat, meals and lodging, and such amount is burdensome for AAA and her mother considering their capacity to earn a living and the fact that AAA has eight other siblings that BBB has to support. Thus, the RTC found

CCC guilty, and the dispositive portion of the Consolidated Decision reads:

IN CRIMINAL CASE NO. 2566

WHEREFORE, in view of the foregoing[,] the Court finds CCC, GUILTY beyond reasonable doubt of RAPE qualified by the special qualifying aggravating circumstance that the victim is under eighteen (18) years of age and the offender is her own father, and is sentenced to suffer the supreme penalty of DEATH, however, by operation of Republic Act No. 9346 that took effect on June 24, 2006, the same is hereby commuted or reduced to *Reclusion Perpetua*, without eligibility for parole and to pay the victim, AAA[,] the amount of P[h]p50,000.00 as civil indemnity, P[h]p75,000.00 as moral damages and P[h]p35,000.00 as exemplary damages.

SO ORDERED.

IN CRIMINAL CASE NO. 2567

WHEREFORE, in view of the foregoing[,] the Court finds CCC, GUILTY beyond reasonable doubt of RAPE qualified by the special qualifying aggravating circumstance that the victim is under eighteen (18) years of age and the offender is her own father, and is sentenced to suffer the supreme penalty of DEATH, however, by operation of Republic Act No. 9346 that took effect on June 24, 2006, the same is hereby commuted or reduced to *Reclusion Perpetua*, without eligibility for parole and to pay the victim, AAA[,] the amount of P[h]p50,000.00 as civil indemnity, P[h]p75,000.00 as moral damages and P[h]p35,000.00 as exemplary damages.

SO ORDERED.

IN CRIMINAL CASE NO. 2568

WHEREFORE, in view of the foregoing[,] the Court finds CCC, GUILTY beyond reasonable doubt of RAPE qualified by the special qualifying aggravating circumstance that the victim is under eighteen (18) years of age and the offender is her own father, and is sentenced to suffer the supreme penalty of DEATH, however, by operation of Republic Act No. 9346 that took effect on June 24, 2006, the same is hereby commuted or reduced to *Reclusion Perpetua*, without eligibility for parole and to pay the victim, AAA[,] the amount of P[h]p50,000.00 as civil indemnity, P[h]p75,000.00 as moral damages and P[h]p35,000.00 as exemplary damages.

SO ORDERED.

IN CRIMINAL CASE NO. 2569

WHEREFORE, in view of the foregoing[,] the Court finds CCC, GUILTY beyond reasonable doubt of RAPE qualified by the special qualifying aggravating circumstance that the victim is under eighteen (18) years of age and the offender is her own father, and is sentenced to suffer the supreme penalty of DEATH, however, by operation of Republic Act No. 9346 that took effect on June 24, 2006, the same is hereby commuted or reduced to *Reclusion Perpetua*, without eligibility for parole and to pay the victim, AAA[,] the amount of P[h]p50,000.00 as civil indemnity, P[h]p75,000.00 as moral damages and P[h]p35,000.00 as exemplary damages.

SO ORDERED.[9]

Aggrieved by the decision of the RTC, CCC filed a Motion for Reconsideration on 26 November 2013 which was denied in a Consolidated Order dated 18 February 2014. CCC then appealed to the CA on 19 February 2014.

The Ruling of the CA

In a Decision dated 22 June 2016, the CA affirmed, with modification as to the penalty, the Consolidated Decision of the RTC. The dispositive portion of the Decision of the CA reads:

WHEREFORE, premises considered, the instant Appeal filed by accused-appellant CCC is DENIED. The assailed Consolidated Decision dated August 20, 2013 of Branch 81, Regional Trial Court of Romblon, Romblon in Criminal Cases Nos. 2566, 2567, 2568 and 2569 entitled "*People of the Philippines vs. CCC*" finding accused-appellant CCC GUILTY beyond reasonable doubt of four (4) counts of qualified rape and sentencing him to suffer the penalty of *reclusion perpetua* for each count, without eligibility for parole, is AFFIRMED with MODIFICATION in that accused-appellant CCC is ordered to pay private complainant AAA the following amounts: (1) One Hundred Thousand Pesos (PhP100,000.00) as civil indemnity; (2) One Hundred Thousand Pesos (PhP100,000.00) as moral damages; and

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[9] *Id*. at 27-29.

(3) One Hundred Thousand Pesos (PhP100,000.00) as exemplary damages for each count of qualified rape. Finally, interest at the legal rate of six percent (6%) *per annum* is imposed on all these damages from date of finality of this Decision until said amounts shall have been fully paid. Costs against accused-appellant CCC.

SO ORDERED.[10]

While the CA did not appreciate the details divulged by AAA to BBB for being mere hearsay evidence, it still found CCC guilty of the crimes charged, based on personal knowledge of BBB, more specifically on her knowledge on the handwritten letter of AAA. The CA held that BBB was sufficiently familiar with her own daughter's penmanship, and she was able to identify the letter in open court. The letter clearly indicated that AAA was raped by her father even if the word "rape" was not used. Accusing her own father of being a "MANYAK" and "WALA KUNG [sic] ~~KUWENT~~ HIYANG AMA" clearly indicates that she had been raped — "7 Bises NiYA iYON GINAWA SA Akin SIMULA NG NAMATAY SI LOLA." Moreover, BBB's observation as to her daughter's and husband's change in behavior was still within her personal knowledge which she could testify on competently. Together with the testimony of Dr. Dianco finding healed injuries in AAA's vagina, the CA found that the totality of the evidence incontrovertibly proved the guilt of CCC in all counts of rape charged against him. While the incident happened seven times, he was only charged with four counts of rape. Finding that the qualifying circumstances — the relationship of AAA with CCC and the age of AAA — were sufficiently proven, the CA upheld the conviction for four counts of rape.

CCC filed his Notice of Appeal dated 7 July 2016 with the CA.[11]

The Issue

The issue to be resolved in this appeal is whether or not the CA gravely erred in finding CCC guilty beyond reasonable doubt of the crime of rape.

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[10] *Rollo*, p. 22.

[11] *Id*. at 24.

The Ruling of the Court

The appeal is meritorious.

Articles 266-A and 266-B of the Revised Penal Code, as amended by the Anti-Rape Law of 1997,[12] provide:

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.

x x x x x x x x x

Article 266-B. *Penalty*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. **When the victim is under eighteen (18) years of age and the offender is a parent**, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim;

x x x x (Emphasis supplied)

The elements of qualified rape are as follows: (1) sexual congress; (2) with a woman; (3) done by force, threat, or

[12] Republic Act No. 8353.

intimidation and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree of the victim, or the common-law spouse of the parent of the victim.[13] The actual force, threat, or intimidation that is an element of rape under Article 266-A, paragraph (1) (a) is no longer required to be present because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.[14]

In this case, we find that the prosecution was not able to sufficiently prove all the elements of qualified rape.

The age of AAA was proven by the Certificate of Live Birth, which was identified by AAA's mother BBB in open court. According to her Certificate of Live Birth, AAA was born on 13 May 1991. Thus, when the first alleged incident happened in January of 2004, AAA was only twelve (12) years and seven (7) months old.

As to the relationship of AAA and CCC, BBB testified that CCC was indeed the father of AAA, and that AAA was using her maiden name because she gave birth to AAA before she married CCC. During the preliminary conference, CCC admitted that he is the father of AAA.

However, CCC argues that the prosecution failed to prove beyond reasonable doubt that there was sexual intercourse between him and AAA because AAA's testimony was expunged from the records; and thus, there was no basis to find him guilty of the crime of rape.

We agree.

We find that the CA was correct in not appreciating the testimony of BBB in relation to what AAA allegedly told her

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[13] *People v. Palanay*, 805 Phil. 116 (2017).

[14] *People v. Pacayra*, G.R. No. 216987, 5 June 2017, 825 SCRA 633, citing *People v. Dalan*, 736 Phil. 298 (2014).

about the instances of rape by CCC. The Revised Rules on Evidence provide:

> Section 36. *Testimony generally confined to personal knowledge; hearsay excluded*. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

A witness may not testify on what she merely learned, read, or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what she has learned, read, or heard.[15] Thus, her testimony as to what AAA told her has no probative value for being merely hearsay.

The CA mainly relied on the handwritten letter of AAA, which was identified by her mother BBB in open court, to find that CCC is guilty of the crimes of rape. BBB was familiar with her daughter's handwriting; and thus, she was able to identify the penmanship of her daughter. Under the Rules of Court, BBB's opinion is admissible in evidence:

> Rule 130, Section 50. *Opinion of ordinary witnesses*. — The opinion of a witness for which proper basis is given, may be received in evidence regarding —
>
> (a) the identity of a person about whom he has adequate knowledge;
>
> (b) a handwriting with which he has sufficient familiarity; and
>
> (c) the mental sanity of a person with whom he is sufficiently acquainted.
>
> The witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person.[16]

The letter was left by AAA when she ran away from home sometime after the alleged incidents, which began on the wake of BBB's mother as referred to by AAA in the letter. BBB herself testified that she noticed a change in behavior in AAA:

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[15] *People v. Cataytay*, 746 Phil. 185 (2014).

[16] Revised Rules on Evidence.

Q- Before she ran away, did you notice of [sic] any extraordinary behavior or change of behavior?
A- Yes, I noticed the change of behaviour [sic].

Q- What is that
A- When I talk to her she is not answering me.

Q- What usually did you try to talk to her about
A- Because she was studying that time a [sic] second high school and when I asked things to her, it takes time before she could answer.

Q- And what other changes, if any?
A- And she could not look straight to me, she was looking some where [sic] else as if she is not in her own sanity.[17]

However, even if we admit and appreciate the testimony of BBB regarding AAA's change in behavior, it does not by itself prove the guilt of CCC. Likewise, the handwritten letter of AAA does not prove that CCC indeed raped his daughter. In the handwritten letter, AAA accuses her own father of being a "MANYAK" and that "7 Bises NIYA iYON GINAWA SA AKIN SIMULA NG NAMATAY SI LOLA." However, AAA never explained what her father did to her. Characterizing her father as a "manyak" does not automatically mean that he raped her, as it may pertain to other acts which are lascivious that do not necessarily constitute rape. Without proving the very acts that CCC did to AAA, we cannot uphold the conviction of CCC.

To be convicted of rape under Article 266-A, paragraph (1) of the Revised Penal Code (RPC), it must be proven that CCC had carnal knowledge of AAA, and that it had been done by force, threat, or intimidation. While it can be argued that the moral ascendancy of CCC over AAA can sufficiently substitute for force, threat, or intimidation, the prosecution still failed to prove the sexual intercourse between AAA and CCC as an element of qualified rape.

Judicial depiction of consummated rape under Article 266-A has not been confined to the oft-quoted "touching of the

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[17] CA *rollo*, p. 182, citing TSN, 13 June 2006, pp. 11-12.

female organ," but has also progressed into being described as "the introduction of the male organ into the labia of the pudendum."[18] Thus, there has to be at least the introduction of the male organ into the *labia majora* of the pudendum to be sufficient to consummate rape under Article 266-A, paragraph 1 of the RPC. Even under Article 266-A, paragraph 2 of the RPC, the "sexual assault" must be committed by CCC "by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person." Unfortunately, due to the absence of the testimony of AAA, the prosecution failed to prove that CCC had carnal knowledge of AAA or that CCC committed "sexual assault" on AAA.

Similarly, the testimony of Dr. Dianco does not prove that CCC raped his daughter. We have consistently held that a medico-legal, who did not witness the actual incident, cannot testify on what had happened to the victim because such testimony would not be based on personal knowledge or derived from his own perception.[19] At most, such findings are corroborative and the testimony of the medico-legal can only suggest what most likely happened but does not establish facts.[20] While Dr. Dianco examined the physical state of AAA, she did not witness CCC raping his daughter. Thus, the findings of Dr. Dianco still are insufficient to hold CCC guilty of the crimes charged.

A conviction in a criminal case must be supported by proof beyond reasonable doubt that the accused is indeed guilty of the crime charged.[21] The prosecution has the primordial duty to present a detailed account of every alleged crime as it is given ample resources of the government to present a logical and realistic account of every alleged crime.[22] To repeat, in

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[18] *People v. Campuhan*, 385 Phil. 912, 922 (2000).

[19] *People v. Amarela and Racho*, G.R. Nos. 225642-43, 17 January 2018.

[20] *Id*.

[21] *Id*.

[22] *Id*.

criminal litigation, the evidence of the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the defense.[23] In this case, we are constrained to reverse the RTC and the CA rulings because the prosecution failed to prove the guilt of CCC beyond reasonable doubt. While the prosecution was given ample time and opportunity to present the testimony of AAA, it failed to do so, partly because of AAA's and BBB's refusal to attend the hearings. While unfortunate, we cannot uphold the conviction of CCC as there were no admissible testimonies or evidence to prove that CCC committed the crimes charged against him. The circumstantial evidence in this case — the change in behavior of AAA and CCC, the handwritten letter of AAA, and the medico-legal report — are insufficient to prove the guilt of CCC beyond reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The 22 June 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06686, affirming with modification the 20 August 2013 Consolidated Decision of Branch 81 of the Regional Trial Court of Romblon, Romblon in Criminal Case Nos. 2566, 2567, 2568 and 2569, is **REVERSED** and **SET ASIDE**. Appellant CCC is **ACQUITTED** due to reasonable doubt.

His immediate **RELEASE** is hereby **ORDERED** unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Bureau of Corrections in Muntinlupa City for immediate implementation, who is then directed to report to this Court the action he has taken within five days from receipt hereof.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.*, concur.

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[23] *People v. Tionloc*, 805 Phil. 907 (2017).

SECOND DIVISION

[G.R. No. 229362. June 19, 2019]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERNESTO SILAYAN** *y* **VILLAMARIN,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS UNDER SECTION 5, ARTICLE II THEREOF; ELEMENTS; CASE AT BAR.—** For a successful prosecution of an offense under Section 5, Article II of RA 9165, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified. In this case, we find that the second element is wanting because of the failure of the police officers in the buy-bust operation to comply with the requirements of Section 21 (1), Article II of RA 9165, without any justifiable grounds therefor.

2. **ID.; ID.; ID.; STRICT COMPLIANCE WITH THE PROCEDURE LAID DOWN IN SECTION 21(1), ARTICLE II AND ITS IMPLEMENTING RULES AND REGULATIONS (IRR) MAY BE EXCUSED AS LONG AS THERE IS A JUSTIFIABLE GROUND, PROVEN AS A FACT, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** Section 21 (1), Article II of RA 9165 and its IRR expressly require the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. If such is not practicable, 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 or team. Equally important is the presence of the accused, or his representative or counsel, a representative of the DOJ, the media, and an elected public official during the inventory, who shall all be required to sign the copies of the inventory and be given a copy thereof. Thus, the three required witnesses — a representative of the DOJ, the media, and an elected public official — should be physically present

at the time of apprehension or immediately thereafter while the inventory is being made as this is a measure to insulate the inventory from any taint of illegitimacy or irregularity. However, there may be instances where strict compliance with the procedure laid down in Section 21 (1), Article II of RA 9165 and its IRR may be dispensed with. Specifically, the IRR allows a deviation from the requirement of the presence of the three witnesses, when the following requisites concur: (a) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (b) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

3. **ID.; ID.; ID.; ID.; BURDEN OF PROVING THE REQUISITES FOR THE DEVIATION FROM THE PROCEDURE LAID DOWN IN SECTION 21 AND ITS IRR LIES WITH THE PROSECUTION; REASONS THAT MUST BE ALLEGED AND PROVED BY THE PROSECUTION WHY THE PRESENCE OF THE THREE WITNESSES DURING THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE ILLEGAL DRUG SEIZED WAS NOT OBTAINED; CASE AT BAR.—** The burden of proving the requisites for the deviation from compliance with the procedure laid down in Section 21 of RA 9165 and its IRR lies with the prosecution which must allege and prove that the presence of the three witnesses during the physical inventory and photographing of the illegal drug seized was not obtained due to reasons such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and 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. In this case, we find that the police failed to follow the procedure laid down

in Section 21 (1), Article II of RA 9165 and its IRR, without the presence of any of the justifiable grounds therefor.

4. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; GUILT BEYOND REASONABLE DOUBT; NOT ESTABLISHED IN CASE AT BAR; CONVICTION OF THE ACCUSED MUST BE BASED ON THE STRENGTH OF THE PROSECUTION'S EVIDENCE AND NOT ON THE WEAKNESS OR ABSENCE OF EVIDENCE OF THE DEFENSE.— The Court has, on numerous occasions, acquitted an accused based on reasonable doubt, for the failure of the police to obtain the presence of the three witnesses required by law — a representative of the DOJ, media, and an elected public official — during the conduct of the inventory of the seized items. The conviction of an accused, who enjoys the constitutional presumption of innocence, must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense. In this case, there was a blatant failure to comply with the requirements of Section 21 (1), Article II of RA 9165 and its IRR without any justifiable ground for such non-compliance. Clearly, the prosecution failed to prove the guilt of Silayan beyond reasonable doubt. We find that an acquittal is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

On appeal is the 18 January 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 06941, which affirmed

[1] *Rollo*, pp. 2-18. Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela concurring.

the 20 June 2014 Decision[2] of the Regional Trial Court (RTC) of Binangonan, Rizal, Branch 67, in Criminal Case No. 12-0343, finding appellant Ernesto Silayan *y* Villamarin (Silayan) guilty of violating Section 5, Article II of Republic Act No. 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

The Facts

On or about 15 June 2012, PO1 Rommel Bilog (PO1 Bilog) and PO1 Mark Riel Canilon (PO1 Canilon), along with the informant, went to Barangay Pag-asa, Binangonan, Rizal to conduct a surveillance and verify the tip that there was an illegal drug trade in the area. The informant pointed Silayan to PO1 Bilog. Silayan was having a drinking spree along the side of the road with two companions. The informant introduced the "scorer" to PO1 Bilog and PO1 Canilon. The "scorer" met with Silayan who handed a small plastic sachet to the "scorer." After confirming the sale, PO1 Bilog and PO1 Canilon went back to the police station to prepare for the buy-bust operation.

At the police station, PO1 Bilog prepared two ₱100 bills and marked them with "LOG-1" and "LOG-2." The informant and the buy-bust team proceeded to Barangay Pag-asa. The informant and PO1 Bilog approached Silayan who asked the informant, "Sino yang kasama mo? Kakampi ba yan?" to which the informant replied, "Oo pare kakampi to, mayroon ba tayo dyan." Silayan replied, "Mayroon magkano iskorin mo?" and the informant replied, "Kasang dos lang pare, tag hirap eh." Thereafter, Silayan took a plastic sachet from his pocket and gave it to the informant. PO1 Bilog handed the marked money to Silayan and scratched his head to signal that the sale has transpired. He identified himself as a police officer and arrested Silayan. PO1 Canilon arrested the two companions of Silayan. PO1 Bilog confiscated the marked money from Silayan and recovered the plastic sachet from the informant. He marked the recovered plastic sachet on site with "RNB 6/15/12." After making the markings, he

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[2] CA *rollo*, pp. 24-26. Penned by Judge Dennis Patrick Z. Perez.

informed Silayan and his two companions of their constitutional rights, and brought them to the police station for processing.

PO1 Bilog prepared the Inventory and the Request for Laboratory Examination of the recovered evidence. Pictures were taken of Silayan with his companions and two other male persons. PO1 Bilog personally delivered the recovered plastic sachet to the Rizal Provincial Crime Laboratory Office for examination. P/Sr. Inspector Beuane Villaranza[3] (Forensic Chemist Villaranza) received the evidence from PO1 Bilog and signed the Chain of Custody Form. The qualitative examination conducted by Forensic Chemist Villaranza on the 0.04 gram of white crystalline substance contained in the heat-sealed plastic sachet marked "RNB 6/15/12" yielded a positive result for methamphetamine hydrochloride or more commonly known as *shabu*, a prohibited drug.

For his defense, Silayan alleges that he went to buy a cigarette when he was invited to have a drink. After five minutes, a tricycle arrived and people in civilian clothes alighted. He was then arrested and forced to board the tricycle with his companions. He was first brought to the barangay hall where he was mauled and thereafter brought to the Binangonan Police Station where Silayan and his two other companions were charged for selling illegal drugs. This was corroborated by the testimonies of his two companions and cousin Dave Villamarin.

The Ruling of the RTC

In a Decision dated 20 June 2014, the RTC found Silayan guilty of violating Section 5, Article II of RA 9165, to wit:

> In light of the above, we find accused Ernesto Silayan GUILTY beyond reasonable doubt of violating Section 5, Article II, R.A. No. 9165 and sentence him to suffer a penalty of life imprisonment and to pay a fine of ₱500,000.00. However, we find accused Jeffrey Coro [a]nd Reyban Mariano NOT GUILTY because of reasonable doubt.

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[3] Also referred to in the records as "Beaune Villaraza."

Let the drug samples in this case be forwarded to the Philippine Drug Enforcement Agency (PDEA) for proper disposition. Furnish PDEA with a copy of this Decision per OCA Circular No. 70-2007.

SO ORDERED.[4]

The RTC found that the prosecution was able to prove the illegal sale of drugs by the testimonies of the police officers, which were given due credence because their duties are presumed to have been performed in a regular manner. The RTC also found that there was no evidence suggesting ill-motive or deviation from the performance of duties by the buy-bust team. The proper chain of custody was also proven by the prosecution, as testified by PO1 Bilog and Forensic Chemist Villaranza. Moreover, the RTC held that the prosecution was able to present the *corpus delicti* as evidence in court in the form of samples and chemistry report. Finally, the RTC rejected the defense of Silayan, finding it a denial that is incredible and weak, coming from a source who is not a credible witness.

The Ruling of the CA

In a Decision dated 18 January 2016, the CA affirmed the Decision of the RTC. The dispositive portion of the Decision of the CA reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision dated 20 June 2014 of the Regional Trial Court of Binangonan, Branch 67 in Criminal Case No. 12-0343 convicting accused-appellant Ernesto Silayan of violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 is hereby AFFIRMED.

SO ORDERED.[5]

The CA found that the prosecution was able to prove the elements of the illegal sale of *shabu* — (1) the identities of the buyer and the seller, the object of the sale, and the consideration;

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[4] *Id*. at 25-26.

[5] *Rollo*, p. 17.

and (2) the delivery of the thing sold and the payment for the thing. PO1 Bilog was able to positively identify Silayan, to whom he handed the marked money for the sale of the plastic sachet with *shabu*. The marked money and the sachet were presented as evidence in court. PO1 Bilog narrated in detail the transaction that transpired between them and Silayan. As for Silayan 's contention that there was no coordination between the PNP-Binangonan and the PDEA, the CA held that such is not a condition *sine qua non* for the validity of every entrapment operation conducted by police authorities.

Moreover, the CA rejected the argument of Silayan that the physical inventory of the seized dangerous drug was made only at the police station and without a representative from the media, DOJ, and any elected public official, which was a violation of Section 21(1), Article II of RA 9165. The CA held that substantial compliance is sufficient as provided under Section 21 of the IRR of RA 9165. Contrary to the allegation of Silayan that the inventory was made only at the police station, the CA found that the inventory made by PO1 Bilog was actually made on site, at the area where Silayan was arrested. This preserved the integrity and evidentiary value of the seized items; and therefore, the inventory was considered substantial compliance with Section 21(1), Article II of RA 9165. Finally, the CA found the chain of custody to be unbroken as it was sufficiently proven through the testimonies of PO1 Bilog and Forensic Chemist Villaranza.

The Issue

The issue to be resolved in this appeal is whether or not the CA gravely erred in finding Silayan guilty of violating Section 5, Article II of RA 9165.

The Ruling of the Court

We find the appeal meritorious.

For a successful prosecution of an offense under Section 5, Article II of RA 9165, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus*

delicti or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[6] In this case, we find that the second element is wanting because of the failure of the police officers in the buy-bust operation to comply with the requirements of Section 21(1), Article II of RA 9165, without any justifiable grounds therefor.

In case of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved.[7] Section 21(1), Article II of RA 9165 p rovides the procedure to be followed for the preservation of the integrity and identity of the seized drugs, to wit:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same **in the presence of the accused or the person/s from whom 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)

The Implementing Rules and Regulations (IRR) of RA 9165 further provide:

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[6] *People v. De la Cruz*, 591 Phil. 259, 269 (2008).

[7] *People v. Ismael*, 806 Phil. 21 (2017).

Section 21. x x x x

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

x x x x x x x x x (Emphasis supplied)

While RA 9165 was amended by RA 10640[8] to modify the number of witnesses required during the conduct of inventory,

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[8] Effective 30 July 2014. Section 21(a), as amended by RA 10640, now reads:

x x x x x x x x x

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

the offense in this case was allegedly committed on or about 15 June 2012; and thus, the original version of Section 21(1) and its IRR as quoted above applies.

Section 21(1), Article II of RA 9165 and its IRR expressly require the apprehending team to conduct a physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation. If such is not practicable, 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 or team. Equally important is the presence of the accused, or his representative or counsel, a representative of the DOJ, the media, and an elected public official during the inventory, who shall all be required to sign the copies of the inventory and be given a copy thereof. Thus, the three required witnesses — a representative of the DOJ, the media, and an elected public official — should be physically present at the time of apprehension or immediately thereafter while the inventory is being made as this is a measure to insulate the inventory from any taint of illegitimacy or irregularity.[9]

However, there may be instances where strict compliance with the procedure laid down in Section 21(1), Article II of RA 9165 and its IRR may be dispensed with. Specifically, the IRR allows a deviation from the requirement of the presence of the three witnesses, when the following requisites concur: (a) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (b) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. Thus, Section 21 of the IRR provides:

> Section 21. x x x x
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation,

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apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x

[9] *People v. Catalan*, 699 Phil. 603 (2012).

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

x x x x x x x x x (Emphasis supplied)

The burden of proving the requisites for the deviation from compliance with the procedure laid down in Section 21 of RA 9165 and its IRR lies with the prosecution which must allege and prove that the presence of the three witnesses during the physical inventory and photographing of the illegal drug seized was not obtained due to reasons such as:

(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and 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.[10]

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[10] *People v. Lim*, G.R. No. 231989, 4 September 2018, citing *People v. Sipin*, G.R. No. 224290, 11 June 2018.

In this case, we find that the police failed to follow the procedure laid down in Section 21(1), Article II of RA 9165 and its IRR, without the presence of any of the justifiable grounds therefor.

Silayan argues that there was a violation of Section 21(1), Article II of RA 9165 because the inventory of the seized drugs was made only at the police station and not at the place of the incident. The prosecution, on the other hand, argues otherwise. PO1 Bilog testified as follows:

> Q- What did you do with the plastic sachet which was handed by Totong to the confidential informant?
> A- I marked it[,] ma'am[.]
>
> Q- What markings did you put on the plastic sachet?
> A- RNB[,] ma'am.
>
> **Q- Who was present when you put markings on the plastic sachet?**
> **A- Tata Rey Abella[,] ma'am.**
>
> Q- Showing you this Inventory of Evidence Seized attached to the records, is this the one you are referring to?
> A- Yes[,] ma'am.
>
> x x x x x x x x x
>
> **Q- Where were you when you made the inventory?**
> **A- At the area[,] ma'am.**
>
> Q- What did you do with the plastic sachet?
> A- After we put the markings we brought it [to] the Provincial Crime Lab[,] ma'am.
>
> Q- You mentioned that there were pictures taken, who are the persons in the picture?
> A- The three accused, *alias* Totong and two other male persons[,] ma'am.
>
> Q- How about this other picture?
> A- That's the item[,] ma'am.
>
> Q- Who took these pictures?
> A- Me[,] ma'am.[11] (Emphasis supplied)

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[11] CA *rollo*, pp. 86-87, citing TSN dated 22 August 2013, pp. 3-12.

Based on the foregoing, we find that the prosecution failed to prove that the apprehending police officers complied with the procedure laid down in Section 21(1), Article II of RA 9165 and its IRR. The testimony of PO1 Bilog is, at best, ambiguous, stating that he was "at the area" when he made the inventory. Worse, based on his testimony, Silayan and his other co-accused were not present when the inventory was made. Moreover, it is not denied by the prosecution that there was no representative from the media, DOJ, and any elected public official when such inventory was conducted.

Despite the obvious absence of the required witnesses, the prosecution argues that the chain of custody was sufficiently established and that the non-compliance with the requirements of Section 21(1), Article II of RA 9165 does not render Silayan's arrest illegal or the items confiscated from him inadmissible. It relies on the presumption of regularity in the performance of official duties by the police officers to prove the guilt of Silayan.

We disagree. To repeat, the burden to prove that there were justifiable grounds for the non-compliance with the procedure laid down in Section 21(1), Article II of RA 9165 and its IRR lies with the prosecution. It must show that the apprehending team exerted earnest efforts to secure the attendance of the necessary witnesses.[12]

However, in this case, there was not even an attempt to explain why the required witnesses were not present during the inventory. No evidence was adduced to prove that earnest efforts were exerted to comply with the requirements of Section 21(1), Article II of RA 9165 and its IRR. As this was a buy-bust operation, it is by its nature a planned activity — the police officers had every chance to comply with the procedural requirements of the law.[13] The prosecution offered no explanation for the failure of the buy-bust team to secure the required

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[12] *People v. Lim*, G.R. No. 231989, 4 September 2018, citing *People v. Ramos*, G.R. No. 233744, 28 February 2018.

[13] *People v. Callejo*, G.R. No. 227427, 6 June 2018.

witnesses under the law. The total failure of the prosecution to explain the non-compliance with the procedural requirements of Section 21(1), Article II of RA 9165 and its IRR creates doubt on whether the buy-bust team was able to preserve the integrity and evidentiary value of the items seized from Silayan.[14]

The Court has, on numerous occasions, acquitted an accused based on reasonable doubt, for the failure of the police to obtain the presence of the three witnesses required by law — a representative of the DOJ, media, and an elected public official — during the conduct of the inventory of the seized items.[15] The conviction of an accused, who enjoys the constitutional presumption of innocence, must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense.[16] In this case, there was a blatant failure to comply with the requirements of Section 21(1), Article II of RA 9165 and its IRR without any justifiable ground for such non-compliance. Clearly, the prosecution failed to prove the guilt of Silayan beyond reasonable doubt. We find that an acquittal is in order.

On a last note, we take this opportunity to remind the prosecution of the mandatory guidelines set out by this Court in *People v. Lim*[17] to ensure that prospectively, Section 21 of RA 9165 be well-enforced:

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[14] *People v. Bartolini*, 791 Phil. 626 (2016).

[15] *People v. Cadungog*, G.R. No. 229926, 3 April 2019, citing *People v. Oliva*, G.R. No. 234156, 7 January 2019; *People v. Malana*, G.R. No. 233747, 5 December 2018; *People v. Ilagan*, G.R. No. 227021, 5 December 2018; *People v. Medina*, G.R. No. 225747, 5 December 2018; *People v. Dela Cruz*, G.R. No. 225741, 5 December 2018; *People v. Torio*, G.R. No. 225780, 3 December 2018; *People v. Tumangong*, G.R. No. 227015, 26 November 2018; *People v. Abdula*, G.R. No. 212192, 21 November 2018; *People v. Señeres, Jr.*, G.R. No. 231008, 5 November 2018; *People v. Jimenez*, G.R. No. 230721, 15 October 2018; *People v. Mendoza*, G.R. No. 225061, 10 October 2018; *People v. Lim*, G.R. No. 231989, 4 September 2018.

[16] *People v. Bartolini*, *supra*.

[17] *Supra*.

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.

2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.

Again, we stress the importance of preserving the integrity and identity of the *corpus delicti* of crimes involving dangerous drugs. Following these guidelines ensures that the apprehending officers, in the seizure, initial custody, and handling of the confiscated illegal drugs and/or paraphernalia, will be able to preserve the integrity, identity, and evidentiary value of the seized items which are essential to prove that a crime has indeed been committed.

WHEREFORE, the appeal is **GRANTED**. The 18 January 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 06941, affirming the 20 June 2014 Decision of the Regional Trial Court of Binangonan Rizal, Branch 67, in Criminal Case No. 12-0343, is **REVERSED** and **SET ASIDE**.

Appellant Ernesto Silayan *y* Villamarin is **ACQUITTED** of violating Section 5, Article II of Republic Act No. 9165 on the ground of reasonable doubt. His **IMMEDIATE RELEASE** from custody is hereby ordered unless he is being lawfully held for another cause.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Bureau of Corrections in 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.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Lazaro-Javier, JJ.,* concur.

FIRST DIVISION

[G.R. No. 229714. June 19, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLANDO DE GUZMAN** *y* **VILLANUEVA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; QUALIFIED RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.— We agree with the CA that appellant is guilty of two counts of qualified rape considering that the following elements thereof had been duly established here: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim." Established facts revealed that appellant had carnal knowledge of his own biological daughter, "AAA," who at the time of the first rape incident was just 14 years old, and was only 15 years old when appellant raped her the second time. "AAA" testified in a clear and straightforward manner her harrowing ordeal; and equally important, the medical examination on "AAA" corroborated her testimony, as elucidated by the

RTC, to wit: The testimony of ["AAA"] describes vividly every lurid detail of the carnal knowledge or sexual intercourse between her and the accused, including the [complete] penetration of the female organ by the male organ and the ejaculation thereafter. Her account on how the carnal knowledge/sexual intercourse [had] been committed by means of force and intimidation has been consistent even under grueling cross-examination by the defense counsel. Her testimony contained the adequate recital of evidentiary facts constituting the crime of rape under paragraph 1 of Article 266-A. The medical certificate even indicated that during the internal examination conducted on the victim, there was a deep healed hymenal laceration at 7:00 o'clock position and a complete healed hymenal laceration at 5:00 o'clock position. The medical examination conducted corroborates the positive testimony of the victim that she was sexually abused.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE AND CATEGORICAL TESTIMONY OF A RAPE VICTIM MUST BE ACCORDED FULL CREDIT BECAUSE WHEN A WOMAN, ESPECIALLY A MINOR, TESTIFIES THAT SHE HAD BEEN RAPED, SHE TESTIFIES TO ALL THAT IS NECESSARY TO PROVE THAT SHE WAS INDEED RAPED; CASE AT BAR.—** The Court holds that "AAA's" positive and categorical testimony must be accorded full credit because when a woman, especially a minor, testifies that she had been raped, she testifies to all that is necessary to prove that she was indeed raped. Indeed, "[y]outh and immaturity are generally badges of truth and sincerity," which are cogent reasons to accord full faith and credence to the straightforward testimony of the child-victim here as against the implausible feeble denial of her own biological father.

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 January 22, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06640, which affirmed with modification the December 23, 2013 Decision[2] of the Regional Trial Court (RTC) of Tarlac City, Branch 64, in Criminal Case Nos. 15127 and 15128.

Antecedent Facts

In two separate Informations dated June 20, 2007, appellant Rolando De Guzman *y* Villanueva was charged with rape, which, except for the dates of commission of the offense, were similarly worded as follows:

> That [on or about May 13, 2006 and thereafter/ sometime in the first week of April, 2007], in Tarlac City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with force and intimidation did then and there willfully, unlawfully and feloniously [have] carnal knowledge of his daughter ["AAA",][3] 15 years old, against the latter's will.
>
> CONTRARY TO LAW.[4]

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[1] CA *rollo*, pp. 125-137; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr.

[2] Records, pp. 140-149; penned by Presiding Judge Lily C. De Vera-Vallo.

[3] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

[4] Records, pp. 1, 8.

Appellant having pleaded "Not Guilty"[5] to the charges against him, trial on the merits ensued.

Version of the Prosecution

On the night of May 13, 2006, "AAA," who, at that time was 14 years old,[6] was at their home in Tarlac City, together with her father, herein appellant, and her two brothers. At around 10:30 p.m., she was awakened from her sleep when she felt someone (who she later discovered was her biological father, the appellant) was on top of her and kissing her neck. Appellant also kissed her chest and breast, licked her vagina, and thereafter, removed her bra. "AAA" kept quiet because appellant had a bladed weapon pointed at her side. He also threatened to kill her if she made any move. "AAA" asked her father to stop what he was doing, but to no avail.[7]

Appellant then pulled down "AAA's" underwear and placed the bladed weapon at the headboard of the bed. After this, he placed "AAA's" clothes on one side of the bed, leaving her naked. "AAA" tried to shout but her voice was not loud enough to awaken her brother, who was sleeping in the lower portion of the double-deck bed she was lying on. She was also unable to shout aloud because she was afraid of her father.[8]

Appellant continued to kiss "AAA" on her breast and then he inserted his penis into her private organ. For a while, he made push-and-pull movements on her. He then removed his penis and secreted his semen on "AAA's" stomach.[9]

In substantiation of the other information, the State's evidence tended to show that sometime in the first week of April 2007, "AAA," then already 15 years old, was left at home with her

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[5] *Id*. at 23-24.

[6] Her birthdate is August 18, 1991; Records, p. 6.

[7] TSN, June 10, 2008, pp. 6-12, 18.

[8] *Id*. at 13-14, 17.

[9] *Id*. at 17, 24-25.

brother and appellant because her mother, "BBB," was staying in the house of her ("AAA's") aunt.[10]

That evening, "AAA" was watching television when appellant suddenly pulled her towards the bedroom. While inside the bedroom, appellant told "AAA" that she should not have a boyfriend, and that she should follow his wishes. Appellant then proceeded to caress "AAA's" arms and back, and then removed her shirt.[11]

Appellant then laid "AAA" down, went on top of her, and kissed her on the lips and neck. "AAA" pushed him but her efforts were futile because he was too strong. Then appellant raised her bra and pressed and kissed her breasts. He then pulled down her shorts, kissed her breasts downward and licked her belly button. He also removed her underwear and licked her private organ. "AAA" tried to kick appellant but to no avail. Appellant then inserted his penis into "AAA's" vagina and made push-and-pull movements on her. After sometime, he removed his penis and secreted his semen on "AAA's" stomach.[12]

After the incident, "AAA's" brother reported to their mother that something had happened to "AAA". Because of this revelation, "BBB" and "AAA's" aunt confronted "AAA" who eventually confessed to them that her father, the appellant, had indeed raped her.[13]

On April 14, 2007, "AAA" underwent a medical examination which revealed, among others, that she had "deep healed laceration at 7 [o']clock position (+) complete healed laceration at 5 [o']clock position."[14]

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[10] TSN, November 25, 2008, pp. 2, 4.

[11] *Id*. at 5-6, 11-12.

[12] *Id*. at 13-24.

[13] *Id*. at 26-30.

[14] Records, p. 7.

Version of the Defense

The appellant denied the accusation against him and testified in this wise:

> [Appellant] used to work in Riyadh, Saudi Arabia as a trailer driver and returned to the Philippines sometime in May 2006. However he could not recall if he was already in the Philippines on 13 May 2006, the day he allegedly first raped his daughter AAA.
>
> x x x Sometime in the first week of April 2007, [appellant], who was then living alone in x x x Tarlac City, went to x x x where his wife, and three (3) children, including AAA, were residing, and took the mobile phone that he lent to AAA.
>
> x x x On 08 April 2007, [appellant] went swimming with his wife, children, mother-in-law, nephews and nieces. He promised AAA that he will return to her the mobile phone.
>
> [Appellant] does not know the reason why AAA accused him of raping her. At the time of the alleged incidents, he had a close relationship with his children.[15]

Ruling of the Regional Trial Court

On December 23, 2013, the RTC convicted appellant of two counts of qualified rape. It held that the qualifying circumstances of relationship and minority were properly alleged in the Informations and likewise proved beyond reasonable doubt. Considering, however, the proscription on the imposition of the death penalty, the RTC sentenced appellant to suffer the penalty of *reclusion perpetua*. The dispositive portion of the RTC Decision reads:

> WHEREFORE, in light of the foregoing, this Court finds the accused ROLANDO DE GUZMAN *y* Villanueva guilty [of] two (2) counts of rape for which this Court hereby sentences him to suffer the penalty of *reclusion perpetua* for each count as the imposition of death is abolished.

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[15] As culled from the Brief for the Accused-Appellant (filed with the CA); CA *rollo*, p. 40.

Likewise, as to the civil liability, the accused is ordered to pay [AAA] for each count of rape ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages.

SO ORDERED.[16]

Ruling of the Court of Appeals

On January 22, 2016, the CA affirmed the RTC Decision with modification as to the amount of damages and declared appellant without eligibility for parole. The dispositive portion of its Decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed December 23, 2013 Decision of the Regional Trial Court, Branch 64, Tarlac City, in Criminal Case Nos. 15127 and 15128, is AFFIRMED with the MODIFICATION that: (1) appellant x x x shall be ineligible for parole; (2) the awards of civil indemnity, moral damages, and exemplary damages are increased to ₱100,000.00 each for each count of qualified rape; and (3) the monetary awards shall earn interest at the rate of six percent (6%) per annum from the finality of this decision until full payment.

SO ORDERED.[17]

The CA held that appellant was guilty of two counts of qualified rape considering that, by use of *force and intimidation*, he had *carnal knowledge* of his *daughter* "AAA," who at the time of the first incident was just a 14 year old *minor* and was only 15 years old during the second incident.[18]

Like the RTC, the CA also gave credence to "AAA's" positive identification of appellant as the person who raped her on two occasions; it rejected the defenses of denial and alibi interposed by appellant.[19]

Hence, this appeal.

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[16] Records, p. 149.

[17] CA *rollo*, p. 136.

[18] *Id*. at 132.

[19] *Id*. at 135.

Our Ruling

After a thorough review of the records, the Court finds this appeal bereft of merit. We thus hold that the CA in CA-G.R. CR-HC No. 06640 properly affirmed with modifications the December 23, 2013 Decision of the RTC of Tarlac City, Branch 64, in Criminal Case Nos. 15127 and 15128.

We agree with the CA that appellant is guilty of two counts of qualified rape considering that the following elements thereof had been duly established here: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim."[20]

Established facts revealed that appellant had carnal knowledge of his own biological daughter, "AAA," who at the time of the first rape incident was just 14 years old, and was only 15 years old when appellant raped her the second time. "AAA" testified in a clear and straightforward manner her harrowing ordeal; and equally important, the medical examination on "AAA" corroborated her testimony, as elucidated by the RTC, to wit:

> The testimony of ["AAA"] describes vividly every lurid detail of the carnal knowledge or sexual intercourse between her and the accused, including the [complete] penetration of the female organ by the male organ and the ejaculation thereafter. Her account on how the carnal knowledge/sexual intercourse [had] been committed by means of force and intimidation has been consistent even under grueling cross-examination by the defense counsel. Her testimony contained the adequate recital of evidentiary facts constituting the crime of rape under paragraph 1 of Article 266-A.
>
> The medical certificate even indicated that during the internal examination conducted on the victim, there was a deep healed hymenal laceration at 7:00 o'clock position and a complete healed hymenal laceration at 5:00 o'clock position. The medical examination conducted

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[20] *See People v. Divinagracia, Sr.*, G.R. No. 207765, July 26, 2017, 833 SCRA 53, 72.

corroborates the positive testimony of the victim that she was sexually abused.[21]

The Court holds that "AAA's" positive and categorical testimony must be accorded full credit because when a woman, especially a minor, testifies that she had been raped, she testifies to all that is necessary to prove that she was indeed raped. Indeed, "[y]outh and immaturity are generally badges of truth and sincerity,"[22] which are cogent reasons to accord full faith and credence to the straightforward testimony of the child-victim here as against the implausible feeble denial of her own biological father.

Finally, the CA properly imposed upon appellant the penalty of *reclusion perpetua* without eligibility of parole for each count of qualified rape. Likewise, in light of prevailing jurisprudence, the CA correctly condemned appellant to pay "AAA" ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for each count of qualified rape; all of which awards for damages shall earn interest at the rate of 6% *per annum* from the date of this Decision becomes final, until paid in full.[23]

WHEREFORE, the appeal is **DISMISSED**. The assailed January 22, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06640, is **AFFIRMED.**

SO ORDERED.

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

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[21] Records, p. 146.

[22] *People v. Villamor*, 780 Phil. 817, 832 (2016).

[23] *People v. Salaver*, G.R. No. 223681, August 20, 2018.

THIRD DIVISION

[G.R. No. 229862. June 19, 2019]

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

SYLLABUS

1. **CRIMINAL LAW; RAPE; DEFINED.—** Article 266-A of the Revised Penal Code defines rape as: 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 anal orifice of another person.

2. **REMEDIAL LAW; CREDIBILITY OF WITNESSES; EVIDENCE; FACTUAL FINDINGS OF THE TRIAL COURT ON WITNESSES' CREDIBILITY IS ACCORDED GREAT RESPECT BY THE SUPREME COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS.—** This Court finds no reason to disturb the findings of the trial court and the Court of Appeals. In *People v. Quintos*: The observance of the witnesses' demeanor during an oral direct examination, cross-examination, and during the entire period that he or she is present during trial is indispensable especially in rape cases because it helps establish the moral conviction that an accused is guilty beyond reasonable doubt of the crime charged. Trial provides judges with the opportunity to detect, consciously or unconsciously, observable cues and microexpressions that could, more than the words said and taken as a whole, suggest sincerity or betray lies and ill will. These important aspects can never be reflected or reproduced in documents and objects used as evidence. Hence, "[t]he evaluation of the witnesses' credibility is a matter best left to the trial court because it has

the opportunity to observe the witnesses and their demeanor during the trial. Thus, the Court accords great respect to the trial court's findings," more so when the Court of Appeals affirmed such findings.

3. CRIMINAL LAW; RAPE; ABUSE OF MORAL INFLUENCE IS THE INTIMIDATION REQUIRED IN RAPE COMMITTED BY THE COMMON-LAW FATHER OF A MINOR; CASE AT BAR.— There is also no merit in accused-appellant's argument that force, intimidation, threat, fraud, or grave abuse of authority was not present. In *People v. Gacusan*, this Court reiterated that "[t]he abuse of moral influence is the intimidation required in rape committed by the common-law father of a minor."

4. ID.; ID.; STATUTORY RAPE; THE GRAVAMEN OF THE OFFENSE IS THE CARNAL KNOWLEDGE OF A WOMAN BELOW 12 YEARS OLD; QUALIFYING CIRCUMSTANCE OF MINORITY, NOT ESTABLISHED IN CASE AT BAR.— As to the inclusion of the word "statutory" in the dispositive portion of the trial court Judgment, this Court holds that it was erroneously added by the trial court judge. In *People v. Dalan*: The gravamen of the offense of statutory rape, as provided for in Article 266-A, paragraph 1 (d) of the Revised Penal Code, as amended, is the carnal knowledge of a woman below 12 years old. To convict an accused of the crime of statutory rape, the prosecution must prove: first, the age of the complainant; second, the identity of the accused; and last but not the least, the carnal knowledge between the accused and the complainant. Here, the Information against accused-appellant did not allege AAA to be below 12 years old, but 14 years old, when the crime was committed upon her. The trial court even held that without documentary or testimonial evidence, the prosecution failed to substantiate the qualifying circumstance of minority. Despite this, it still found him guilty of simple statutory rape and imposed the penalty of *reclusion perpetua*. Nonetheless, this Court finds that the penalty imposed on accused-appellant is correct as it is the penalty for offenders who were found guilty beyond reasonable doubt of simple rape under Article 266-B of the Revised Penal Code.

5. REMEDIAL LAW; EVIDENCE; AFFIDAVITS OF DESISTANCE; AS A RULE, AFFIDAVITS OF DESISTANCE ARE VIEWED WITH SKEPTICISM AND RESERVATION BECAUSE THEY CAN BE EASILY OBTAINED FOR MONETARY

CONSIDERATION OR THROUGH INTIMIDATION; CASE AT BAR.— As a rule, affidavits of desistance are viewed with skepticism and reservation because they can be "easily obtained for monetary consideration or through intimidation." Based on the circumstances here, this Court cannot give any weight to AAA's Affidavit of Recantation and Desistance. If the crime did not really happen, AAA would have made the Affidavit at the earliest instance—but she did not. Instead, she executed it more than two (2) years after the crime had been committed. If the crime did not really happen, she would not have submitted herself to physical examination or hours of questioning—but she did. Moreover, her recollection on how accused-appellant committed the crime was detailed; her testimony, consistent. There was no evidence that AAA was forced or pressured by the prosecutor to take the witness stand, as manifested by her answer during the cross-examination.

6. **CRIMINAL LAW; RAPE; MERE TOUCHING, NO MATTER HOW SLIGHT OF THE LABIA OR LIPS OF THE FEMALE ORGAN BY THE MALE GENITAL, EVEN WITHOUT RUPTURE OR LACERATION OF THE HYMEN, IS SUFFICIENT TO CONSUMMATE RAPE; AN INTACT HYMEN DOES NOT NEGATE THE COMMISSION OF RAPE.—** [T]he absence of hymenal laceration fails to exonerate accused-appellant. As explained in *People v. Osing*: [M]ere touching, no matter how slight of the labia or lips of the female organ by the male genital, even without rupture or laceration of the hymen, is sufficient to consummate rape. The absence of fresh hymenal laceration does not disprove sexual abuse, especially when the victim is a young girl. This Court has consistently held that an intact hymen does not negate the commission of rape. The element of rape does not even include hymenal laceration: The absence of external signs or physical injuries on the complaint's body does not necessarily negate the commission of rape hymenal laceration not being, to repeat, anelement of the crime of rape. A healed or freshlaceration would of course be a complelling proof of defloration. What is more, the foremost consideration in the prosecution of rape is the victrim's testimony and not the findings of the medico-legal officer. In fact,. a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.

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.*:

Recantations are viewed unfavorably especially in rape cases. Circumstances in which the recantation was made are thoroughly examined before the evidence of retraction can be given any weight.

Before this Court is a criminal case for rape committed by the common-law spouse of the victim's mother. Accused-appellant ZZZ assails the September 30, 2016 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01769, which affirmed his conviction in the June 25, 2013 Judgment[2] of the Regional Trial Court.

On May 23, 2006, an Information[3] was filed against ZZZ charging him with the crime of rape:

> That on or about 11:00 o'clock (*sic*) on the morning of the 12th day of April 2006, in the City of [redacted], Philippines and within the jurisdiction of this Honorable Court, the said accused, the live-in partner of the mother of the victim, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the victim [AAA], a minor fourteen (14) years old, against her will.
>
> Contrary to Article 266-A, in relation to 266-B of the Revised Penal Code.[4]

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[1] *Rollo*, pp. 4-13. The Decision was penned by Associate Justice Edward B. Contreras, and concurred in by Associate Justices Edgardo L. Delos Santos and Geraldine C. Fiel-Macaraig of the Nineteenth Division, Court of Appeals, Cebu City.

[2] CA *rollo*, pp. 40-47. The Judgment, in Crim. Case No. 529, was penned by Executive/Presiding Judge Ananson E. Jayme of Branch 63, Regional Trial Court, Bayawan City, Negros Oriental.

[3] *Id*. at 39.

[4] *Id*.

ZZZ pleaded not guilty to the crime charged during his arraignment on July 19, 2006. Pre-trial was held on October 25, 2006. Trial on the merits then ensued.[5]

The prosecution presented AAA[6] and Dr. Edalin Dacula (Dr. Dacula) as its witnesses.[7]

AAA narrated that in the afternoon of April 12, 2006, she had fallen asleep after doing laundry, while her stepfather, ZZZ, was doing carpentry works. Suddenly, she woke up and found ZZZ on top of her, his lower body naked. He then sat on the floor with his penis showing and removed her short pants and underwear, after which he went back on top of her and masturbated. He took AAA's hands and put them on his penis,[8] telling her that if she became pregnant, "he [would] be happy."[9] ZZZ then inserted his penis into her vagina "and sat, kissed her face, touched her vagina[,] and kissed her breast."[10]

AAA later reiterated on cross-examination that ZZZ put his penis into her vagina. She failed to see the act, but felt it. She also felt pain on her vagina's side, caused by the penis' insertion.[11]

Dr. Dacula, who conducted the medical examination on AAA, testified that she had found redness and abrasion on the right

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[5] *Rollo*, p. 5.

[6] In *People v. Cabalquinto*, 533 Phil. 703 (2006) [Per *J*. Tinga, *En Banc*], this Court discussed the need to withhold the victim's real name and other information that would compromise the victim's identity, applying the confidentiality provisions of: (1) Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and its Implementing Rules and Regulations; (2) Republic Act No. 9262 (Anti-Violence Against Women and their Children Act of 2004) and its Implementing Rules and Regulations; and (3) this Court's October 19, 2004 Resolution in A.M. No. 04-10-11-SC (Rule on Violence Against Women and their Children).

[7] CA *rollo*, p. 41.

[8] *Id*.

[9] *Id*.

[10] *Id*.

[11] *Id*.

side of the victim's *labia minora*, "caused by a smooth, soft object"[12] as indicated in the Medico-Legal Report.[13]

Meanwhile, the defense presented as witnesses: (1) AAA's mother BBB; (2) ZZZ; and (3) AAA, on her affidavit of recantation.[14]

BBB testified that ZZZ had been her common-law spouse for four (4) years. At 10:00 a.m. on April 12, 2006, she and her stepdaughter, CCC, went for a 30-minute walk to the *barangay* hall to request a toilet bowl, as instructed by ZZZ. They went back home after being told that the toilet bowl was not yet available.[15]

When she arrived at their house, BBB was surprised to see that the door and window were shut. Upon opening the door, she saw AAA sitting and ZZZ standing, both silent. BBB got mad and whipped ZZZ with a plastic hose, but he remained silent.[16]

Thinking that her daughter was raped, BBB brought AAA to the *barangay* hall. Then, with the assistance of the Department of Social Welfare and Development and the police, they went to [redacted] City for AAA's physical examination.[17]

On cross-examination, BBB stated that she brought AAA to the barangay hall "because her vision at that time was blurred as if she cannot notice a person[.]"[18] Maintaining that their house was closed when she first arrived from the barangay hall, she reiterated seeing ZZZ and AAA inside when she opened the door and thinking that her daughter was raped.[19]

ZZZ testified that he was BBB's common-law spouse. He took AAA as his stepdaughter, supporting her since childhood.

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[12] *Id*.

[13] *Id*.

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

[15] *Id*. at 42.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

He narrated that at 6:00 a.m. on April 12, 2006, he was working on the kitchen in their house while AAA and DDD did the laundry. Meanwhile, BBB proceeded to the barangay hall to check if the toilet bowl they requested was already available.

ZZZ further narrated that at around 10:00 a.m. on April 12, 2006, DDD and AAA were eating breakfast after they had finished washing clothes. AAA then went up the second floor of their house and slept, while he was then Installing an electric bulb in the kitchen. When BBB arrived, she opened the door at once.[20] AAA "was surprised because [BBB] was shouting as if she was dreaming."[21] BBB asked ZZZ if he raped AAA, which he denied. He was around 12 meters away from AAA, holding a hammer on the window. BBB then went to AAA and pinched her "*bulog*[.]"[22] Afterwards, BBB grabbed a hose and whipped ZZZ, who was able to parry the strike. BBB then went out with AAA only to return the following morning.[23]

ZZZ claimed that BBB was influenced by her cousins to accuse him.[24] The cousins were allegedly mad at him and wanted BBB and him to separate since he was "not a useful person."[25]

On cross-examination, ZZZ stated that the house's window and door were always shut because the house was still unfinished. He restated that when BBB arrived, she saw him standing by the window and AAA sitting at a corner of their house. He reiterated that BBB whipped him with a hose.[26] He added that when he saw AAA crying, he thought that she would not pinpoint him as her rapist "because her conscience [was] bothered."[27]

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[20] *Id*. at 43.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] *Id*.

On August 8, 2008, AAA executed her Affidavit of Recantation and Desistance,[28] praying that the rape case be dismissed. She claimed that her declarations during the direct and cross-examinations "were done under duress and that she was afraid of the authorities at that time[.]"[29] Maintaining that ZZZ did not rape her, she claimed that she was forced by a certain EEE to file the rape case.

On cross-examination, AAA testified that she was not compelled by the prosecutor to testify. Contrary to her Affidavit, she also admitted that she was not under duress when she was presented as a witness. She recalled crying during the direct examination and pointing to ZZZ as her rapist when she was asked. EEE, she added, was their neighbor.[30]

In its June 25, 2013 Judgment,[31] the Regional Trial Court found ZZZ guilty beyond reasonable doubt of simple statutory rape.[32]

The trial court found that the prosecution failed to establish AAA's minority. It did not present documentary evidence, such as her birth certificate, or even testimonial evidence to prove that AAA was a minor when the crime was committed.[33]

The trial court further gave weight to AAA's declaration that she was raped. It noted her sincerity during trial and her candid and straightforward manner in giving her testimony. It held that her allegations were corroborated by Dr. Dacula's findings and BBB's subsequent acts in bringing AAA to the barangay officials, the Department of Social Welfare and Development, and the police.[34]

The trial court did not give merit to ZZZ's denial for being unsubstantiated. It further held that instead of discrediting the

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[28] *Id*. at 43 and *rollo*, p. 6.

[29] *Id*. at 43.

[30] *Id*.

[31] *Id*. at 40-47.

[32] *Id*. at 47.

[33] *Id*. at 44.

[34] *Id*. at 44-46.

prosecution's evidence, AAA's Affidavit of Recantation and Desistance bolstered her earlier statements by reaffirming that: (1) ZZZ sexually molested her; (2) the prosecutor did not force her to testify; and (3) she was not put under duress.[35]

The dispositive portion of the Regional Trial Court Judgment read:

> WHEREFORE, based on the prevailing facts, evidences, law and jurisprudence applicable, the court finds accused [ZZZ] GUILTY BEYOND REASONABLE DOUBT of the crime of simple statutory rape and hereby sentenced him to suffer the penalty of imprisonment of *reclusion perpetua*. He is hereby ordered to pay to the victim civil indemnity in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00 without proof of its basis.
>
> SO ORDERED.[36]

ZZZ appealed[37] before the Court of Appeals. In turn, the People of the Philippines, represented by the Office of the Solicitor General, filed its Brief.[38]

In its September 30, 2016 Decision,[39] the Court of Appeals denied the appeal and affirmed the trial court Judgment with modification.[40] It declared that the trial court erroneously used the word "statutory" since it was not established that AAA was below 12 years old when the crime was committed. Nonetheless, the error was harmless because the penalty meted and the monetary awards granted were for the crime of simple rape.[41] It sustained ZZZ's conviction based on AAA's "vivid recollection"[42] of how rape was committed against her.[43]

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[35] *Id*. at 45.

[36] *Id*. at 47.

[37] *Id*. at 18-37.

[38] *Id*. at 67-81.

[39] *Rollo*, pp. 4-13.

[40] *Id*. at 13.

[41] *Id*. at 8-10.

[42] *Id*. at 10.

[43] *Id*. at 8-10.

The Court of Appeals did not give merit to ZZZ's argument that the prosecution failed to prove the presence of force, intimidation, threat, fraud, or grave abuse of authority.[44] Citing *People v. Arpon*,[45] it held that the moral influence or ascendancy of the common-law spouse of the victim's mother replaced the elements of violence and intimidation.[46]

Likewise, the Court of Appeals gave no merit to either AAA's recantation or the argument that her lack of hymenal laceration negated the crime of rape.[47]

The dispositive portion of the Court of Appeals Decision read:

> WHEREFORE, the appeal is DENIED. The Judgment dated June 25, 2013, of the Regional Trial Court, Branch 63, Bayawan City, in Criminal Case No. 529 is hereby AFFIRMED, but with modification only in that the word "statutory" in the dispositive portion thereof is DELETED.
>
> SO ORDERED.[48]

Hence, ZZZ appealed his case before this Court.[49]

On April 5, 2017, this Court issued a Resolution[50] requiring the parties to file their supplemental briefs. The parties filed their respective Manifestations,[51] stating that they would no longer file their supplemental briefs as they had sufficiently exhausted their arguments in their Briefs before the Court of Appeals.[52]

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[44] *Id*. at 10.

[45] 678 Phil. 752 (2011) [Per J. Leonardo-De Castro, First Division].

[46] *Rollo*, p. 10.

[47] *Id*. at 10-12.

[48] *Id*. at 13.

[49] *Id*. at 14-16.

[50] *Id*. at 20-21.

[51] *Id*. at 22-25, Manifestation for plaintiff-appellee, and 27-28, Manifestation for accused-appellant.

[52] *Id*. at 22 and 27.

Accused-appellant argues that the crime of statutory rape was not proven because the prosecution failed to sufficiently establish AAA's minority, which the trial court also noted.[53]

Assuming that the prosecution established her age, accused-appellant contends that he was still wrongly convicted of statutory rape. Pointing out that AAA's alleged age in the Information was 14 years old, he argues that under the law and jurisprudence, the victim must be below 12 years old for the crime to be statutory rape.[54]

Accused-appellant avers that since the case does not involve statutory rape, the presence of force, intimidation, threat, fraud, or grave abuse of authority must be established in the alleged crime's commission. He contends that the prosecution failed to show these circumstances.[55]

Moreover, accused-appellant alleges that AAA's "[i]nconsistent and improbable statements[,]"[56] particularly on direct examination and on her Affidavit of Recantation and Desistance, raised doubts on the credibility of her allegations.[57]

Accused-appellant also points out that Dr. Dacula only found redness and abrasion, and not hymenal laceration, which should have been present had there been sexual intercourse.[58] These manifestations "could have been easily caused by pinching, scratching, or wearing very tight underwear."[59]

Lastly, accused-appellant argues that the prosecution should not draw its strength on the alleged weakness of the defense.[60]

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

[54] *Id*.

[55] *Id*. at 27.

[56] *Id*.

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

[58] *Id*. at 34.

[59] *Id*.

[60] *Id*. at 35.

He maintains that he should be acquitted considering that his guilt was not proven beyond reasonable doubt.[61]

Plaintiff-appellee counters that accused-appellant was actually convicted not of statutory rape, but of simple rape, and was meted with the penalty of simple rape. Hence, even if the trial court erroneously included the word "statutory" in describing the crime, there was no effect in the imposed penalty.[62]

Plaintiff-appellee insists that accused-appellant's guilt was proven beyond reasonable doubt.[63] It was able to establish the following elements:

> *First*. [AAA] was then 14-year old when appellant had sexual intercourse with her.
>
> *Second*. Appellant who is the common-law husband of [AAA's] mother exercises moral ascendancy and authority over her.
>
> *Third*. [AAA] testified that appellant had carnal knowledge of her on April 12, 2006 at about 11:00 o'clock (*sic*) in the morning while her mother went to the Barangay Hall to do an errand for appellant.[64] (Emphasis in the original)

Plaintiff-appellee maintains that AAA's narration of the incident proves that accused-appellant raped her.[65] It adds that recantations are usually viewed unfavorably since it can be secured by intimidating the witness or in exchange of monetary consideration.[66] It alleges that AAA's recantation was doubtful because BBB and accused-appellant continued their common-law relationship and AAA's new claim "was a mere legal conclusion, bereft of any details or other indicia of credibility, much less truth."[67]

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[61] *Id*. at 34.

[62] *Id*. at 72-76.

[63] *Id*. at 70-72.

[64] *Id*. at 72.

[65] *Id*.

[66] *Id*. at 76-78.

[67] *Id*. at 77.

Finally, plaintiff-appellee contends that AAA's intact hymen is not fatal to its cause. In the crime of rape to be consummated, it is sufficient that the penis touched the pudendum or the labia.[68]

The sole issue for this Court's resolution is whether or not accused-appellant ZZZ's guilt for the crime of rape has been proven beyond reasonable doubt.

In arguing for his innocence, accused-appellant maintains that the element of force, intimidation, threat, fraud, or grave abuse of authority in the crime of rape was not established, and that the element of the victim's minority in the crime of statutory rape was not proven. Moreover, AAA's recantation and her intact hymen both negate the allegation of rape.

Accused-appellant's contentions have no merit

I

Article 266-A of the Revised Penal Code defines rape as:

> 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 anal orifice of another person.

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

After a careful examination of the case records, this Court holds that the prosecution has established beyond reasonable doubt that accused-appellant is guilty of raping AAA. The trial court also found AAA's testimony credible and supported by evidence:

> The candid, straightforward and unrehearsed testimony of victim [AAA] who declared against the bestial acts of the accused on her person and maintained that she was required to hold his penis and thereafter, again, rode on top of her placing his penis on her vagina is corroborated by the unrefuted findings of Dr. Edalin L. Dacula who found that the abrasion and redness in color on the right side of the *labia minora* is caused by a smooth, soft object. A smooth, soft object is a penis and that the abrasion and redness in color on the right side of the *labia minora* is caused probably by the friction of the hardened and erected penis of the accused. That was why the victim complained that she felt pain on her vagina.[69]

The Court of Appeals, likewise, found that AAA's testimony during the direct examination showed that she clearly remembered how accused-appellant committed the crime:

> PROS. BALBUENA ON DIRECT EXAMINATION:
>
> (COURT INTERRUPTED)
>
> COURT . . . Which come (*sic*) first, the raping or the masturbating?
>
> WITNESS The raping.
>
> Q How did he rape — How did the accused rape you?
>
> . . . . . .
>
> A First, he positioned himself on top of me and then he undressed me, and then he sat on the floor and masturbated. He let me hold his penis, kissed me. On top of me, he kissed me, and he undressed me, sat on the floor and masturbated, and then he let me hold his penis, and then he again positioned himself on top of me.

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[69] *Id*. at 46.

Q Court.	**Tell in straight words; answer 'yes' or 'no'. Did he place his penis inside your vagina?**
A	**Yes.**

. . . .

[ON CROSS EXAMINATION]

(COURT INTERRUPTED)

Q	Did you feel?
A	Yes.
Q	And what was your feeling?
A	Pain
Q	**What was painful?**
A	**At the side**
Q	**Of what?**
A	**The side of my vagina.**
Q	**Why?**
A	**Because his penis [was] in my vagina**.[70] (Emphasis in the original)

This Court finds no reason to disturb the findings of the trial court and the Court of Appeals. In *People v. Quintos*:[71]

> The observance of the witnesses' demeanor during an oral direct examination, cross-examination, and during the entire period that he or she is present during trial is indispensable especially in rape cases because it helps establish the moral conviction that an accused is guilty beyond reasonable doubt of the crime charged. Trial provides judges with the opportunity to detect, consciously or unconsciously, observable cues and microexpressions that could, more than the words said and taken as a whole, suggest sincerity or betray lies and ill will. These important aspects can never be reflected or reproduced in documents and objects used as evidence.

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[70] *Rollo*, pp. 9-10.

[71] 746 Phil. 809 (2014) [Per *J.* Leonen, Second Division].

Hence, "[t]he evaluation of the witnesses' credibility is a matter best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial. Thus, the Court accords great respect to the trial court's findings," more so when the Court of Appeals affirmed such findings.[72] (Citations omitted)

There is also no merit in accused-appellant's argument that force, intimidation, threat, fraud, or grave abuse of authority was not present. In *People v. Gacusan*,[73] this Court reiterated that "[t]he abuse of moral influence is the intimidation required in rape committed by the common-law father of a minor."[74]

As to the inclusion of the word "statutory" in the dispositive portion of the trial court Judgment, this Court holds that it was erroneously added by the trial court judge.

In *People v. Dalan*:[75]

> The gravamen of the offense of statutory rape, as provided for in Article 266-A, paragraph 1 (d) of the Revised Penal Code, as amended, is the carnal knowledge of a woman below 12 years old. To convict an accused of the crime of statutory rape, the prosecution must prove: first, the age of the complainant; second, the identity of the accused; and last but not the least, the carnal knowledge between the accused and the complainant.[76] (Citation omitted)

Here, the Information against accused-appellant did not allege AAA to be below 12 years old, but 14 years old, when the crime was committed upon her. The trial court even held that without documentary or testimonial evidence, the prosecution failed to substantiate the qualifying circumstance of minority. Despite this, it still found him guilty of simple statutory rape and imposed the penalty of *reclusion perpetua*.

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[72] *Id*. at 819-820.

[73] 809 Phil. 773 (2017) [Per J. Leonen, Second Division].

[74] *Id*. at 774.

[75] 736 Phil. 298 (2014) [Per J. Brion, Second Division].

[76] *Id*. at 303.

Nonetheless, this Court finds that the penalty imposed on accused-appellant is correct as it is the penalty for offenders who were found guilty beyond reasonable doubt of simple rape under Article 266-B[77] of the Revised Penal Code.[78]

II

As a rule, affidavits of desistance are viewed with skepticism and reservation because they can be "easily obtained for monetary consideration or through intimidation."[79]

Based on the circumstances here, this Court cannot give any weight to AAA's Affidavit of Recantation and Desistance.

If the crime did not really happen, AAA would have made the Affidavit at the earliest instance—but she did not. Instead, she executed it more than two (2) years after the crime had been committed. If the crime did not really happen, she would not have submitted herself to physical examination or hours of questioning—but she did.

Moreover, her recollection on how accused-appellant committed the crime was detailed; her testimony, consistent. There was no evidence that AAA was forced or pressured by the prosecutor to take the witness stand, as manifested by her answer during the cross-examination:

PROS. BALBUENA ON CROSS EXAMINATION:

Q: Now, Mrs. (*sic*) Witness, can you recall having testified in this case?

A: Yes.

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[77] REV. PEN. CODE, Art. 266-B provides:

ARTICLE 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

[78] *See People v. Gacusan*, 809 Phil. 773, 789 (2017) [Per J. Leonen, Second Division] and *People v. Corpuz*, G.R. No. 208013, July 3, 2017, 828 SCRA 565, 600 [Per J. Leonen, Second Division].

[79] *People v. Bertulfo*, 431 Phil. 535, 550 (2002) [Per *C.J.* Davide, Jr., First Division].

Q: In fact, it was I who presented you as our witness, Mrs. (*sic*) Witness?

A: Yes.

Q: And when you testified Mrs. (*sic*) Witness, of course, **this Fiscal did not force you to testify, is that not right?**

A: **I was not forced**.

Q: So, in your testimony when you were presented by the prose[cu]tion as our witness[,] **you were not under duress then, Mrs.** (*sic*) **Witness?**

ATTY. CABUSAO: Objection Your honor. What has be[e]n testified by the witness, Your Honor, it is not the Prosecutor who forced her, Your Honor.

PROS. BALBUENA: I am on cross examination, Your Honor and the credibility of this witness is questioned, Your Honor.

COURT: Okay, let her answer.

. . . . . .

WITNESS:

A: **I was not forced by the Fiscal**.[80] (Emphasis in the original, citation omitted)

Likewise, the absence of hymenal laceration fails to exonerate accused-appellant. As explained in *People v. Osing*:[81]

[M]ere touching, no matter how slight of the labia or lips of the female organ by the male genital, even without rupture or laceration of the hymen, is sufficient to consummate rape. The absence of fresh hymenal laceration does not disprove sexual abuse, especially when the victim is a young girl[.][82] (Citation omitted)

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[80] *Rollo*, p. 11.

[81] 402 Phil. 343 (2001) [Per *J*. Melo, Third Division].

[82] *Id*. at 354.

This Court has consistently held that an intact hymen does not negate the commission of rape.[83] The element of rape does not even include hymenal laceration:

> The absence of external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape, hymenal laceration not being, to repeat, an element of the crime of rape. A healed or fresh laceration would of course be a compelling proof of defloration. What is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.[84] (Citations omitted)

The guilt of accused-appellant having been proven beyond reasonable doubt for the crime of rape, the penalty of *reclusion perpetua* was correctly imposed. However, in line with prevailing jurisprudence,[85] this Court increases the amount of civil indemnity to ₱75,000.00 and moral damages to ₱75,000.00. Exemplary damages of ₱75,000.00 shall also be awarded to AAA.[86]

Finally, a six percent (6%) per annum legal interest shall be imposed on all the damages awarded to AAA from the date of finality of the judgment until fully paid.[87]

WHEREFORE, the Court of Appeals' September 30, 2016 Decision in CA-G.R. CR-HC No. 01769 is **AFFIRMED**. Accused-appellant ZZZ is found **GUILTY** beyond reasonable doubt of rape, as punished under Article 266-B of the Revised

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[83] *People v. Francica*, G.R. No. 208625, September 6, 2017, 839 SCRA 113, 135 [Per *J.* Leonen, Third Division]; *People v. Austria*, G.R. No. 210568, November 8, 2017, 844 SCRA 523, 543-544 [Per *J.* Leonen, Third Division]; and *People v. Opong*, 577 Phil. 571, 592-593 (2008) [Per *J.* Chico-Nazario, Third Division].

[84] *People v. Araojo*, 616 Phil. 275, 288 (2009) [Per *J.* Velasco, Jr., Third Division].

[85] *People v. Jugueta*, 783 Phil. 806, 851 (2016) [Per *J.* Peralta, *En Banc*].

[86] *Id*.

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

Penal Code. He is sentenced to suffer the penalty of *reclusion perpetua*.

Accused-appellant is further **DIRECTED** to pay AAA: (1) Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; (2) Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity; and (3) Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages.

All damages awarded shall be subject to interest at the rate of six percent (6%) per annum from the finality of this Decision until its full satisfaction.

SO ORDERED.

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

Peralta (*Chairperson*) and *Hernando, JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 232194. June 19, 2019]

ALVIN M. DE LEON, *petitioner, vs.* **PHILIPPINE TRANSMARINE CARRIERS, INC. and ANNA MARIA MORALEDA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PETITION MUST BE FILED NOT LATER THAN SIXTY (60) DAYS FROM NOTICE OF THE JUDGMENT, OR RESOLUTION SOUGHT TO BE ASSAILED; WHEN THE 60TH DAY FALLS ON A SUNDAY, THE DEADLINE FOR FILING THE PETITION IS UNTIL THE NEXT BUSINESS DAY; CASE AT BAR.— The CA dismissed de Leon's petition primarily for

allegedly being filed out of time. On this score, the CA erred. De Leon received a copy of the NLRC Resolution on December 3, 2014. Consequently, he had 60 days, or until February 1, 2015, to file the Petition for *Certiorari*. However, February 1, 2015 fell on a Sunday, hence the deadline for filing the Petition for *Certiorari* was until the next business day, or on February 2, 2015. x x x Verily, the CA erred in holding that de Leon's petition was filed out of time. De Leon therefore timely filed the Petition for *Certiorari* when he filed the same on the next business day, or on February 2, 2015.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; MANAGEMENT PREROGATIVE IN TERMINATING AN EMPLOYEE'S EMPLOYMENT UPON A FINDING OF VIOLATION OF ITS COMPANY RULES, UPHELD IN CASE AT BAR; COMPANY POLICIES AND REGULATIONS, UNLESS SHOWN TO BE GROSSLY OPPRESSIVE OR CONTRARY TO LAW, ARE GENERALLY VALID AND BINDING ON THE PARTIES AND MUST BE COMPLIED WITH UNTIL FINALLY REVISED OR AMENDED.— Despite the finding, however, that the CA erred in ruling that the petition was filed out of time, the Court nevertheless upholds the ruling of the CA as regards the merits of the case. De Leon's dismissal was anchored on his violation of PTC's Code of Discipline. x x x A plain reading of the above rule would reveal that what is punished are two separate acts: (1) offering or accepting, whether directly or indirectly, any gift with a collective value of ₱500.00 or more, *regardless of who it came from*, and (2) acceptance by an employee of any gift — *regardless of value* — from a crew member, ex-crew member, or representative of a crew member. It is likewise clear from the said rule that a violation, even on the first instance, merits the dismissal of the employee from his employment. x x x The Court's reading of the relevant rule from PTC's Code of Conduct is that it is not vague, nor is it unreasonable. The fact that it did not specify the origin of the gift or the purpose for which the gift was given did not automatically mean that the rule was vague. It simply means that this "no-gift" policy of PTC was absolute, that is, the origin or the purpose of the gift was irrelevant. In simple terms, the mere act of offering or receiving a gift constitutes a violation. The rule is likewise not unreasonable. In its Comment, PTC explained the rationale for the rule. It cites the 2003 POEA Rules

and Regulations Governing the Recruitment of Seafarers (POEA Rules). x x x The Court agrees with the x x x explanation of PTC. Indeed, in light of the strict provisions of the POEA Rules, it was reasonable for PTC to protect itself by crafting its Code of Discipline that imposes the supreme penalty of dismissal for those who commit acts that, if construed to be PTC's, would merit the cancellation of its license. Thus, as it is recognized that company policies and regulations, unless shown to be grossly oppressive or contrary to law, are generally valid and binding on the parties and must be complied with until finally revised or amended, the dismissal of de Leon — hinged on a rule that provides for dismissal even on the first instance of violation — should therefore be upheld. The Court has, in the past, upheld a company's management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements. In this case, the Court holds that PTC was well within its management prerogative in terminating de Leon's employment upon a finding of violation of its company rules. It is likewise well to note that, as pointed out by PTC and by the NLRC in its Resolution, de Leon's actions reveal that he was aware that he was violating a company rule. x x x This therefore constitutes ***willful*** misconduct or disobedience of company rules that further justifies PTC's decision to terminate de Leon's employment.

APPEARANCES OF COUNSEL

Earl I. Gadit for petitioner.
Manalo Perez Paco & Antonio Law Offices for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) filed by Alvin M. de Leon (de Leon), assailing the

[1] *Rollo*, pp. 3-35.

Decision[2] dated July 19, 2016 and Resolution[3] dated May 23, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 138932, which affirmed the Resolution[4] dated November 28, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002342-14.

The Facts

On January 31, 2005, de Leon began as a Hotel Personnel Planner for the Crewing Department of respondent Philippine Transmarine Carriers, Inc. (PTC), a manning agency acting as agent for foreign principals and engaged in the business of sending Filipino seafarers on board ocean-going ships or vessels.[5] At the start of his employment, de Leon was given PTC's old company handbook;[6]

De Leon's first few years with PTC went well, and he was, in fact, promoted to Hotel Personnel Officer in 2008.[7] In December 2010, he was seconded by PTC to First Maritime Shared Services, Inc. (FMSSI), PTC's offshore processing unit, where he was given the position of "Scheduler."[8] During his time with PTC, he was given the following awards:

1. Star Award in 2006;
2. Superstar Award in 2007;
3. Megastar Award in 2008;
4. Megastar I Award in 2009;

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[2] *Id*. at 39-47. Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles concurring.

[3] *Id*. at 49-50.

[4] *Id*. at 91-99. Penned by Presiding Commissioner Alex A. Lopez, with Commissioner Pablo C. Espiritu Jr. concurring.

[5] *Id*. at 5 and 338.

[6] *Id*. at 338.

[7] *Id*. at 5.

[8] *Id*.

5. Megastar II Award in 2010;
6. Hall of Fame Award - the highest distinction an employee of PTC could get-in 2011.[9]

Meanwhile, during his secondment with FMSSI, he received four Top Performer of the Month awards, three Top Performer of the Quarter awards, and a Top Performer of the Year Award in 2012.[10]

It must be noted, however, that in 2010, he was served with two written memoranda by the Human Resources Department of PTC regarding a supposed violation of PTC's Code of Discipline, particularly Section 3, Number 2 of which provides:

E. Employees Behaviour, Relationship with Co-employees/Superiors

2. It is the duty and obligation of every employee to comply faithfully and strictly with every rule, [regulation], instruction, notice or directive of the company relative to or in connection with his work or employment. This includes strict compliances with notices to appear on investigation to shed light on matter being investigated by or of interest of the company.[11]

One of the two written memoranda served on de Leon was regarding an incident on October 11, 2010, caught on PTC's closed-circuit television (CCTV) where he appeared to have violated the policy of receiving "*pasalubong*" which was prohibited under the written instruction of the company.[12] De Leon served replies to the memoranda issued to him, in which he explained that he merely assisted a crewmember in giving a gift to a relative. PTC found his explanations honest and justified, so he was given a mere verbal reprimand to discourage any similar suspicious behavior.[13]

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[9] *Id.* at 6.

[10] *Id.* at 7.

[11] *Id.* at 339.

[12] *Id.*

[13] *Id.*

In 2012, PTC revised its Code of Discipline, in which it indicated more clearly its prohibition against accepting gifts. Thus:

Section O. CONCERTED ACTIONS AGAINST COMPANY & OTHER OFFENSES

5. No employee shall offer or accept directly or indirectly any gift with a collective value of Php 500.00 and above. Any item worth Php 500.00 and above should be returned or surrendered to HR Department. In addition, an employee who accepts any amount of money or any gift in kind from a crew member, ex-crew member, or representative of a crew member shall be dismissed.

Offering or accepting any gift with collective value of ₱500.00 and above should be dealt with DISMISSAL.

1st Offense - DISMISSAL[14]

De Leon was served a copy of PTC s revised Code of Discipline on September 7, 2012.[15] Incidentally, FMSSI —the PTC-owned company where de Leon was seconded — also had the exact same policy.[16]

On October 9, 2013, de Leon, along with a co-employee Aaron T. Brillante[17] (Brillante), was caught on the CCTV accepting a brown bag from another employee Fred Rikko B. Adefuin (Adefuin).[18] The brown bag — which contained two bottles of Jack Daniel's Whiskey — came from Mr. Mustafa Acar (Acar), a friend and co-employee of de Leon when he was still working in another vessel, the Oasis of the Seas.[19] In his Petition, de Leon admitted:

x x x Thinking in all honesty that Mr. Acar's surprise gift as harmless, de Leon instructed Mr. Adefuin to give the gift instead to

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[14] *Id.* at 340.

[15] *Id.*

[16] *Id.*

[17] Also surnamed "Brillantes" in some parts of the record.

[18] *Id.* at 7 and 340.

[19] *Id.* at 7.

Mr. Aaron T. Brillantes in the far end of the office knowing that there is a CCTV camera trained on their work area. He informed the crew to give the gift in the far end of the work area so as not to arouse curious stares and create misunderstandings about the liquor sent by Mr. Acar considering that they are at the Crewing Operations Center and in front of a lot of crewmembers waiting.[20]

The next day, he was confronted about the incident and he readily admitted that he and Brillante did accept a gift.[21] On October 25, 2013, de Leon and Brillante were served with a memorandum to explain the October 9, 2013 incident. They were also served a 30-day Suspension Notice.[22]

In his answer to the memorandum, de Leon admitted to receiving the bottles of liquor, but insisted that it was not a violation of the company policy for it did not come from a crewmember but from an outsider.[23] On November 6, 2013, an administrative hearing was held, and de Leon was able to attend the same.[24] In the administrative hearing, Brillante testified that de Leon told Adefuin "not here, there are cctv and others might have a wrong idea about it," and de Leon then advised Adefuin to proceed to the rear section of the crewing operations office.[25] On November 12, 2013, Acar sent an email to the representatives of PTC, to wit:

This matter and statement is just to bring to your notice that recently I had gifted our previous scheduler Alvin [d]e Leon 2 bottles of whiskey worth $36 US dollars as a goodwill gesture and token of friendship. This gift was sent through one of my Filipino waiters Adefuin, Fred Rikko Bernardin to be given to Alvin [d]e Leon. However there was a whole lot of misunderstanding and it seems like the bottle was being given to Alvin [d]e Leon by the crew member Adefuin, Fred Rikko Bernardin as a favor[.]

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[20] *Id*. at 7-8.

[21] *Id*. at 8 and 340.

[22] *Id*. at 340.

[23] *Id*. at 7, 340-341.

[24] *Id*. at 341.

[25] *Id*. at 342.

I just wanted to let you know that there is no personal favor behind this gift that was extended except for the friendship that we still share till date.

Kindly understand the above matter and I can assure that there is no personal favor involved from Alvin [d]e Leon nor the crew member (Adefuin, Fred Rikko Bernardin) and the whole situation has been misunderstood.

Mustafa Acar
Maitre'D
Oasis of the Seas.[26]

On November 22, 2013, de Leon received a written resolution from PTC notifying him of the termination of his employment.[27] Meanwhile, PTC also terminated the employment of Brillante.

On January 30, 2014, de Leon filed a case for illegal dismissal with the Labor Arbiter.[28] However, on July 30, 2014, the Labor Arbiter dismissed the case for lack of merit. De Leon thus filed an appeal with the NLRC.

Rulings of the NLRC

On October 21, 2014, the Third Division of the NLRC issued a Decision[29] partially granting de Leon's appeal. It found the penalty of dismissal too harsh and not commensurate to the act committed, more so because it was done without wrongful intent.[30] It also took into consideration the fact that de Leon was an exemplary employee during his stint with PTC, as proved by the numerous awards he received.[31] It thus held that de Leon was illegally dismissed by PTC.

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[26] *Id*. at 9-10. (Emphasis and underscoring removed)

[27] *Id*. at 341-344.

[28] *Id*. at 124.

[29] *Id*. at 79-89. Penned by Presiding Commissioner Alex A. Lopez, with Commissioner Pablo C. Espiritu Jr. concurring.

[30] *Id*. at 86.

[31] *Id*.

Aggrieved, PTC filed a motion for reconsideration with the NLRC.

On November 28, 2014, the NLRC issued a Resolution[32] reversing its earlier Decision. In this Resolution, the NLRC noted that de Leon was well-aware of the company policy, yet he willfully violated the same. As the penalty provided under PTC's Code of Discipline was dismissal, de Leon's dismissal was therefore justified. The NLRC likewise took into consideration de Leon's position as Scheduler. It noted that de Leon's duties and responsibilities made him a member of the managerial staff, and thus, this violation made him lose the trust and confidence of PTC. All in all, the NLRC held that de Leon was validly dismissed.

De Leon then filed a Petition for *Certiorari* under Rule 65 with the CA.

Ruling of the CA

In the questioned Decision[33] dated July 19, 2016, the CA dismissed de Leon's Petition for *Certiorari* primarily for allegedly being filed out of time. It held:

> Records reflect that petitioner received on 3 December 2014 a copy of the assailed *Resolution* of the NLRC. Conformably with Sections 1 and 4, Rule 65 of the 1997 Rules of Civil Procedure, petitioner had 60 days from 3 December 2014 within which to file his *Petition for Certiorari*, or, on 1 February 2015. As it happened, on 1 February 2015, the impugned *Resolution* became final and executory and was ordered recorded in the NLRC Book of Entries of Judgment. Plain as a pikestaff, when the instant *Petition* was filed on 2 February 2015, the repugned *Resolution* had already attained finality.[34]

It then held that it nevertheless sieved through the records, and found no grave abuse of discretion in the NLRC's Resolution.

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[32] *Supra* note 4.

[33] *Supra* note 2.

[34] *Rollo*, p. 42.

De Leon filed a motion for reconsideration, but the same was denied by the CA in a Resolution[35] dated May 23, 2017.

Hence, the instant appeal.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the CA erred in dismissing de Leon's Petition for *Certiorari*.

The Court's Ruling

The appeal is unmeritorious. The CA did not err in dismissing the Petition for *Certiorari* filed by de Leon.

The Petition for Certiorari was not filed out of time

The CA dismissed de Leon's petition primarily for allegedly being filed out of time. On this score, the CA erred.

De Leon received a copy of the NLRC Resolution on December 3, 2014. Consequently, he had 60 days, or until February 1, 2015, to file the Petition for *Certiorari*. However, February 1, 2015 fell on a Sunday, hence the deadline for filing the Petition for *Certiorari* was until the next business day, or on February 2, 2015. In the similar case of *Dela Rosa v. Michaelmar Philippines, Inc.*,[36] the Court held:

> A decision issued by a court becomes final and executory when such decision disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, such as when after the lapse of the reglementary period to appeal, no appeal has been perfected.
>
> The period or manner of appeal from the NLRC to the CA is governed by Rule 65, pursuant to the ruling of this Court in *St. Martin Funeral Home v. National Labor Relations Commission*, Section 4 of Rule 65, as amended, *states that the petition may be filed not*

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[35] *Supra* note 3.

[36] 664 Phil. 154 (2011).

later than sixty (60) days from notice of the judgment, or resolution sought to be assailed.

Record shows that Dela Rosa received a copy of the November 24, 2005 Resolution of the NLRC, denying his motion for reconsideration on December 8, 2005. **He had sixty (60) days, or until February 6, 2006, to file his petition for certiorari. February 6, 2006, however, was a Sunday. Thus, Dela Rosa filed his petition the next working day, or on February 7, 2006. Undoubtedly, Dela Rosa's petition was timely filed.**[37] (Emphasis and underscoring supplied)

Verily, the CA erred in holding that de Leon's petition was filed out of time. De Leon therefore timely filed the Petition for *Certiorari* when he filed the same on the next business day, or on February 2, 2015.

De Leon was validly dismissed by PTC

Despite the finding, however, that the CA erred in ruling that the petition was filed out of time, the Court nevertheless upholds the ruling of the CA as regards the merits of the case.

De Leon's dismissal was anchored on his violation of PTC's Code of Discipline, the pertinent provision again reads:

Section O. CONCERTED ACTIONS AGAINST COMPANY & OTHER OFFENSES

5. No employee shall offer or accept directly or indirectly any gift with a collective value of Php 500.00 and above. Any item worth Php 500.00 and above should be returned or surrendered to HR Department. In addition, an employee who accepts any amount of money or any gift in kind from a crew member, ex-crew member, or representative of a crew member shall be dismissed.

Offering or accepting any gift with collective value of ₱500.00 and above should be dealt with DISMISSAL.

1st Offense - DISMISSAL[38]

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[37] *Id.* at 162.

[38] *Rollo*, p. 340.

A plain reading of the above rule would reveal that what is punished are two separate acts: (1) offering or accepting, whether directly or indirectly, any gift with a collective value of ₱500.00 or more, *regardless of who it came from*, and (2) acceptance by an employee of any gift — *regardless of value* — from a crew member, ex-crew member, or representative of a crew member.

It is likewise clear from the said rule that a violation, even on the first instance, merits the dismissal of the employee from his employment. It is without question that de Leon received a gift during his tenure with PTC — his only contentions are: (1) that it did not constitute a violation of the foregoing rule as he did not receive it from a crew member, ex-crew member, or representative of a crew member, and (2) that the rule was vague, unreasonable, and unfair.

With regard to his first contention, de Leon's contention is untenable for his act clearly falls under the first act punished by the rule. He received a gift with a value of $36, which was clearly above the ₱500.00 threshold under the rule. Without doubt, therefore, de Leon's acts violated PTC's Code of Conduct.

As regards his second contention, he argues:

> Careful analysis of the said provision however will reveal that the same is utterly vague. From the Notice of Dismissal, it shows that petitioner was dismissed for violating the policy that "*No employee shall offer or accept directly or indirectly any gift with a collective value of Php500.00 and above*." It was his mere acceptance of the gift that he was meted with the supreme penalty of dismissal. Such **provision was however noticeably couched in general and vague manner**, without any qualification as to from whom the gift should come from and for what consideration. But based from the Notice of Dismissal itself, it is expressly stated the "the governing principles behind the PTC policy ... does not take into account the intent or the origin of the gift." From this admission by the respondents alone, the subject rule should have been declared to be unreasonable and unfair.[39] (Emphasis in the original; underscoring supplied)

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[39] *Id*. at 18.

De Leon's contention is bereft of merit.

The Court's reading of the relevant rule from PTC's Code of Conduct is that it is not vague, nor is it unreasonable. The fact that it did not specify the origin of the gift or the purpose for which the gift was given did not automatically mean that the rule was vague. It simply means that this "no-gift" policy of PTC was absolute, that is, the origin or the purpose of the gift was irrelevant. In simple terms, the mere act of offering or receiving a gift constitutes a violation.

The rule is likewise not unreasonable.

In its Comment, PTC explained the rationale for the rule. It cites the 2003 POEA Rules and Regulations Governing the Recruitment of Seafarers (POEA Rules), the relevant portions of which state:

PART V
RECRUITMENT VIOLATION AND RELATED CASES

RULE I
LEGAL ASSISTANCE AND ENFORCEMENT MEASURES

Section 1. Acts Constituting Illegal Recruitment. Illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority. Provided, that any such nonlicensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged.

It shall likewise include the following acts committed by any person whether or not a holder of a license or authority:

a. Charging or accepting directly or indirectly any amount of money, goods or services, or any fee or bond for any purpose from an applicant seafarer;

x x x x x x x x x

RULE II
RECRUITMENT VIOLATIONS AND RELATED CASES

x x x x x x x x x

Section 2. Grounds for imposition of administrative sanctions:

a. Charging, imposing or accepting directly or indirectly, any amount of money goods or services, or any fee or bond for any purpose from an applicant seafarer;

x x x x x x x x x

RULE V
CLASSIFICATION OF OFFENSES
AND SCHEDULE OF PENALTIES

Section 1. Classification of Offenses. Administrative offenses are classified into serious, less serious and light, depending on their gravity. The Administration shall impose the appropriate administrative penalties for every recruitment violation.

A. The following are serious offenses with their corresponding penalties:

1. Engaging in act/s of misrepresentation for the purpose of securing a license or renewal thereof, such as giving false information or documents

1st Offense — Cancellation of License

2. Engaging in the recruitment or placement of seafarers in jobs harmful to public health or morality or to dignity of the Republic of the Philippines

1st Offense — Cancellation of License

3. Transfer or change of ownership of a single proprietorship licensed to engage in overseas employment

1st Offense — Cancellation of License

4. Charging or accepting directly or indirectly any amount of money, goods or services, or any fee or bond for any purpose from the seafarers.

1st Offense - Cancellation of License

> **The penalty shall carry the accessory penalty of refund of the fee charged or collected from the worker**. (emphases and underscoring supplied)

PTC explains:

> In view of the POEA's strict requirements and the geverity of the corresponding penalty imposed at the first instance, it is only just and reasonable for PTC to take measures to ensure that any act of its officials, employees and representatives that could possibly be construed as a violation of the rules above be given the same degree of importance and dealt with similarly.
>
> x x x Bearing in mind that PTC is accountable for the actions of its officials, employees and representatives and that the offenses underscored in the POEA Rules carry the corresponding penalty of cancellation of license for a single violation thereof, the strict implementation of company rules and regulations is indispensable.[40]

The Court agrees with the above explanation of PTC. Indeed, in light of the strict provisions of the POEA Rules, it was reasonable for PTC to protect itself by crafting its Code of Discipline that imposes the supreme penalty of dismissal for those who commit acts that, if construed to be PTC's, would merit the cancellation of its license. Thus, as it is recognized that company policies and regulations, unless shown to be grossly oppressive or contrary to law, are generally valid and binding on the parties and must be complied with until finally revised or amended,[41] the dismissal of de Leon — hinged on a rule that provides for dismissal even on the first instance of violation — should therefore be upheld.

The Court has, in the past, upheld a company's management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under

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[40] *Id.* at 351.

[41] *Aparente, Sr. v. National Labor Relations Commission*, 387 Phil. 96 106 (2000).

special laws or under valid agreements.[42] In this case, the Court holds that PTC was well within its management prerogative in terminating de Leon's employment upon a finding of violation of its company rules.

It is likewise well to note that, as pointed out by PTC and by the NLRC in its Resolution, de Leon's actions reveal that he was aware that he was violating a company rule. By his own admission in the present petition, he instructed Adefuin to give the gift in question to Brillante in the far end of the office, as he knew that there was a CCTV camera in their work area.[43] He thus knew that he was at risk of getting caught doing an act he should not do. Despite this, he still received the gift and did not return the same to Acar or even turned over the same to the Human Resources Department as instructed by the Code of Discipline. This therefore constitutes ***willful*** misconduct or disobedience of company rules that further justifies PTC's decision to terminate de Leon's employment.

WHEREFORE, in view of the foregoing, the appeal is hereby **DENIED**. The Decision dated July 19, 2016 and Resolution dated May 23, 2017 of the Court of Appeals in CA-G.R. SP No. 138932 is hereby **AFFIRMED**.

SO ORDERED.

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

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[42] *Id.*

[43] *Rollo*, p. 7.

SECOND DIVISION

[G.R. No. 232493. June 19, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CESAR VILLAMOR CORPIN @ "BAY"** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF THE TRIAL COURT ARE GENERALLY ACCORDED GREAT WEIGHT EXCEPT WHEN IT APPEARS ON THE RECORD THAT THE TRIAL COURT MAY HAVE OVERLOOKED, MISAPPREHENDED, OR MISAPPLIED SOME SIGNIFICANT FACT OR CIRCUMSTANCE WHICH IF CONSIDERED, WOULD HAVE ALTERED THE RESULT.—** It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result. This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY; CONDITIONS THAT MUST EXIST TO QUALIFY AN OFFENSE; ESSENCE OF TREACHERY IS THE SUDDEN AND UNEXPECTED ATTACK BY AN AGGRESSOR ON THE UNSUSPECTING VICTIM, DEPRIVING THE LATTER OF ANY CHANCE TO DEFEND HIMSELF AND THEREBY ENSURING ITS COMMISSION WITHOUT RISK TO HIMSELF; TREACHERY, NOT ESTABLISHED IN CASE AT BAR.—** It is established that qualifying circumstances must be proven by clear and convincing evidence. Thus, for Corpin to be convicted of Murder, the prosecution must establish by

clear and convincing evidence that the killing of Paulo was qualified by the aggravating circumstance of treachery. There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself. x x x In this case, the following circumstances negate the presence of treachery: *First*, although the attack was sudden and unexpected as he was hacked from behind, the prosecution did not prove that Corpin deliberately chose the particular mode of attack he used to ensure the execution of the criminal purpose without any risk to himself. x x x *Second*, Corpin did not deliberately seek the presence of the victim. As testified by the prosecution witnesses and Corpin himself, he and Paulo have been working as meat vendors in the same public market for several years. In addition, the weapon he used to kill the victim was a butcher's knife that he regularly used for his work. x x x All told, based on the first and second circumstances abovementioned, Corpin's decision to attack the victim was more of sudden impulse than a planned decision. The prosecution failed to prove the elements of treachery. Thus, Corpin can only be held guilty of the crime of Homicide.

3. **ID.; HOMICIDE; CRIME COMMITTED WHEN THE QUALIFYING CIRCUMSTANCE OF THE TREACHERY IS NOT PROVEN; PROPER PENALTY IN CASE AT BAR.—** With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*. In the absence of any mitigating circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, Corpin should be sentenced to an indeterminate penalty whose

minimum shall be within the range of *prision mayor* (the penalty next lower in degree to that provided in Article 249 of the RPC) and whose maximum shall be within the range of *reclusion temporal* in its medium period. There being no mitigating or aggravating circumstance proven in the present case, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months. Thus, applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which is *prision mayor* (six [6] years and one [1] day to twelve [12] years). Hence, the indeterminate sentence of eight (8) 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, should be as it is hereby imposed.

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 this Court is an appeal[1] filed under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated January 27, 2017 of the Court of Appeals (CA), in CA-G.R. CR-H.C. No. 07635 which affirmed the Decision[3] promulgated on June 24, 2015 of the Regional Trial Court, National Capital Judicial Region, Branch 201, Las Piñas City (RTC), in Criminal Case No. 10-0718,

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[1] See Notice of Appeal dated February 23, 2017; *rollo*, pp. 17-18.

[2] *Rollo*, pp. 2-16. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting concurring.

[3] CA *rollo*, pp. 40-48 Dated June 16, 2015 but promulgated on June 24, 2015; penned by Presiding Judge Lorna Navarro Domingo.

finding herein accused-appellant Cesar Villamor Corpin @ "Bay" (Corpin) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The Facts

Corpin was charged for the crime of Murder under the following Information:

> "That on or about the 1st day of September, 2010, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and with treachery, did then and there willfully, unlawfully and feloniously attack, assault and swiftly hack one PAULO MENDOZA PINEDA, with a butcher's knife on his face, giving the latter no opportunity to defend himself, thereby inflicting upon said victim serious and mortal wound which directly caused his death.
>
> CONTRARY TO LAW."[4]

Upon arraignment, Corpin pleaded not guilty to the charge.

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

> x x x [T]he prosecution presented Marilyn Pineda, Helen Raymundo, Dr. Ethel Punzalan, Marlon Ramos, Christopher Opalda Quides, and SPO2 Aristotle Raquion as witnesses.
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> x x x x x x x x x
>
> Helen Raymundo (Raymundo for brevity) testified that: at around 2:30 o'clock in the afternoon of September 1, 2010, while she was tending to her vegetable stall in Las Piñas Public Market, she saw Kuya Bay, herein accused-appellant Corpin, kill Kuya Paulo; accused-appellant Corpin sold pork in the public market while Paulo was a chicken vendor; their stalls were situated at the back of each other and had the same entrance and exit; prior to the hacking incident, accused-appellant Corpin and Paulo were always joking at each other; Paulo often said "*Ang baho*" which made accused-appellant Corpin

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[4] *Rollo*, p. 3.

frown as he thought he was the one being alluded to; there was no provocation on the part of Paulo at the time the hacking incident happened; accused-appellant Corpin and the victim were not facing each other and the latter was in no position to defend himself; she was one (1) meter away from them; after accused-appellant Corpin hacked Paulo, the victim was able to get a knife but the former embraced him; at that juncture, one of the meat vendors, Kuya Kris, arrived and pushed accused-appellant Corpin away from Paulo; and, Paulo ran away for about three (3) meters and fell down in front of the canteen, in front of Raymundo's stall. Raymundo identified the *Sinumpaang Salaysay* she executed.

Dr. Ethel Punzalan (Dr. Punzalan for brevity) testified that: on September 1, 2010, she was at home when the resident doctor at Las Piñas Doctors' Hospital called her to attend to a patient named Paulo Pineda; she rushed to the hospital because she was told that the patient was continuously bleeding; due to the profuse bleeding, Paulo developed hypovolemic shock; they tried to give him blood transfusion but before they could do so, the patient expired; their hospital issued a Medical Certificate stating that the patient was admitted with a hacking wound in the maxillary zygomatic area and that his blood pressure was 60/40; the maxillary zygomatic area is from the cheekbone to the neck; Dr. Funtila took a picture of the patient when he was in the hospital; at that time, Dr. Punzalan was beside the patient; the Medical Certificate was signed by the resident physician, Dr. Michael Galope; and, it is questionable whether the patient could have survived the hacking wound because of the trauma on the major blood vessels, and also because it is very hard to get blood for transfusion.

Marlon Ramos (Ramos for brevity) testified that: he knows both accused-appellant Corpin and Paulo as he is also a pork and chicken vendor in Las Piñas Public Market, employed by a certain Manny Pareja; at about 2:30 o'clock in the afternoon of September 1, 2010, he was sleeping after having worked early in the morning; it was their rest time as they would start selling again at 3:00 o'clock in the afternoon; Paulo, the victim, woke him up and asked for his help to carry a tray of chicken; he helped the victim carry the yellow Magnolia tray which was about ten (10) kilos and as wide as the stenographer's table; they were facing each other while they carried the tray of chicken; when they put the tray down, accused-appellant Corpin came from behind the victim and hacked him in his right jaw; at that time, Ramos was very near Paulo as they were just in front

of each other; accused-appellant Corpin hacked Paulo with a butcher's knife used in chopping pork; the knife has a rectangular shape and as long as a ruler; it is long and wide; when he was hacked, the victim said to accused-appellant Corpin, "*Bay, bakit mo ako tinaga*"; accused-appellant Corpin did not answer; and, Marlon was in front of them at the time of the hacking but he ran away as he was shocked and afraid.

Christopher Opalda Quides (Quides for brevity) testified that: he knows accused-appellant Corpin being his co-meat vendor in Las Piñas Public Market, while the victim, Paulo Pineda, was his *kumpare*; the victim was the godfather of his youngest child although accused-appellant Corpin is also his friend; at around 2:30 o'clock in the afternoon of September 1, 2010, he was in his stall when accused-appellant Corpin suddenly hacked Paulo who was "*walang kamalay-malay*"; he was about two (2) to three (3) meters away from the place where the hacking happened; he told Paulo to run away, then he called the guards; Paulo ran away then fell down near the canteen; the victim was able to board a tricycle and went to the Las Piñas District Hospital; and, the security guards arrived as they were just near the crime scene.[5]

Version of the Defense

The version of the defense, as summarized by the CA, is as follows:

Accused-appellant Cesar Villamor Corpin testified that: he hacked the victim but it was unintentional; he knew Paulo Pineda because every afternoon they would sell meat side by side at the Las Piñas Public Market, located in Zapote near the flyover; he had known Paulo for quite a long time, since the market opened in 2003; they knew each other and sometimes they exchanged stories; every morning, Paulo sold meat in the middle of the market, and transfer[r]ed to the back of accused-appellant Corpin's stall in the afternoon; accused-appellant Corpin's stall is just one (1) meter away from Paulo's; at about 3:00 o'clock in the afternoon of September 1, 2010, accused-appellant Corpin was chopping liempo for display in his stall; while he was chopping liempo, his vision suddenly darkened ("*biglang dumilim ang paningin ko*"); this always happens to him every three

[5] *Id*. at 3-6.

(3) months, even at home, but in the market it happened only once; he was not aware that he hacked Paulo who was at his back; he remembered that Paulo embraced him and asked for help; he did not see Paulo but he heard his voice; the victim said, "*Nataga mo ako bay*"; when accused-appellant Corpin regained his senses, he saw blood and realized that he indeed hacked Paulo; accused-appellant Corpin told Paulo that he would bring him to the hospital and that he would surrender to the police afterwards; accused-appellant Corpin helped the victim walk outside the market but when they reached the eatery, Paulo pushed him away; he went back to his stall and waited for his consciousness to regain; Paulo used to badmouth him ("*sinisiraan*") everyday but he just ignored him as he was suffering from highblood; Paulo always mocked him by saying "*Ang baho*" everytime he passed by; accused-appellant Corpin would smell himself and he did not stink; and, the mockery happened in the past four (4) months prior to the incident but accused-appellant Corpin just kept silent as he did not want any trouble.[6]

Ruling of the RTC

In its Decision[7] promulgated on June 24, 2015, the RTC found Corpin guilty of Murder, to wit:

WHEREFORE, premises considered, the Court hereby finds the accused CESAR VILLAMOR CORPIN @ "BAY" **GUILTY** beyond reasonable doubt of the crime of MURDER penalized under Article 248 of the Revised Penal Code and [is] hereby sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim Paulo Pineda x x x the following amount:

1. Php 50,000.00 as civil indemnity;
2. Php 51,673.76 as actual damages;
3. Php 50,000.00 as moral damages; and
4. Php 10,000.00 as exemplary damages.

SO ORDERED.[8]

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[6] *Id*. at 7.

[7] CA *rollo*, pp. 40-48.

[8] *Id*. at 48.

The RTC ruled that all the elements of Murder were established by the prosecution.[9] It further ruled that treachery attended the commission of the crime.[10] The prosecution witnesses' account of what transpired from the inception of the attack, as well as the presence of the aggravating circumstance of treachery, was factual and convincing.[11] It is clear that the attack was sudden and the victim had no opportunity to defend himself.[12]

Aggrieved, Corpin appealed to the CA.

Ruling of the CA

In the Decision[13] dated January 27, 2017, the CA affirmed the conviction by the RTC with modifications:

> **WHEREFORE**, premises considered, the instant appeal is **DENIED**. The assailed Decision dated June 16, 2015 of the RTC, Branch 201, Las Piñas City in Criminal Case No. 10-0718 is hereby **AFFIRMED with the MODIFICATION** that accused-appellant Cesar Villamor Corpin is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and is ordered to pay the heirs of Paulo Mendoza Pineda the amounts of: (1) Php 75,000.00 as civil indemnity; (2) Php 75,000.00 as moral damages; (3) Php 75,000.00 as exemplary damages; and (4) Php 51,673.76 as actual damages. All damages awarded shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.
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> **SO ORDERED.**[14]

The CA ruled that the RTC committed no reversible error in convicting Corpin of the crime of Murder.[15] It further ruled

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[9] *Id*. at 47.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Rollo*, pp. 2-16.

[14] *Id*. at 15-16.

[15] *Id*. at 9.

that the killing of Paulo was attended by treachery.[16] The allegation that the victim uttered "*Ang baho*" moments before the hacking incident does not negate the treacherous character of the attack.[17] Also, contrary to Corpin's contention, the hacking was not done on impulse, but deliberately and with murderous intent.[18] Moreover, the fact that the victim was unsuspecting of any attack is bolstered by the coherent testimonies of the prosecution witnesses that his back was turned when Corpin suddenly hacked him from behind.[19]

Hence, this appeal.

Issues

Whether the CA erred in affirming Corpin's conviction for Murder.

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.[20] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.[21] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine

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[16] *Id*.

[17] *Id*. at 10.

[18] *Id*. at 13.

[19] *Id*. at 14.

[20] *People v. Duran Jr.*, G.R. No. 215748, November 20, 2017, 845 SCRA 188, 211.

[21] *Id*. at 211.

records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[22]

After a careful review and scrutiny of the records, the Court affirms the conviction of Corpin, but only for the crime of Homicide, instead of Murder, as the qualifying circumstance of treachery was not proven in the killing of Paulo.

Treachery was not established by clear and convincing evidence

Seeking the reduction of his criminal liability to Homicide, Corpin admits that he indeed killed Paulo, but contends that said killing was not attended by the aggravating circumstance of treachery.[23] He argues that the prosecution failed to prove that he consciously adopted the particular mode of attack he employed to facilitate the perpetration of the killing without risk to himself.[24]

The Court finds merit in Corpin's argument.

The fact that Corpin killed the victim is undisputed as said act was admitted by Corpin himself.[25] However, the Court is not convinced that treachery attended the commission of the crime.

It is established that qualifying circumstances must be proven by clear and convincing evidence.[26] Thus, for Corpin to be convicted of Murder, the prosecution must establish by clear and convincing evidence that the killing of Paulo was qualified by the aggravating circumstance of treachery.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms

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[22] *Ramos v. People*, 803 Phil. 775, 783 (2017).

[23] See CA *rollo*, pp. 34-35.

[24] *Id*. at 36.

[25] *Id*. at 34.

[26] *People v. Latag*, 465 Phil. 683, 685 (2004).

in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.[27] To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[28] The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.[29]

In order to appreciate treachery, both elements must be present.[30] It is not enough that the attack was "sudden", "unexpected," and "without any warning or provocation."[31] There must also be a showing that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.

In this case, the following circumstances negate the presence of treachery:

First, although the attack was sudden and unexpected as he was hacked from behind, the prosecution did not prove that Corpin deliberately chose the particular mode of attack he used to ensure the execution of the criminal purpose without any risk to himself. As testified by the witnesses of the prosecution, the incident happened in a public market where there were numerous other people, including the witnesses, who could have offered their help. In a similar case, the Court held that when

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[27] *People v. Duran, Jr.*, *supra* note 20, at 205-206.

[28] *Id*. at 206, citing *People v. Dulin,* 762 Phil. 24, 40 (2015).

[29] *Id*., citing *People v. Escote, Jr.,* 448 Phil. 749, 786 (2003).

[30] See *id*. at 205-206, citing REVISED PENAL CODE, Art. 14, par. 16.

[31] See *People v. Sabanal*, 254 Phil. 433, 436-437 (1989).

aid is easily available to the victim, such as when the attendant circumstances show that there were several eyewitnesses to the incident, no treachery could be appreciated because if the accused indeed consciously adopted the particular means he used to insure the facilitation of the crime, he could have chosen another place or time.[32] Moreover, after he was attacked by Corpin, Paulo was able to run away and escape,[33] which shows that the victim had the opportunity to defend himself.

Second, Corpin did not deliberately seek the presence of the victim. As testified by the prosecution witnesses and Corpin himself, he and Paulo have been working as meat vendors in the same public market for several years.[34] In addition, the weapon he used to kill the victim was a butcher's knife that he regularly used for his work. In this connection, the Court ruled in another case that the fact that the victim and the accused were already within the same vicinity when the attack happened and that the accused did not deliberately choose the particular weapon he used to kill the victim as he merely picked it up from within his reach is proof that there is no treachery involved.[35]

All told, based on the first and second circumstances abovementioned, Corpin's decision to attack the victim was more of sudden impulse than a planned decision. The prosecution failed to prove the elements of treachery. Thus, Corpin can only be held guilty of the crime of Homicide.

Proper penalty and award of damages

With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*. In the absence of any mitigating circumstance, the penalty shall be imposed in its medium period. Applying the

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[32] *People v. Caliao*, G.R. No. 226392, July 23, 2018, p. 7.

[33] *Rollo*, p. 6.

[34] *Id*. at 7.

[35] *People v. Bacolot*, G.R. No. 233193, October 10, 2018, pp. 8-9.

Indeterminate Sentence Law, Corpin should be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor* (the penalty next lower in degree to that provided in Article 249 of the RPC) and whose maximum shall be within the range of *reclusion temporal* in its medium period. There being no mitigating or aggravating circumstance proven in the present case, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months.

Thus, applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which is *prision mayor* (six [6] years and one [1] day to twelve [12] years). Hence, the indeterminate sentence of eight (8) 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, should be as it is hereby imposed.[36]

Finally, in view of the Court's ruling in *People v. Jugueta*,[37] the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED**. The Court **DECLARES** accused-appellant **Cesar Villamor Corpin @ "Bay" GUILTY** of **HOMICIDE**, for which he is sentenced to suffer the indeterminate penalty of eight (8) 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. He is further ordered to pay the heirs of Paulo Mendoza Pineda the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages.

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[36] *People v. Duavis*, 678 Phil. 166, 179 (2011).

[37] 783 Phil. 806 (2016).

All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 233557-67. June 19, 2019]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (FIRST DIVISION) and CESAR ALSONG DIAZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL AN ACQUITTAL THAT IS RENDERED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; LACK OF JURISDICTION PREVENTS DOUBLE JEOPARDY FROM ATTACHING.— [A] judgment of acquittal may be assailed by the People in a petition for *certiorari* under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the prosecution is burdened to establish that the court *a quo*, in this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction or a denial of due process. x x x Likewise, in *Javier v. Gonzales*, the

Court stressed that "[d]ouble jeopardy is not triggered when the order of acquittal is void." "An acquittal rendered in grave abuse of discretion amounting to lack or excess of jurisdiction does not really 'acquit' and therefore does not terminate the case as there can be no double jeopardy based on a void indictment." Simply stated, a decision rendered with grave abuse of discretion amounts to lack of jurisdiction. In turn, this lack of jurisdiction prevents double jeopardy from attaching. Applying the foregoing pronouncements to the case at bar, the instant petition for *certiorari* is the correct remedy in seeking to annul the Resolutions of the Sandiganbayan.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; FACTORS TO CONSIDER IN DETERMINING WHETHER THE RIGHT TO SPEEDY DISPOSITION OF CASES HAS BEEN VIOLATED; DETERMINATION OF DELAY IN THE PROCEEDINGS IS NOT SUBJECT TO A MERE MATHEMATICAL RECKONING.— No less than the 1987 Constitution guarantees to all persons accused of crimes the right to a speedy disposition of their case. Article III, Section 16 in no uncertain terms mandates that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." The term "speedy disposition" is a relative term and necessarily a flexible concept. Mere mathematical reckoning of the time involved would not suffice, as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum. As such, any alleged delay in the disposition of the case should be considered in view of the entirety of the proceedings. Accordingly, in determining whether the right has been violated, the following factors may be considered and balanced, namely, (i) the length of delay; (ii) the reasons for the delay; (iii) the assertion or failure to assert such right by the accused; and (iv)the prejudice caused by the delay.

3. ID.; ID.; ID.; ID.; GUIDELINES IN DETERMINING WHETHER THE DELAY IN THE DISPOSITION OF THE CASE CONSTITUTES A VIOLATION OF THE ACCUSED'S RIGHT TO SPEEDY DISPOSITION OF CASES.— [T]he Court, in the recent *en banc* case of *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, Office of the Ombudsman, and People of the Philippines*, laid down the following guidelines in determining whether the delay in the disposition of the case constitutes a violation of the accused's right to speedy disposition of cases, to wit: (i) The right to speedy disposition of cases is different from the right to speedy trial; (ii) A case shall deemed initiated upon the filing of a formal complaint prior to the conduct of a preliminary investigation. x x x **[T]he period taken for fact-finding investigations prior to the filing of the formal complaint shall no longer be included in the determination of whether there has been inordinate delay.** Likewise, the OMB shall set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond the periods set by the OMB shall be taken against the prosecution; (iii) Courts must first determine which party carries the burden of proof. If the case was resolved within the time periods contained in the law. Supreme Court resolutions, and circulars, then the burden falls on the defense to prove that the accused's right to speedy disposition was indeed violated. Specifically, the defense must show that the case is motivated by malice, or is politically motivated and attended by utter lack of evidence; and that it did not contribute to the delay. Otherwise, if the case drags beyond the reasonable periods, and the accused invokes his right to speedy disposition, then the prosecution must justify the delay. **The prosecution must prove that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; the issues in the case were complex, and that the volume of evidence made the delay inevitable; and that the accused did not suffer any prejudice**

as a result of the delay; (iv) **"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."** x x x (v) **The right to speedy disposition of cases or the right to speedy trial must be timely raised.**

4. ID.; ID.; ID.; RIGHT TO SPEEDY TRIAL; CANNOT BE INVOKED WHERE TO SUSTAIN THE SAME WOULD RESULT IN CLEAR DENIAL OF DUE PROCESS TO THE PROSECUTION; SHOULD NOT OPERATE TO DEPRIVE THE STATE OF ITS INHERENT PREROGATIVE TO PROSECUTE CRIMINAL CASES; NOT VIOLATED IN CASE AT BAR.— "[J]udicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman." Hence, "it cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice." For sure, the right to speedy trial cannot be invoked where to sustain the same would result in a clear denial of due process to the prosecution. This right should not operate to deprive the State of its inherent prerogative to prosecute criminal cases. x x x It must be stressed that the determination of the length of delay is never mechanical. Rather, the Court must consider the peculiar facts and circumstances surrounding the case. As the rule now stands, a case should not precipitately be dismissed simply because the case dragged beyond the reasonable periods. The prosecution must be given the chance to prove to the satisfaction of the Court that it followed the prescribed procedure in the prosecution of the case, the issues in the case were complex, the volume of evidence made the

delay inevitable, and the accused did not suffer any prejudice as a result of the delay. This, the prosecution sufficiently did. The records show that the conduct of the preliminary investigation actually proceeded at a continuous and steady pace. Likewise, the OMB sufficiently explained the reasons behind the purported delay in the disposition of the case. x x x [I]t becomes all too apparent that the alleged periods of delay considered by the Sandiganbayan were not actually "lulls" or periods of inactivity. Rather, during these periods, the OMB had to meticulously scrutinize the documents, review and study the case, make necessary corrections - all to ensure the proper resolution of the case. For sure, this cannot be characterized as an inordinate delay. At best, this shows that the OMB did not proceed with the case in a haphazard manner, but undertook a thorough scrutiny of the case, to ensure the existence of probable cause against Diaz.

5. ID.; ID.; ID.; RIGHT TO SPEEDY DISPOSITION OF CASES; TO DETERMINE A VIOLATION THEREOF, IT IS ESSENTIAL FOR THE ACCUSED TO SHOW THAT HE/SHE SUFFERED PREJUDICE DUE TO THE DELAY; CASE AT BAR.— In determining whether the right of the accused to a speedy disposition of his/her case was violated, it is likewise essential for the accused to show that he/she suffered prejudice due to the delay. This "prejudice" is assessed in light of the interests of the accused which the speedy disposition right is designed to protect, such as: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. To begin with, the first criterion does not apply in the case at bar, as the respondent was never arrested or taken into custody, or otherwise deprived of his liberty in any manner. Thus, the only conceivable harm to Diaz are the anxiety brought by the investigation, and the potential prejudice to his ability to defend his case. Even then, the harm suffered by Diaz occasioned by the filing of the criminal cases against him is too minimal and insubstantial to tip the scales in his favor.

6. ID.; ID.; ID.; ID.; MUST BE TIMELY RAISED BY FILING THE APPROPRIATE MOTION UPON THE LAPSE OF THE STATUTORY OR PROCEDURAL PERIODS, OTHERWISE, THE RIGHT IS WAIVED; CASE AT BAR.— It must be remembered that the invocation of one's right to speedy disposition of cases must be timely raised. The accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Failure to do so constitutes a waiver of such right. Indeed, although the Sandiganbayan noted that Diaz raised this right immediately after the filing of the Information, there was no showing that he attempted to assert his right during the conduct of the preliminary investigation. Although there may have been delay, Diaz has not shown that he asserted his rights during this period, choosing to wait until the Information was filed against him with the Sandiganbayan. In *Cagang*, this was considered against therein accused, who raised no objection before the OMB, where the inordinate delay was claimed to have occurred. Indeed, Diaz, as the accused, has no obligation to bring himself to trial. However, his act of waiting for four (4) years while the preliminary investigation took place, passively accepting the delay without any objection, and then suddenly asserting his right to speedy disposition as soon as he received the OMB's adverse ruling, is certainly questionable.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Napoleon Uy Galit & Associates Law Offices for private respondent.

D E C I S I O N

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

The right of an accused to the speedy disposition of cases is a sacrosanct right that must not only be respected by courts and tribunals, but must also be invoked only in clear instances of vexatious, capricious, and oppressive delays. This sacred right is a shield, not a weapon to be used against the State, and should not preclude the rights of public justice.[1]

This treats of the Petition for *Certiorari*[2] filed by herein petitioner People of the Philippines, seeking to reverse and set aside the Resolutions dated April 18, 2017[3] and July 3, 2017,[4] both issued by the Sandiganbayan, granting the Motion to Quash and the Supplemental Motion to Quash the Information filed by private respondent Cesar Alsong Diaz (Diaz).

The Antecedents

On January 18, 2011, State Auditor III and Audit Team Leader Oscar C. Lerio (Lerio) of the Commission on Audit (COA), Municipality of Tagana-an, Surigao del Norte sent a Demand Letter to Diaz requiring him to liquidate and account for his cash advances amounting to ₱5,223,014.00.[5]

In compliance with the said demand, Diaz made a liquidation on January 18, 2011 and April 5, 2011 in the total amount of ₱110,987.00, thereby leaving a balance of ₱5,172,227.24.[6]

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[1] *Olbes v. Hon. Judge Buemio, et al.*, 622 Phil. 357, 366 (2009).

[2] *Rollo*, pp. 6-56.

[3] Penned by Associate Justice Geraldine Faith A. Econg, with Associate Justices Efren N. Dela Cruz and Bernelito R. Fernandez concurring; *id*. at 58-71.

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

[5] *Id*. at 121.

[6] *Id*.

Meanwhile, on April 18, 2011 and September 2, 2011, Diaz incurred additional cash advances on the Intelligence Fund in the sum of ₱202,500.00. Again, he failed to liquidate the same amount within the prescribed period, prompting Lerio to send another Demand Letter dated June 9, 2011.[7] Thus, as of March 31, 2012, Diaz's cash advances amounted to ₱5,374,727.24.[8]

On August 6, 2012, Lerio filed an Affidavit before the Office of the Ombudsman-Mindanao (OMB-Mindanao), accusing Diaz of violating Article 218 of the Revised Penal Code (RPC) for failing to liquidate his cash advances amounting to ₱5,374,727.24.[9] Attached to Lerio's Affidavit were 76 different documents, checks, receipts and other papers.[10] The case was docketed for preliminary investigation as OMB-M-C-13-0003, entitled *Oscar C. Lerio v. Cesar A. Diaz*.[11]

On January 30, 2013, the OMB-Mindanao released the Order dated January 29, 2013, directing Diaz to submit his counter-affidavit.[12]

On March 5, 2013, Diaz filed a Motion for Extension of Time to Submit Counter-Affidavit requesting for an extension of 10 days.[13]

On March 19, 2013, the OMB-Mindanao received Diaz's Counter-Affidavit, which included 10 Annexes consisting of Liquidation Reports, among others.[14] In his Counter-Affidavit, Diaz admitted obtaining the cash advances. However, he claimed that he submitted the liquidation reports for eight of his cash

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[7] *Id*. at 121-122.

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

[9] *Id*. at 10.

[10] *Id*. at 10-16.

[11] *Id*. at 17.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 17-18.

advances from the Intelligence Fund, amounting to ₱762,500.00.[15] Diaz further averred that he had liquidated all of his cash advances, but he incurred difficulties retrieving the said records from the Municipal Accountant's Office and the Municipal Treasurer's Office, considering that the records from January 2004 to September 2011 were no longer available in the said offices.[16]

Ruling of the Ombudsman

In a Resolution[17] dated February 7, 2014, the OMB found probable cause to indict Diaz for violation of Article 218 of the RPC. The OMB found that all the elements of Article 218 were present, considering that while Diaz was the Municipal Mayor of Tagana-an, Surigao del Norte, he received the public funds and failed to account for the same within the specified periods required by law.[18]

The dispositive portion of the OMB ruling reads:

> WHEREFORE, this Office finds probable cause to indict respondent for thirteen counts of violation of Article 218 of the [RPC]. Let the corresponding Information be filed with the Sandiganbayan.
>
> SO ORDERED.[19]

Diaz filed a Motion for Reconsideration[20] dated November 5, 2014. Thereafter, he filed a Supplemental Motion for Reconsideration[21] dated November 25, 2014.

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[15] *Id*. at 123.

[16] *Id*. at 124.

[17] Rendered by Graft Investigation and Prosecution Officer I Janice Joanne T. Torres-Arenas; *id*. at 121-128.

[18] *Id*. at 124.

[19] *Id*. at 127.

[20] *Id*. at 129-137.

[21] *Id*. at 138-145.

In an Order[22] dated December 8, 2014, the OMB denied Diaz's Motion for Reconsideration.

Later, on January 30, 2017, Diaz filed a "Motion to Quash the Information and/or Dismiss These Cases on Account of Gross Violation By the Office of the Ombudsman of Accused'[s] Right to Speedy Disposition of His Cases."[23]

On February 22, 2017, the OMB filed its Comment/Opposition[24] to the Motion to Quash filed by Diaz.

Ruling of the Sandiganbayan

On April 18, 2017, the Sandiganbayan issued the assailed Resolution,[25] granting Diaz's Motion to Quash. The Sandiganbayan found that there was an inordinate delay in the conduct of the preliminary investigation against Diaz, which lasted for four (4) years, five (5) months, and ten (10) days.[26] The Sandiganbayan observed that there were lulls during the conduct of the preliminary investigation. Specifically, it took the OMB six (6) months and twenty-four (24) days to issue an Order directing Diaz to file his Counter-Affidavit;[27] one (1) year, six (6) months, and twenty-one (21) days (from the filing of Diaz's Counter Affidavit) to sign and approve the Resolutions recommending the filing of the Information against Diaz;[28] one (1) year and three (3) months to resolve Diaz's Motion for Reconsideration;[29] and eleven (11) months and eleven (11) days (from the denial of Diaz's Motion for Reconsideration) to file the Information. The Sandiganbayan found the reasons for the said delays to be unjustified.[30]

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[22] *Id*. at 146-149.

[23] *Id*. at 77-96.

[24] *Id*. at 97-113.

[25] *Id*. at 58-70.

[26] *Id*. at 67.

[27] *Id*.

[28] *Id*. at 68.

[29] *Id*.

[30] *Id*.

Moreover, the Sandiganbayan noted that Diaz asserted his right to the speedy disposition of his case at the earliest opportunity, by filing a Motion to Quash immediately after the Informations were filed against him.[31]

Finally, the Sandiganbayan opined that the prejudice suffered by Diaz is "obvious[,]"[32] as "[t]he cases against Diaz has [sic] been pending for a considerable period."[33]This prejudice was evident from the fact that Diaz suffered "dire circumstances consisting of difficulties in the preparation of his defense, owing the lapse of memories and probable dissipation of documentary evidence and witnesses."[34] In addition, Diaz was "unable to secure the necessary clearances from government agencies, and endured financial drain, restrained freedom of movement, public ridicule, embarrassment, anguish, sleepless nights, restless moments, and isolation from friends and other people."[35]

The decretal portion of the assailed Sandiganbayan ruling reads:

WHEREFORE, in view of the violation of the constitutional right of accused Diaz to the speedy disposition of the cases against him, the instant cases are hereby **DISMISSED**.

The bond which the accused posted in the amount of Sixty-Six Thousand Pesos (Php 66,000.00) in Cash is hereby ordered released, subject to the liability of the bond, if there be any, as well as the usual accounting procedures.

The Hold Departure Order (HDO) dated January 20, 2017 is hereby recalled.

SO ORDERED.[36] (Emphases in the original)

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[31] *Id*. at 69.

[32] *Id*.

[33] *Id*. at 69-70.

[34] *Id*. at 70.

[35] *Id*.

[36] *Id*.

Aggrieved, the OMB filed a Motion for Reconsideration, which the Sandiganbayan denied in its Resolution[37] dated July 3, 2017.

Dissatisfied with the ruling, the OMB filed the instant Petition for *Certiorari* under Rule 65 of the Revised Rules of Court.

Issue

The main issue raised for the Court's consideration rests on whether or not the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting Diaz's Motion to Quash.

The People of the Philippines, through the Office of the Special Prosecutor (OSP), decries the dismissal of the criminal cases filed against Diaz. The OSP claims that the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when the latter arbitrarily rejected the fact that the period that lapsed in the preliminary investigation was necessitated by the demands of due process and was forced by the surrounding circumstances of the case. According to the OSP, the Sandiganbayan simply ventured into a mere mathematical computation of the period involved, and completely abandoned its task of conducting a balancing test. Instead, the Sandiganbayan arbitrarily set aside the doctrinal rule of considering the four-fold factors that should be assessed in determining whether there was in fact a violation of the right to speedy disposition.

Moreover, the OSP avers that Diaz did not assert his right to speedy disposition, and that he failed to show any overt acts proving that he is not abandoning his right to the speedy disposition of his case at any time during the actual preliminary investigation.

The OSP further contends that there was no conclusive factual evidence presented to substantiate Diaz's purported claim of prejudice that he suffered during the alleged delay in the preliminary investigation.

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

On the other hand, Diaz counters that the period during which the COA conducted its fact-finding investigation should be included in counting the period of the delay.[38] He avers that the delay in resolving the case was in no way justified, which resulted in a violation of his right to the speedy disposition of his case.[39]

Ruling of the Court

An Acquittal That Is Rendered with Grave Abuse of Discretion Amounting to Lack or Excess of Jurisdiction May Be Questioned Through a Special Civil Action for Certiorari under Rule 65 of the Rules of Court

It must be noted at the outset that a judgment of acquittal may be assailed by the People in a petition for *certiorari* under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the prosecution is burdened to establish that the court *a quo*, in this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction or a denial of due process.[40] This doctrine was expounded in *People v. Sandiganbayan Fifth Division, et al.*,[41] where the Court, citing the case of *People v. Hon. Asis, et al.*,[42] further explained that:

A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the

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[38] *Id.* at 561.

[39] *Id.* at 563.

[40] *People v. Sandiganbayan Fifth Division, et al.*, 791 Phil. 37, 51-52 (2016), citing *People v. Judge Laguio, Jr.*, 547 Phil. 296, 311 (2007); *People v. Uy*, 508 Phil. 637, 649 (2005).

[41] 791 Phil. 37 (2016).

[42] 643 Phil. 462 (2010).

appellate level. In our jurisdiction, We adhere to the finality-of-acquittal doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissals of, criminal cases. x x x.[43] (Citations omitted)

Likewise, in *Javier v. Gonzales*,[44] the Court stressed that "[d]ouble jeopardy is not triggered when the order of acquittal is void."[45] "An acquittal rendered in grave abuse of discretion amounting to lack or excess of jurisdiction does not really 'acquit' and therefore does not terminate the case as there can be no double jeopardy based on a void indictment."[46] Simply stated, a decision rendered with grave abuse of discretion amounts to lack of jurisdiction. In turn, this lack of jurisdiction prevents double jeopardy from attaching.[47]

Applying the foregoing pronouncements to the case at bar, the instant petition for *certiorari* is the correct remedy in seeking to annul the Resolutions of the Sandiganbayan.

With this, the Court shall now proceed to determine whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the criminal case filed against Diaz due to the Ombudsman's violation of his right to the speedy disposition of his case.

The Determination of Delay in the Proceedings Is Not Subject to a Mere Mathematical Reckoning

No less than the 1987 Constitution guarantees to all persons accused of crimes the right to a speedy disposition of their

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[43] *People v. Sandiganbayan Fifth Division, et al.*, *supra* note 40, at 52.

[44] 803 Phil. 631 (2017).

[45] *Id.* at 647.

[46] *Id.* at 648, citing *Villareal v. People*, 680 Phil. 527 (2012).

[47] *Javier v. Gonzales*, *id.*

case. Article III, Section 16 in no uncertain terms mandates that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."[48]

The term "speedy disposition" is a relative term and necessarily a flexible concept. Mere mathematical reckoning of the time involved would not suffice, as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum. As such, any alleged delay in the disposition of the case should be considered in view of the entirety of the proceedings.[49]

Accordingly, in determining whether the right has been violated, the following factors may be considered and balanced, namely, (i) the length of delay; (ii) the reasons for the delay; (iii) the assertion or failure to assert such right by the accused; and (iv) the prejudice caused by the delay.[50]

Added to this, the Court, in the recent *en banc* case of *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, Office of the Ombudsman, and People of the Philippines*,[51] laid down the following guidelines in determining whether the delay in the disposition of the case constitutes a violation of the accused's right to speedy disposition of cases, to wit:

(i) The right to speedy disposition of cases is different from the right to speedy trial;

(ii) A case shall deemed initiated upon the filing of a formal complaint prior to the conduct of a preliminary investigation. The doctrine in

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[48] 1987 CONSTITUTION, Article III, Section 16.

[49] *Sps. Uy v. Judge Adriano*, 536 Phil. 475, 497 (2006).

[50] *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001), citing *Alvizo v. Sandiganbayan*, 292-A Phil. 144, 154-155 (1993); *Dansal v. Judge Fernandez, Sr.*, 383 Phil. 897, 907 (2000); *Blanco v. Sandiganbayan*, 399 Phil. 674, 682 (2000).

[51] G.R. Nos. 206438 and 206458 - G.R. Nos. 210141-42, July 31, 2018.

People v. Sandiganbayan which states that the fact-finding investigation should not be deemed separate from the preliminary investigation for the purposes of determining whether there was a violation of the right to speedy disposition of cases, has been abandoned.

Accordingly, the period taken for fact-finding investigations prior to the filing of the formal complaint shall no longer be included in the determination of whether there has been inordinate delay.

Likewise, the OMB shall set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond the periods set by the OMB shall be taken against the prosecution;

(iii) Courts must first determine which party carries the burden of proof. If the case was resolved within the time periods contained in the law. Supreme Court resolutions, and circulars, then the burden falls on the defense to prove that the accused's right to speedy disposition was indeed violated. Specifically, the defense must show that the case is motivated by malice, or is politically motivated and attended by utter lack of evidence; and that it did not contribute to the delay.

Otherwise, if the case drags beyond the reasonable periods, and the accused invokes his right to speedy disposition, then the prosecution must justify the delay. **The prosecution must prove that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; the issues in the case were complex, and that the volume of evidence made the delay inevitable; and that the accused did not suffer any prejudice as a result of the delay;**

(iv) **"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."** This rule holds true unless it is shown that the prosecution of the case was solely motivated by malice, or if the accused himself/herself waived his/her right to speedy disposition of cases or the right to speedy trial. In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court; and

(v) **The right to speedy disposition of cases or the right to speedy trial must be timely raised.** The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural

periods. Failure to do so, constitutes a waiver of such right.[52] (Citation omitted and emphases Ours)

Applying the foregoing tenets to the case at bar, the Court finds that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the quashal of the Information against Diaz based on the purported violation of his right to speedy disposition.

The Investigation Conducted by the OMB Proceeded at a Continuous and Steady Pace

Article XI, Section 12[53] of the Constitution and Republic Act No. 6770, Section 13[54] underscore the need for the OMB to act promptly on all the complaints brought before his/her Office.[55] This duty, however, should not be performed at the expense of thoroughness and correctness.[56] It bears stressing that to administer justice with dispatch pertains to an orderly and expeditious process, and not mere speed.[57]

Likewise, "judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals

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[52] *Id.*

[53] Article XI, Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

[54] Section 13. *Mandate*. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

[55] *Dansal v. Judge Fernandez, Sr.*, *supra* note 50, at 908-909.

[56] *Id.*

[57] *Olbes v. Hon. Judge Buemio, et al., supra* note 1, 366 (2009).

who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman."[58] Hence, "it cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice."[59] For sure, the right to speedy trial cannot be invoked where to sustain the same would result in a clear denial of due process to the prosecution. This right should not operate to deprive the State of its inherent prerogative to prosecute criminal cases.[60]

In the case at bar, the Sandiganbayan concluded that the OMB was guilty of violating the right of Diaz to the speedy disposition of his case, due to the purported delay in its conduct of the preliminary investigation, which lasted for four (4) years, five (5) months, and ten (10) days.[61] Also, the Sandiganbayan held that the OMB took a particularly long time to perform the following acts: (i) six (6) months and twenty-four (24) days before directing Diaz to file his Counter-Affidavit;[62] (ii) one (1) year, six (6) months and twenty-one (21) days before signing and approving the Resolutions recommending the filing of the Information against Diaz;[63] (iii) one (1) year and three (3) months before issuing the Resolution denying Diaz's Motion for Reconsideration;[64] and (iv) eleven (11) months and eleven (11) days before filing the Information with the Sandiganbayan.[65]

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[58] *Dansal v. Judge Fernandez, Sr.*, *supra* note 50, at 908-909.

[59] *Olbes v. Hon. Judge Buemio, et al.*, *supra* note 1.

[60] *Sps. Uy v. Judge Adriano*, *supra* note 49, at 503.

[61] *Rollo*, p. 67.

[62] *Id.*

[63] *Id.* at 68.

[64] *Id.*

[65] *Id.*

The Court disagrees.

It must be stressed that the determination of the length of delay is never mechanical.[66] Rather, the Court must consider the peculiar facts and circumstances surrounding the case. As the rule now stands, a case should not precipitately be dismissed simply because the case dragged beyond the reasonable periods. The prosecution must be given the chance to prove to the satisfaction of the Court that it followed the prescribed procedure in the prosecution of the case, the issues in the case were complex, the volume of evidence made the delay inevitable, and the accused did not suffer any prejudice as a result of the delay.[67] This, the prosecution sufficiently did.

The records show that the conduct of the preliminary investigation actually proceeded at a continuous and steady pace. Likewise, the OMB sufficiently explained the reasons behind the purported delay in the disposition of the case.

During the alleged lag of six (6) months and twenty-four (24) days from the filing of Lerio's Affidavit to the issuance of the Order directing Diaz to submit his Counter-Affidavit, the OMB's investigating prosecutor had to study the case and evaluate the charges. The OMB noted that Lerio's Affidavit was "undated, unverified, and did not charge any offense against Diaz."[68] Because of this, the investigating prosecutor had to scrutinize the attached 76 documents and make a determination on the proper course of action.[69]

Anent the one (1) year, six (6) months, and twenty-one (21) days of delay in the signing and approval of the Resolutions recommending the filing of the Informations against Diaz, the OMB explained that the said process had to undergo various

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[66] *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, Office of the Ombudsman, and People of the Philippines*, *supra* note 51.

[67] *Id.*

[68] *Rollo*, p. 102.

[69] *Id.*

triers of review within the Office of the OMB. Added to this, the proper dates of the commission of the offense sought to be charged were not readily ascertainable from Lerio's Affidavit or from any of the documents submitted by Diaz. According to the OMB, this was further complicated by the fact that during this time, they were already past the stage of clarificatory questioning.[70]

Likewise, following the filing of Lerio's Affidavit, the following incidents took place, the Deputy OMB-Mindanao submitted his Review Memorandum dated March 31, 2013 to the OMB, recommending the approval of the proposed Draft Resolution of GIPO Arenas and the proposed 13 Informations. The said Review Memorandum, Draft Resolution and the 13 Draft Informations were then endorsed to the OMB Quezon City through a letter dated June 25, 2014. Accordingly, the OMB signed and approved the correct Draft Resolution on October 10, 2014.[71]

It bears emphasis that the Resolution recommending the filing of criminal charges, passed from the hands of GIPO Arenas to the Deputy OMB-Mindanao, down to the OMB-Quezon City, back again to the Deputy OMB-Mindanao, and then to the OMB-Quezon City for finalization. These are the normal processes performed in the Office of the OMB. To the mind of the Court, this justifiably explains the delay of six (6) months and twenty-four (24) days for the issuance of the Order to file Counter-Affidavit, and the one (1) year, six (6) months, and twenty-one (21) days alleged delay from the filing of the Counter-Affidavit to the approval of the resolution of the case.

Added to this, voluminous records had to be carefully considered, and there were overlapping cash advances drawn over a period of seven (7) to eight (8) years. These records were scrutinized and analyzed against Diaz's defense that he had liquidated the said accounts.

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[70] *Id*. at 22-23.

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

As to the delays in the resolution of Diaz's Motion for Reconsideration, the following timeline belies the existence of inordinate delay:

On November 5, 2014, the OMB-Mindanao received Diaz's Motion for reconsideration, where he insisted that the cash advances from January 2004 to November 2005 were already liquidated and that the liquidation papers are with the COA. Around 20 days thereafter, Diaz filed a Supplemental Motion for Reconsideration on November 27, 2014. The same Motion was resolved by GIPO Arenas in less than a month, in an Order dated December 8, 2014. Then, following the protocol within the OMB, the said Order was submitted to Deputy OMB-Mindanao, who issued his Review Memorandum a month thereafter, or on January 9, 2015, recommending the approval of the proposed Order dated December 8, 2014 to the OMB.[72]

Consistent with the OMB's internal processes, the said Review Memorandum, along with the Order dated December 8, 2014 and the previously prepared Draft Informations, were transmitted by the OMB-Mindanao to the OMB in Quezon City in a letter dated January 16, 2014 for the letter's perusal and action. During this period, however, the OMB-Quezon City noted several details that necessitated corrections to the Draft Informations. Thus, the OMB-Quezon City caused the amendment of the draft Informations, pertaining to Diaz's cash advances incurred from 2004 to 2006, considering that during the said period, Diaz was the Vice Mayor, and not the Mayor of Tagana-an, Surigao del Norte. As such, the Informations should be filed before the RTC.[73]

Also, the OMB noted errors in the dates of the commission of the offense as written in the Draft Informations. The dates in the Draft Informations reflected the dates of the Disbursement Vouchers. It must be noted that the date of the commission of the offense for violation of Article 218 of the RPC should be

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[72] *Id*. at 20-21.

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

that following the two (2)-month period after the due date for the liquidation of the cash advances. Thus, this led to the redrafting of the Informations.[74]

Further, the OMB was likewise saddled with the dilemma of adding additional respondents based on Diaz's statements in his Motion for Reconsideration and Supplemental Motion for Reconsideration that he was allegedly allowed to incur subsequent cash advances even if his previous cash advances have not yet been liquidated or properly accounted for.[75]

Based on the foregoing, it becomes all too apparent that the alleged periods of delay considered by the Sandiganbayan were not actually "lulls" or periods of inactivity. Rather, during these periods, the OMB had to meticulously scrutinize the documents, review and study the case, make necessary corrections — all to ensure the proper resolution of the case. For sure, this cannot be characterized as an inordinate delay. At best, this shows that the OMB did not proceed with the case in a haphazard manner, but undertook a thorough scrutiny of the case, to ensure the existence of probable cause against Diaz.

It must be remembered that "courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case."[76] Courts are called to consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised. This rule holds true unless it is shown that the prosecution of the case was solely motivated by malice, or if the accused himself/herself waived his/her right to speedy disposition of cases or the right to speedy trial.[77]

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[74] *Id.* at 22; 25-26.

[75] *Id*. at 22.

[76] *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, Office of the Ombudsman, and People of the Philippines*, *supra* note 51.

[77] *Id*.

Equally important, the purported delay was in no way vexatious, capricious, and/or oppressive. There is no showing that the prosecution was solely motivated by malice in the prosecution of the case. In handling the case, the OMB did not harass Diaz, or treat him in an unfair or oppressive manner. Neither was it shown that the case was politically motivated. In fact, Diaz never adverted to anything of this sort.

Diaz Failed to Show Any Prejudice Suffered from the Alleged Delay in the Prosecution of His Case

In determining whether the right of the accused to a speedy disposition of his/her case was violated, it is likewise essential for the accused to show that he/she suffered prejudice due to the delay. This "prejudice" is assessed in light of the interests of the accused which the speedy disposition right is designed to protect, such as: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.[78]

To begin with, the first criterion does not apply in the case at bar, as the respondent was never arrested or taken into custody, or otherwise deprived of his liberty in any manner. Thus, the only conceivable harm to Diaz are the anxiety brought by the investigation, and the potential prejudice to his ability to defend his case. Even then, the harm suffered by Diaz occasioned by the filing of the criminal cases against him is too minimal and insubstantial to tip the scales in his favor.

Suffice to say, not every claim of prejudice shall conveniently work in favor of the respondent. First, there must be a conclusive factual basis behind the purported claim of prejudice, as the Court cannot rely on pure speculation or guesswork. The respondent, who asserts to have suffered prejudice, must show actual, specific, and real injury to his rights.[79] Thus, a "mere

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[78] *The Ombudsman v. Jurado*, 583 Phil. 132, 148-149 (2008).

[79] *Sps. Uy v. Judge Adriano*, *supra* note 49, at 509.

reference to a general asseveration that their 'life, liberty and property, not to mention reputation' have been prejudiced is not enough."[80]

Diaz's claims that he "endured financial drain, restrained freedom of movement, public ridicule, embarrassment, anguish, sleepless nights, restless moments, and isolation from friends and other people,"[81] are vague assertions, and typical trepidations and problems attendant to every criminal prosecution. Concededly, anxiety typically accompanies a criminal charge. However, not every claim of anxiety affords the accused a ground to decry a violation of the rights to speedy disposition of cases and to speedy trial.[82] "The anxiety must be of such nature and degree that it becomes oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charge."[83]

Likewise, the alleged public ridicule, embarrassment, anguish, sleepless nights, restless moments and isolation do not amount to that degree that would justify the nullification of the appropriate and regular steps that must be taken to assure that while the innocent should go unpunished, those guilty must expiate for their offense. They pale in importance to the gravity of the charges and the paramount considerations of seeking justice.[84]

Furthermore, a claim that the delay has caused an impairment to one's defense must be specific and not merely conjectural. "Vague assertions of faded memory will not suffice. Failure to claim that particular evidence had been lost or had disappeared defeats speedy trial claim."[85]

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[80] *Id*. at 489-490.

[81] *Rollo*, p. 70.

[82] Separate Concurring Opinion of Associate Justice Josue N. Bellosillo in *People v. Lacson*, 448 Phil. 317 421-422 (2003).

[83] *Id*.

[84] *Id*. at 408.

[85] *Sps. Uy v. Judge Adriano*, *supra* note 49, at 509.

In the instant case, all that Diaz decried were general claims that he could no longer locate unnamed and unidentified witnesses and that he is having difficulty securing unspecified documents.[86] These shall not serve to deprive the State of its right to prosecute criminal offenses involving millions of pesos from the public coffers.

It must be remembered that in *Alvizo v. Sandiganbayan*,[87] the Court warned against purported claims of prejudice that are simply "conjectural and dubious invocations."[88] The claim of possible loss of evidence, or unavailability of witnesses, although prejudicial to the accused, must still be scrutinized, *viz.*:

> We recognize the concern often invoked that undue delay in the disposition of cases may impair the ability of the accused to defend himself, the usual advertence being to the possible loss or unavailability of evidence for the accused. We do not apprehend that such a difficulty would arise here. x x x.
>
> x x x x x x x x x
>
> Consequently, whatever apprehension petitioner may have over the availability of such documents for his defense is inevitably shared in equal measure by the prosecution for building its case against him. This case, parenthetically, is illustrative of the situation that what is beneficial speed or delay for one side could be harmful speed or delay for the other, and vice-versa. Accordingly, we are not convinced at this juncture that petitioner has been or shall be disadvantaged by the delay complained of or that such delay shall prove oppressive to him. The just albeit belated prosecution of a criminal offense by the State, which was enjoined by this very Court, should not be forestalled either by conjectural supplications of prejudice or by dubious invocations of constitutional rights.[89] (Citations omitted)

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[86] *Rollo*, p. 567.

[87] 292-A Phil. 144 (1993).

[88] *Id*. at 156.

[89] *Id*.

The Court is not unmindful of its ruling in *Sandiganbayan Fifth Division, et al.*[90] *Commo. Torres (Ret.) v. Sandiganbayan, et al.*,[91] and *Inocentes v. People*[92] where the Court affirmed the Motion to Quash the Information due to the violation of the accused's right to the speedy disposition of his case. In these cases, the argument that the accused was prejudiced because of the difficulty in securing witnesses and evidence swayed the Court.

However, in *Sandiganbayan, Fifth Division*, the case dragged on for 15 years, in *Torres* for 18 years, and in *Inocentes* for 7 years. Added to this, the Court found in the cited cases that the delays were in fact unreasonable, oppressive, and vexatious, and that the reasons proffered behind the delay were unjustified.

It also bears noting that the records are bereft of any showing that there was a deliberate attempt on the part of the OMB to delay the case in order to gain some tactical advantage over the accused.

The Assertion of the Right to Speedy Trial

It must be remembered that the invocation of one's right to speedy disposition of cases must be timely raised. The accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Failure to do so constitutes a waiver of such right.[93] Indeed, although the Sandiganbayan noted that Diaz raised this right immediately after the filing of the Information, there was no showing that he attempted to assert his right during the conduct of the preliminary investigation.

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[90] *Supra* note 40.

[91] 796 Phil. 856 (2016).

[92] 789 Phil. 318 (2016).

[93] *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, Office of the Ombudsman,* and *People of the Philippines*, *supra* note 51.

Although there may have been delay, Diaz has not shown that he asserted his rights during this period, choosing to wait until the Information was filed against him with the Sandiganbayan. In *Cagang*, this was considered against therein accused, who raised no objection before the OMB, where the inordinate delay was claimed to have occurred.

Indeed, Diaz, as the accused, has no obligation to bring himself to trial. However, his act of waiting for four (4) years while the preliminary investigation took place, passively accepting the delay without any objection, and then suddenly asserting his right to speedy disposition as soon as he received the OMB's adverse ruling, is certainly questionable.

In fine, the Courts are called to balance the duty of the State to effectively prosecute crimes alongside the Constitutional right of the accused to a speedy disposition of his/her case. Lest it be forgotten, "[a]s significant as the right of an accused to a speedy trial is the right of the State to prosecute people who violate its penal laws."[94] This means that the OMB is saddled with the task of meticulously and diligently assessing each case, while working against time. The OMB should not be faulted if the delay in the proceedings is only attributable to the ordinary processes of justice.[95] This is why it is imperative to do away with a mechanical mathematical reckoning of time, and to delve deeper into the circumstances of each particular case. Otherwise, the precipitate dismissal of a case may enable the accused, who may be guilty, to go scot-free without having been tried, thereby infringing the societal interest in trying people accused of crimes by granting them immunization simply because of a legal blunder.[96]

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[94] *Sps. Uy v. Judge Adriano*, *supra* note 49, at 503, citing *Dansal v. Judge Fernandez, Sr.*, *supra* note 50, at 902-903.

[95] *Roallos v. People*, 723 Phil. 655, 671 (2013).

[96] *Sps. Uy v. Judge Adriano*, *supra* note 49, at 493, citing *Barker v. Wingo*, 407 US 514, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972); *see* also *Guiani v. Sandiganbayan*, 435 Phil. 467, 480 (2002), and *Sumbang, Jr. v. Gen. Court Martial Pro-Region 6, Iloilo City*, 391 Phil. 929, 934 (2000).

WHEREFORE, premises considered, the Petition is **GRANTED**. The Resolutions of the Sandiganbayan dated April 18, 2017, and July 3, 2017, which granted respondent Cesar Alsong Diaz's Motion to Quash are hereby **REVERSED and SET ASIDE**. The Sandiganbayan is forthwith **DIRECTED** to proceed with deliberate dispatch in the disposition of Criminal Case Nos. SB-17-CRM-0038 to 0048.

SO ORDERED.

Leonen[*] (*Acting Chairperson*) and *Inting, JJ.*, concur.

Peralta and *Hernando, JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 234947. June 19, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GARRY PADILLA *y* BASE and FRANCISCO BERMAS *y* ASIS,** *accused,* **FRANCISCO BERMAS *y* ASIS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENTS.— In rape cases, the prosecution has the burden to conclusively prove the two elements of the crime, *viz.*: (1) that the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.

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[*] Designated Acting Chairperson per Special Order No. 2675 dated June 17, 2019.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, THE ACCUSED MAY BE CONVICTED ON THE BASIS OF THE LONE, UNCORROBORATED TESTIMONY OF THE RAPE VICTIM, PROVIDED THAT HER TESTIMONY IS CLEAR, CONVINCING, AND OTHERWISE CONSISTENT WITH HUMAN NATURE; TRIAL COURT'S FINDINGS THEREON CARRY GREAT WEIGHT AND SUBSTANCE.— It bears emphasis that in rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Hence, the trial court's findings carry very great weight and substance.

3. ID.; CRIMINAL PROCEDURE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES; ABSOLUTE GUARANTEE OF GUILT IS NOT DEMANDED BY THE LAW TO CONVICT A PERSON OF A CRIMINAL CHARGE BUT THERE MUST, AT LEAST BE MORAL CERTAINTY ON EACH ELEMENT.— [I]n reviewing rape cases, the Court observes the following guiding principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (3) **the evidence for the prosecution must stand or fall on its own merits**, and cannot be allowed to draw strength from the weakness of the evidence for the defense. This must be so as the guilt of an accused must be proved beyond reasonable doubt. Before he is convicted, there should be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it. Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict. Again, these basic postulates assume that the court and others at the trial are able to comprehend the testimony of witnesses,

particularly of the victim herself if she is presented and testified under oath.

4. CRIMINAL LAW; RAPE; SECOND ELEMENT OF THE CRIME CHARGED, NAMELY, THAT THE VICTIM BE DEPRIVED OF REASON, NOT ESTABLISHED IN CASE AT BAR; TESTIMONIES OF WITNESSES ARE MERE CONCLUSIONS THAT DO NOT ESTABLISH THE FACT OF THE VICTIM'S MENTAL RETARDATION, WHICH MUST BE PROVED BEYOND REASONABLE DOUBT.— Similar to Dalandas, the records of the present case are likewise bereft of any evidence conclusively establishing AAA's mental retardation. If at all, the only evidence offered to prove the said fact were: (1) BBB's testimony that AAA has had mental retardation since birth; (2) Barangay Captain CCC's testimony that he has known AAA to have mental retardation and that she went to a special school; and (3) Dr. Barasona's testimony that AAA "probably" has Down Syndrome. Following Dalandas, however, BBB and CCC's testimonies are but mere conclusions that do not establish the fact of AAA's mental retardation. Likewise, Dr. Barasona's testimony cannot be the basis for such as the said findings were inconclusive. x x x Therefore, the finding that AAA is a mental retardate has no leg to stand on. The Court, in *People v. Cartuano, Jr.,* (*Cartuano*) reminds: "[t]rial courts should put prosecution evidence under severe testing. Every circumstance or doubt favoring the innocence of the accused should be taken into consideration." Thus, the Court therein explained that: **Mental retardation is a clinical diagnosis which requires demonstration of significant subaverage intellectual performance (verified by standardized psychometric measurements); evidence of an organic or clinical condition which affects an individual's intelligence; and proof of maladaptive behavior.** x x x **In making a diagnosis of mental retardation, a thorough evaluation based on history, physical and laboratory examination made by a clinician is necessary.** x x x The Court, in *Cartuano* and as subsequently clarified in *Dalandas*, does not require a comprehensive medical examination in each and every case where mental retardation needed to be proved. However, it is well to emphasize that the conviction of an accused of rape based on the mental retardation of the private complainant **must be anchored on proof beyond reasonable doubt of her mental retardation**.

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 Francisco Bermas *y* Asis (Bermas) assailing the Decision[2] dated July 6, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06972, which affirmed the Judgment[3] dated May 16, 2014 of the Regional Trial Court (RTC) of EEE,[4] in Criminal Case No. 08-1631, finding Bermas guilty beyond reasonable doubt of Rape.

The Facts

An Information was filed against Bermas for the rape of AAA,[5] which reads:

That sometime in the evening of January 10, 2008 at [DDD], Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, motivated by bestial lust and by means of force and intimidation, did, then and there, willfully, unlawfully and feloniously touch the vagina and had carnal knowledge by inserting his penis to the vagina of the private complainant, one AAA, mentally retarded, against her will, to the damage and prejudice of the offended party.

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[1] See Notice of Appeal dated July 31, 2017; *rollo*, pp. 12-15.

[2] *Rollo*, pp. 2-11. Penned by Associate Justice Renato C. Francisco, with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios concurring.

[3] CA *rollo*, pp. 38-46. Penned by Acting Presiding/Executive Judge Roberto A. Escaro.

[4] The name of the municipality and province were replaced with fictitious initials pursuant to Amended Circular No. 83-2015 dated September 5, 2017.

[5] The name of the victim is replaced with fictitious initials pursuant to Amended Circular No. 83-2015 dated September 5, 2017.

CONTRARY TO LAW.[6]

When arraigned, Bermas pleaded not guilty to the charge. Thereafter, pre-trial and trial on the merits ensued.

During the trial, the prosecution presented as its witnesses the following: (i) AAA; (ii) BBB, AAA's mother; (iii) Rural Health Physician Dr. Virginia Barasona (Dr. Barasona); and (iv) Barangay Captain CCC. The prosecution's version, as summarized by the CA, was as follows:

> BBB testified that her daughter AAA was mentally retarded since birth as manifested by the latter's hardheadedness. AAA would also utter senseless words which were inappropriate for her age. There were also times when AAA would not be responsive to questions. Sometimes AAA would hit her nephews and nieces without any reason at all while other times AAA would be out of dimension and not within herself.
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> Barangay Captain CCC, on the other hand, has been a neighbor of AAA for ten (10) years and has known AAA to be mentally retarded for she was always smiling and laughing for no reason. He also knew that AAA went to a special education school.
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> On 10 January 2008, AAA told her mother that she was to attend a birthday party near their house. AAA testified that as she was watching those having videoke, she was told by accused [Bermas] to go to Barangay Captain CCC's house. Upon her arrival, accused [Bermas] and one Garry Padilla were already at the house of the barangay captain. While at the stairs of the said house, accused [Bermas] allegedly told her "*AAA, wag kang magsumbong marami ako ritong pera, sige na hubarin mo na ang panty mo.*" Both men then removed private complainants' (*sic*) shorts and underwear. [Bermas] showed her his penis, inserted it into her vagina and moved in a pumping motion. After a while, [Bermas] removed his penis and a liquid substance came out. Thereafter, Garry inserted his penis into her vagina.
>
> After the termination of AAA's testimony, the court *a quo* ordered the amendment of the Information to include Garry Padilla as co-accused as well as the x x x issuance of the corresponding warrant for his arrest.

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[6] *Rollo*, pp. 2-3.

Meanwhile, Barangay Captain CCC testified that he was awakened by the sound of his hogs and the barking of dogs. He peeped through his window and saw AAA raising her shorts as she walked from his pig pen. AAA was also with a male companion who he identified as accused Francisco Bermas. Barangay Captain CCC then went next door to inform AAA's parents of what he saw.

When BBB saw her daughter, the latter was crying and trembling with fear. She confronted her daughter and asked who the man she was with. AAA replied that she was with accused Francisco Bermas. They then went to the Women's and Children's Desk ng Himpilan ng Pulisya ng [DDD] Camarines Norte to report the incident.

Dr. Barasona testified that she examined private complainant on 12 January 2008 and found that there was a clear evidence of penetration which happened within 72 hours from examination. She also referred private complainant for psychiatric evaluation as she suspected her of having Down Syndrome for having features such as low-set and malformed ears as well as oblique palpebral fissures. In addition, Dr. Barasona observed that private complainant had difficulty in understanding questions. AAA was not fully responsive to questions and could not fully narrate incidents.[7]

On the other hand, the evidence of the defense is based on the lone testimony of Bermas, who testified as follows:

Accused [Bermas] claimed that at around late afternoon of 10 January 2008, he went to Poblacion at the barangay proper to buy cigarette. He was then invited by his *compare* (*sic*) Gary to a birthday party near BBB's house where they had a drinking session. Gary, however, went home ahead of him. At around 10:00 o clock in the evening, he was already on his way home when he passed by the house of Barangay Captain CCC who asked him where he was going. Upon replying that he was already on his way home, accused [Bermas] saw private complainant come out of the barangay captain's house. Barangay Captain CCC then went to private complainant's house and informed the latter's parents that he saw the private complainant with a male companion. Apparently, accused [Bermas] was being pinpointed as the male companion of private complainant. He was thereafter brought to the police station where he was incarcerated

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[7] *Id*. at 3-5.

with Gary for allegedly raping private complainant. Both the accused were released after a period of thirty six (36) hours.[8]

Ruling of the RTC

After trial on the merits, in its Judgment[9] dated May 16, 2014, the RTC convicted Bermas of the crime of Rape. The dispositive portion of the said Judgment reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding the accused, **FRANCISCO BERMAS, GUILTY** beyond reasonable doubt of the crime of Rape defined and penalized under Art. 266-A of the Revised Penal Code in relation to Republic Act 7610. He is hereby sentenced to suffer the penalty of imprisonment of RECLUSION PERPETUA.
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> x x x x x x x x x
>
> SO ORDERED.[10]

In finding Bermas guilty, the RTC reasoned:

> Based on the evidence adduced by the parties, and after a thorough evaluation, both on the testimonial and documentary evidence, it has been established by the prosecution, most particularly the testimony of the victim, who is mentally retarded, that the herein accused, Francisco Bermas had carnal knowledge with her on January 10, 2008 night time at the stairs of the house of [CCC]. She categorically said that the accused removed her panty, shown to her the penis of the accused and inserted [it] into her vagina, moving his body in a pumping motion and thereafter a liquid substance came out. The victim and the accused were seen by the barangay captain at his pigpen on the same evening. The testimony of the private complainant, as well as by the barangay captain, who positively identified the accused, and the findings of the doctor gave credence to the commission of the crime.[11]

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[8] *Id*. at 5.

[9] CA *rollo*, pp. 38-46.

[10] *Id*. at 46.

[11] *Id*. at 44.

Aggrieved, Bermas appealed to the CA.

Ruling of the CA

In the appeal, Bermas mainly questioned the RTC's conclusion that AAA was a mental retardate, and as a result of her mental retardation, that he was, thus, guilty of rape.

In the questioned Decision[12] dated July 6, 2017, the CA affirmed the RTC's conviction of Bermas. The CA explained:

> The gravamen of the crime of rape under Art. 266-A (1) is sexual intercourse with a woman against her will or without her consent. In this case, appellant was charged and convicted of rape under Article 266-A (1) (b). The term "*deprived of reason*" is associated with insanity or madness. A person deprived of reason has mental abnormalities that affect his or her reasoning, perception of reality as well as his or her capacity to resist, make decisions, and give consent. The deprivation of reason, however, need not be complete for mental abnormality or deficiency is enough.
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> It has also been held that carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provision of law. This is because a mentally deficient person is automatically considered incapable of giving consent to a sexual act. Thus, proof of force or intimidation is not necessary. What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.[13]

The CA also held that BBB's testimony that AAA was mentally retarded since birth was sufficient to establish her retardation, and that medical evidence was not a condition *sine qua non* to prove that AAA indeed was a mental retardate.[14]

Hence, the instant appeal.

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[12] *Rollo*, pp. 2-11.

[13] *Id*. at 7. Citations omitted.

[14] *Id*. at 8.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting Bermas.

The Court's Ruling

The appeal is meritorious. The Court acquits Bermas for the failure of the prosecution to prove all the elements of the crime charged beyond reasonable doubt.

In rape cases, the prosecution has the burden to conclusively prove the two elements of the crime, *viz.*: (1) that the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.[15]

The Information in this case accuses Bermas of having carnal knowledge with AAA, a supposed mental retardate, through force or intimidation. The RTC and the CA convicted him of the crime charged holding that: (1) carnal knowledge was sufficiently proved through AAA's testimony; and (2) AAA was mentally retarded — and thus, "deprived of reason" — such that the carnal knowledge with her amounted to rape so that proof of force or intimidation was not necessary.

The Court disagrees.

The lower courts' conclusions are unwarranted, and are unsupported by the prevailing jurisprudence on the matter.

It bears emphasis that in rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature.[16] This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their

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[15] *People v. Dalan*, 736 Phil. 298, 300 (2014).

[16] *People v. XXX*, G.R. No. 226467, October 17, 2018, p. 5.

demeanor, conduct, and attitude during cross-examination. Hence, the trial court's findings carry very great weight and substance.[17]

However, it is equally true that in reviewing rape cases, the Court observes the following guiding principles:

(1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;

(2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution;

(3) **the evidence for the prosecution must stand or fall on its own merits**, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[18]

This must be so as the guilt of an accused must be proved beyond reasonable doubt. Before he is convicted, there should be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.[19] Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender.[20] Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict.[21] Again, these basic postulates assume that the court and others at the trial are able to comprehend the testimony of witnesses, particularly of the victim herself if she is presented and testified under oath.[22]

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[17] *Id*., citing *People v. Alemania*, 440 Phil. 297, 304-305 (2002).

[18] *Id*. at 5-6, citing *People v. Lumibao*, 465 Phil. 771, 780 (2004).

[19] *Id*. at 6, citing *People v. Lumibao*, *id*. at 781.

[20] *Id*.

[21] *Id*., citing *People v. Lumibao*, *supra* note 18, at 781.

[22] *Id*., citing *People v. Lumibao*, *id*.

With the foregoing principles in mind, the Court holds that the evidence presented by the prosecution did not sufficiently establish the second element of the crime charged, namely, that he had carnal knowledge of AAA either (a) through force or intimidation, or (b) when she was deprived of reason. Hence, Bermas' acquittal necessarily follows.

In holding that AAA was a mental retardate, the CA rationalized:

> *People v. Dalandas* has already qualified the application [of] the *Cartuano, Jr.* ruling. In *Dalandas*, the Supreme Court held that clinical evidence is necessary in borderline cases when it is difficult to ascertain whether the victim is of a normal mind or is suffering from a mild mental retardation. Medical evidence is not a condition *sine qua non* in all cases of rape or sexual crimes for that matter to prove that the victim is a mental retardate or is suffering from mental deficiency or some form of mental disorder. A person's mental retardation can also be proven by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court.
>
> Here, private complainant's mother testified that her daughter was mentally retarded since birth as she exhibited hardheadedness and uttered senseless words which were inappropriate for her age. Barangay Captain CCC, a neighbor of private complainant for almost ten (10) years, knew private complainant as mentally retarded for she was always smiling and laughing for no reason. The rural health physician who examined private complainant a few days after the alleged rape incident also observed that private complainant had difficulty in understanding questions as her answers were not fully responsive. She also observed that private complainant had difficulty in narrating incidents. On this basis, the rural health physician recommended that private complainant be referred to psychiatric evaluation.
>
> Faced with the foregoing testimonial evidence, the trial court held that private complainant's mother BBB was competent to testify on the physical and mental condition of her daughter. Albeit not a psychologist or psychiatrist, BBB knew how her daughter was born, what she is suffering from and what her attainments are. The court

a quo also held that the personal observation of the trial judge suffices even in the absence of an expert opinion.[23]

After a careful consideration of the foregoing, the Court holds that the CA erred in the above disquisition. Its reading of *People v. Dalandas*[24] (*Dalandas*) is highly misplaced.

In *Dalandas*, the private complainant was a 20-year old mental retardate who only finished the second grade of elementary school. As proof of her mental retardation, the private complainant's father, much like AAA's mother in this case, testified that his daughter has had a mental defect since childhood. The Court eventually acquitted the accused therein and, in the process, held that the "claim that his daughter was suffering from a mental defect since childhood was a mere conclusion."[25] In acquitting the accused in *Dalandas*, the Court explained at length:

> The basic postulate in criminal prosecution anchored on the constitution is that the prosecution is burdened to prove the guilt of the accused the crime charged beyond cavil of doubt. In this case, the prosecution was burdened to prove conclusively and indubitably not only that accused-appellant had carnal knowledge of private complainant but also that private complainant was a mental retardate.
>
> Mental retardation is a chronic condition present from birth or early childhood and characterized by impaired intellectual functioning measured by standardized tests. It manifests itself in impaired adaptation to the daily demands of the individual's own social environment. Commonly, a mental retardate exhibits a slow rate of maturation, physical and/or psychological, as well as impaired learning capacity.
>
> Although "mental retardation" is often used interchangeably with "mental deficiency," the latter term is usually reserved for those without recognizable brain pathology. The degrees of mental

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[23] *Rollo*, pp. 8-9. Citations omitted.

[24] 442 Phil. 688 (2002).

[25] *Id*. at 699-700. Underscoring supplied.

retardation according to their level of intellectual function are illustrated, thus:

Mental Retardation

LEVEL	DESCRIPTION TERM	INTELLIGENCE QUOTIENT (IQ RANGE)
I	Profound	Below 20
II	Severe	20-35
III	Moderate	36-52
IV	Mild	53-68

A normal mind is one which in strength and capacity ranks reasonably well with the average of the great body of men and women who make up organized human society in general, and are by common consent recognized as sane and competent to perform the ordinary duties and assume the ordinary responsibilities of life.

x x x x x x x x x

The mental retardation of persons and the degrees thereof may be manifested by their overt acts, appearance, attitude and behavior. The dentition, manner of walking, ability to feed oneself or attend to personal hygiene, capacity to develop resistance or immunity to infection, dependency on others for protection and care and inability to achieve intelligible speech may be indicative of the degree of mental retardation of a person. Those suffering from severe mental retardation are usually undersized and exhibit some form of facial or body deformity such as mongolism, or gargolism. The size and shape of the head is indicative of microphaly. The profoundly retarded may be unable to dress himself, or wash or attend to bowel and bladder functions so that his appearance may be very unclean and untidy unless [he] receive[s] a great deal of nursing care. There may be marked disturbance of gait and involuntary movements. Attempts to converse with a mental retardate may be limited to a few unintelligible sounds, either spontaneous or in response to attempts that are made by the examiner to converse, or may be limited to a few simple words or phrases. All the foregoing may be testified on by ordinary witnesses who come in contact with an alleged mental retardate.

x x x x x x x x x

It goes without saying that there must be some evidence in the record which, if true, will afford substantive support for such findings and its absence cannot be cured by assuming that the trial court saw something in the conduct or demeanor of the victim which must have led to the decision appealed from.

Our pronouncement in *People vs. Cartuano, Jr.* that a finding of the victim being a mental retardate must be based on laboratory and psychometric support does not preclude the presentation by the prosecution of evidence other than clinical evidence to prove the mental retardation of the victim. We held in said case that clinical evidence is necessary in borderline cases when it is difficult to ascertain whether the victim is of a normal mind or is suffering from a mild mental retardation. Medical evidence is not a condition *sine qua non* in all cases of rape or sexual crimes for that matter to prove that the victim is a mental retardate or is suffering from mental deficiency or some form of mental disorder. **However, the conviction of an accused of rape based on the mental retardation of private complainant must be anchored on proof beyond reasonable doubt of her mental retardation.**

In the appeal at bench, the prosecution did not present any clinical evidence to prove that private complainant was a mental retardate. It relied merely on the testimony of Budsal Dalanda, the father of private complainant who testified that the latter had a mental defect since childhood; she did not know anything about money; and she would not eat if she was fed with food. The prosecution also relied on the testimony of private complainant that she finished only Grades I and II in the Gintilan Elementary School. The trial court concluded that private complainant had suffered some mental retardation on the basis of the corroborative testimonies of private complainant and her father, as well as on its observation that when she testified, private complainant had difficulty expressing herself and even failed to recall things spontaneously although she had the ability, though slowly, to make her perceptions known to others. Her mental condition necessitated that leading questions to be propounded to her to elicit the truth.

However, based on its analysis of the testimonial evidence adduced by the prosecution and even of the observations of the trial court on private complainant when she testified, the Court is convinced that said testimonies and observations are not sufficient proof that private complainant was a mental retardate and incapable of validly

giving consent or opposing the carnal act. **Budsal Dalanda's claim that his daughter was suffering from a mental defect since childhood was a mere conclusion**. Even if private complainant did not know anything about money or that she would not eat if she was fed with food, it cannot thereby be conclusively concluded that she was suffering from a mild mental retardation at the very least. **The lack of knowledge about money or her refusal eat even when fed are not necessarily manifestations of a mental defect or the effects of mental retardation. It behooved the prosecution to prove that private complainant's lack of knowledge about money and her refusal to eat even when fed were caused by, or are manifestations of, mental retardation or mental deficiency or disorder**. Neither does the bare fact that private complainant finished only Grades I and II in the elementary although she had reached adulthood constitute proof that private complainant was a mental retardate. x x x[26] (Emphasis and underscoring supplied)

Similar to *Dalandas*, the records of the present case are likewise bereft of any evidence conclusively establishing AAA's mental retardation. If at all, the only evidence offered to prove the said fact were: (1) BBB's testimony that AAA has had mental retardation since birth; (2) Barangay Captain CCC's testimony that he has known AAA to have mental retardation and that she went to a special school; and (3) Dr. Barasona's testimony that AAA "probably" has Down Syndrome.

Following *Dalandas*, however, BBB and CCC's testimonies are but mere conclusions that do not establish the fact of AAA's mental retardation. Likewise, Dr. Barasona's testimony cannot be the basis for such as the said findings were inconclusive, as revealed by the following testimony:

"Q You also said that the patient is suffering from down's syndrome. You will agree with me that there is no particular study on this aspect?

A **We have plans of referring the patient to a psychiatrist for further evaluation.**

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[26] *Id*. at 695-700.

Q But your findings is (*sic*) not conclusive?

A That the patient has a down's syndrome.

Q With respect to conclusion, Madam Witness, that indeed the patient is suffering [from] mental retardation, **this findings is (*sic*) not conclusive**?

A **Yes**."[27] (Emphasis and underscoring supplied)

Therefore, the finding that AAA is a mental retardate has no leg to stand on.

The Court, in *People v. Cartuano, Jr.,*[28] (*Cartuano*) reminds: "[t]rial courts should put prosecution evidence under severe testing. Every circumstance or doubt favoring the innocence of the accused should be taken into consideration."[29] Thus, the Court therein explained that:

Mental retardation is a clinical diagnosis which requires demonstration of significant subaverage intellectual performance (verified by standardized psychometric measurements); evidence of an organic or clinical condition which affects an individual's intelligence; and proof of maladaptive behavior. The degree of intellectual impairment must be shown to be at least two (2) standard deviations (SD<2) below the mean for age as confirmed by reliable standardized tests such as the Stanford Binet Test and The Weschler Intelligence Tests. Non-standardized, non-parametric tests, such as the Denver Development Screening Tests or nonstandardized, non-specific "quick" tests such as sentence completion tests and the Goodenough Drawing Test are unreliable.

In making a diagnosis of mental retardation, a thorough evaluation based on history, physical and laboratory examination made by a clinician is necessary. The reason for this universal requirement is well-explained in both x x x the medical and clinical psychology literature: mental retardation is a recognized clinical syndrome usually traceable to an organic cause, which determinants are complex and multifactorial. As the boundaries between normality and retardation

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[27] CA *rollo*, p. 31, citing TSN, August 24, 2011, p. 7.

[28] 325 Phil. 718 (1996).

[29] *Id.* at 745.

are difficult to delineate, proper identification requires competent clinical evaluation of psychometric parameters in conjunction with medical and laboratory tests.

In the case at bench, the record is almost bare of clinical, laboratory and psychometric support which would sustain a *proper* conclusion that complainant was indeed mentally deficient. The patient history yields nothing but the fact that complainant left school at third grade, a fact which the school principal blamed on frequent absences and tardiness, and the only appropriate conclusion which could be drawn from her second grade teacher's testimony was that complainant was a poor student. Neither were the findings on physical examination noted on record, either by the psychiatrist or the psychologist. Physical examination would have confirmatory value because most cases of congenital mental retardation in this country are due to Down's and other related translocation variants. These conditions, outwardly characterized by hypertelorism, low set ears, a micrognathic jaw, and a simian crease are fairly common, and afflicted individuals are generally recognized even by laymen. Individuals afflicted with the less common causes of mental retardation likewise have distinct physical features, recognizable by clinicians. The rare metabolic and genetic causes are usually incompatible with survival beyond childhood and the degree of retardation is usually severe. Appallingly, no physical evaluation (essential in the diagnosis of any disorder, mental or somatic) appears on record.

On top of these, the psychometric tests which were utilized in evaluating the complainant, the Goodenough Drawing Test and the Bender Visual Motor Test, are non-parametric tests of generally low reliability, adopted by psychologists as quick screening tests, not so much for intelligence but for visual-motor function and coordination. The Sack's Sentence Completion Test, the third leg in the psychologist's evaluation is likewise considered of low reliability and specificity in intelligence assessment and is culture and language specific and biased. (In the case at bench, the Sack's Sentence Completion Test was conducted in *Tagalog*, not in the dialect of the complainant.) All the three tests are used in a wide range of psychological disorders other than mental retardation, and none of them either alone or taken together — would suffice as a proper test for intelligence.

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x x x It is held in the most recent of the Medical, Psychiatric, and General and Clinical Psychology literature on mental retardation and deficiency here and abroad, that ***identification of mental deficient subjects cannot be left to ambiguous social notions and assumptions alone, such markers being unfortunately vague, sometimes discriminatory and widely open to chance*. The proper clinical determination of mental deficiency requires several legs. Needless to say, after psychometric diagnosis utilizing the proper test has been confirmed, a comprehensive medical evaluation, (all reasonably within the capacity of our major provincial and city hospitals and centers) is necessary to complete the process**.

It is necessary to stress here, conformably with what the Court has been saying in jurisprudence on the matter, that deprivation of reason need not be complete. Mental abnormality or deficiency is enough. **However, abnormality or deficiency of whatever state or degree should be sufficiently and adequately established by orthodox and reasonably available methods and procedures. It is possible that complainant could well have been merely on the lower end of the acceptable mean for her age group, a condition which would have been aggravated by her lack of education, but this, by any medical or psychological yardstick, does not itself negate autonomous choice or decision-making based on reasoning**.[30] (Emphasis and underscoring supplied)

The Court, in *Cartuano* and as subsequently clarified in *Dalandas*, does not require a comprehensive medical examination in each and every case where mental retardation needed to be proved. However, it is well to emphasize that the conviction of an accused of rape based on the mental retardation of the private complainant **must be anchored on proof beyond reasonable doubt of her mental retardation**.[31]

In the present case, however, there is no such proof as previously discussed.

Even if the Court were to appreciate BBB's testimony, the same conclusion would nevertheless be reached, for claims of

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[30] *Id*. at 747-751.

[31] *People v. Dalandas*, *supra* note 24, at 699. Emphasis and underscoring supplied.

"hardheadedness,"[32] "utter[ing] senseless words,"[33] and unresponsiveness to questions are all insufficient to conclude that AAA is suffering from retardation such that she was unable to comprehend the consequences of consenting to a sexual act. The Court needed to ascertain her level of understanding, including that of sexual acts, for it is clear in the decision of the RTC,[34] and in her testimony, that she "consented" to the sexual act. She testified:

"Q What did you feel when he insert (*sic*) his penis inside your vagina?

A None, sir

x x x x x x x x x

Q Why is it that you did not prevent them from doing that thing

A No answer.

COURT

Did you like what the accused do (*sic*) to you?

A **Yes, Your Honor**."[35] (Emphasis and underscoring supplied)

As the victim apparently "consented" to the act, the Court necessarily had to determine whether this consent was vitiated, such that the act would amount to Rape under Article 266-A(l)(b) for having carnal knowledge with a woman "deprived of reason." However, as discussed, the prosecution failed to establish her mental retardation beyond reasonable doubt.

In sum, the second element of the crime charged — that the victim be "deprived of reason" — was not established beyond reasonable doubt. Hence, in consonance with the constitutional

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[32] *Rollo*, p. 3; CA *rollo*, p. 32, citing TSN, February 10, 2011, p. 3.

[33] *Id*.; *id*., citing TSN, February 10, 2011, *id*.

[34] See CA *rollo*, p. 39.

[35] *Id*. at 29, citing TSN, November 23, 2010, pp. 6, 17.

right of presumption of innocence, the Court acquits Bermas of the crime charged.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated July 6, 2017 of the Court of Appeals in CA-G.R. CR HC No. 06972 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Francisco Bermas *y* Asis 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.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 235749. June 19, 2019]

RAMON PICARDAL *y* **BALUYOT,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE COURT OF APPEALS AFFIRMING THAT OF THE TRIAL COURT, ARE GENERALLY FINAL AND CONCLUSIVE ON THE SUPREME COURT; EXCEPTIONS; CASE AT BAR.— [T]he factual findings of the CA, affirming that of the trial court, are generally final and conclusive on the Court. The foregoing rule, however, is subject to the following exceptions: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd

or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of fact are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; **(9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion;** (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. In the present case, the ninth exception applies. The CA manifestly overlooked the undisputed facts that: (1) the firearm subject of this case was seized from Picardal after he was frisked by the police officers for allegedly urinating in a public place; and (2) the aforementioned case for "urinating in a public place" filed against Picardal was subsequently dismissed by the Metropolitan Trial Court of Manila. The act supposedly committed by Picardal — urinating in a public place — is punished only by Section 2(a) of Metro Manila Development Authority (MMDA) Regulation No. 96-009 (MMDA Regulation). x x x The MMDA Regulation, however, provides that the penalty for a violation of the said section is only a **fine** of five hundred pesos (PhP500.00) or community service of one (1) day. The said regulation did not provide that the violator may be imprisoned for violating the same, precisely because it is merely a regulation issued by the MMDA. **Stated differently, the MMDA Regulation is, as its name implies, a mere regulation, and not a law or an ordinance**.

2. ID.; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH INCIDENTAL TO A LAWFUL ARREST; NOT ESTABLISHED WHEN THERE WAS NO OR THERE COULD NOT HAVE BEEN ANY LAWFUL ARREST TO SPEAK OF; ACQUITTAL OF THE ACCUSED; PROPER IN CASE AT BAR.— [E]ven if it were true that the accused-appellant did urinate in a public place, the police officers involved in this case still conducted an illegal search when they frisked Picardal for allegedly violating the regulation. It was not a search incidental to a lawful arrest as there was no or there could not have been any lawful arrest to speak of. In *Luz v. People*, 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: ***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**. 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.** The same principle applies in the present case. There was similarly no lawful arrest in this case as Picardal's violation, if at all committed, was only punishable by fine. x x x Thus, as the firearm was discovered through an illegal search, the same cannot be used in **any** prosecution against him as mandated by Section 3(2), Article III of the 1987 Constitution. As there is no longer any evidence against Picardal in this case, he must perforce be acquitted.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) filed by accused-appellant Ramon Picardal *y* Baluyot

[1] *Rollo*, pp. 12-27.

(Picardal) assailing the Decision[2] dated May 31, 2017 and Resolution[3] dated October 27, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38123, which affirmed the Decision[4] dated September 24, 2015 of the Regional Trial Court of Manila, Branch 21 (RTC) in Criminal Case No. 14-304527, finding Picardal guilty beyond reasonable doubt of the crime of Qualified Illegal Possession of Firearms.

The Facts

An Information[5] was filed against Picardal for Qualified Illegal Possession of Firearms, the accusatory portion of which reads:

> That on or about March 28, 2014, in the City of Manila, Philippines, the said accused did then and there willfully and unlawfully have in his possession and under his control one (1) caliber .38 revolver loaded with five (5) live ammunitions, without first having secured the necessary license or permit therefore (*sic*) from the proper authorities.
>
> Contrary to law.[6]

When arraigned, Picardal pleaded not guilty to the charge. Thereafter, pre-trial and trial on the merits ensued.

The prosecution's version, as summarized in its Appellee's Brief,[7] is as follows:

> Police Officer (PO) 1 Mark Anthony Peniano is a regular member of the Philippine National Police (PNP) assigned at Ermita Police Station located at Baseco PNP Compound, Port Area, Manila. On March 27,

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[2] *Id*. at 29-40. Penned by Associate Justice Socorro B. Inting, with Associate Justices Romeo F. Barza and Ramon Paul L. Hernando (now a Member of this Court) concurring.

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

[4] *Id*. at 60-66. Penned by Presiding Judge Alma Crispina B. Collado-Lacorte.

[5] Records, p. 1.

[6] *Id*.

[7] *Rollo*, pp. 69-85.

2014, at around 8:00 o'clock in the evening, together with his companion PO1 William Cristobal and PO1 Rodrigo Co, while they were on a beat patrol back to the station, they chanced upon a person urinating against the wall. The police officers approached said person who was later identified as accused-appellant Ramon Picardal. The place is well-lighted since it is within the main road. PO1 Peniano told accused-appellant that it is forbidden to urinate in public. In view of said violation, they invited accused-appellant to go with them to the precinct. When PO 1 Peniano is about to handcuff him, accused-appellant attempted to run. His attempt failed since PO1 Peniano was able to get hold of his hand. Once caught, PO1 Peniano frisked accused-appellant and was able to recover a caliber .38 revolver from his waist. The rusty [pistol] with a handle made of wood contained five (5) live ammunitions. Accused-appellant was brought to the police station, after PO1 Cristobal apprised him of his constitutional rights.

At the police station, PO1 Peniano referred accused-appellant to the officers in-charge for the purpose of medical examination and the recovered items were surrendered to P/Chief Insp. William Santos for safekeeping. The following morning, the items were retrieved back by PO1 Peniano and gave the same to the assigned investigator, PO3 Anthony Navarro, for proper marking.

PO1 Peniano had the confiscated firearm checked with the Firearm and Explosive Division (FED) of the PNP and it was discovered that the same is a loose firearm. The FED was issued a certification stating that accused-appellant is not licensed or registered firearm holder of any kind and caliber.[8]

On the other hand, the evidence of the defense is based on the lone testimony of Picardal, who testified as follows:

x x x Accused RAMON PICARDAL (Picardal) denied the charges against him. On March 28, 2014, he was buying viand in the wet market of Baseco Compound, Tondo, Manila, when he noticed three (3) armed police officers in uniform within the vicinity. Two (2) of the three (3) police officers called him because of allegedly urinating at the side of the market. Upon denying the said accusation, the police officers got mad, frisked him, took his cellphone, and brought him to the police precinct. He went voluntarily with the police officers to the police precinct and was detained there overnight. Thereafter,

[8] *Id*. at 71-72.

he was brought for inquest the following day. He was surprised when he was charged for urinating and illegal possession of firearms. He also denied that said confiscated items were seized from him. He asked the police officers to take his finger print to prove that the subject firearm does not belong to him, but the police officers refused. The case for urinating in public filed against him was dismissed by the Metropolitan Trial Court (MTC) of Manila, Branch 26.[9]

Ruling of the RTC

After trial on the merits, in its Decision[10] dated September 24, 2015, the RTC convicted Picardal of the crime charged. The dispositive portion of the said Decision reads:

> **WHEREFORE**, accused **RAMON PICARDAL *y* BALUYOT** is hereby declared **GUILTY** beyond reasonable doubt of the crime of Qualified Illegal Possession of Firearms penalized under Section 28(a) in relation to Section 28(e-1) of Republic Act No. 10591 and there being neither aggravating nor mitigating circumstance that has been established, accused is hereby sentenced to suffer an indeterminate imprisonment of 8 years and 1 day of *prision mayor* as minimum to 10 years, 8 months and 1 day of *prision mayor* as maximum.
>
> x x x x x x x x x
>
> SO ORDERED.[11]

In finding Picardal guilty, the RTC held that the prosecution was able to prove all the elements of the crime charged, namely: (1) the existence of the subject firearm; and (2) the fact that the accused, who owned or possessed it, does not have the license or permit to possess the same. The RTC also held that Picardal's defense of denial was self-serving and inherently weak.[12]

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

[10] *Rollo*, pp. 60-66.

[11] *Id*. at 65-A to 66.

[12] *Id*. at 65 to 65-A.

Aggrieved, Picardal appealed to the CA.

Ruling of the CA

In the questioned Decision[13] dated May 31, 2017, the CA affirmed the RTC's conviction of Picardal. Relying on the testimonies of the apprehending officers, in addition to the certification presented in court which said that Picardal was "not a licensed/registered firearm holder of any kind of caliber,"[14] the CA held that Picardal was indeed guilty of the crime charged.

Hence, the instant Petition.

Issue

Proceeding from the foregoing, for resolution of the Court is the issue of whether the RTC and the CA erred in convicting Picardal.

The Court's Ruling

The Petition is meritorious.

At the outset, it is well to emphasize that the factual findings of the CA, affirming that of the trial court, are generally final and conclusive on the Court.[15] The foregoing rule, however, is subject to the following exceptions:

(1) the conclusion is grounded on speculations, surmises or conjectures;

(2) the inference is manifestly mistaken, absurd or impossible;

(3) there is grave abuse of discretion;

(4) the judgment is based on a misapprehension of facts;

5) the findings of fact are conflicting

(6) there is no citation of specific evidence on which the factual findings are based;

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

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

[15] *Cereno v. Court of Appeals,* 695 Phil. 820, 828 (2012).

(7) the findings of absence of fact are contradicted by the presence of evidence on record;

(8) the findings of the CA are contrary to those of the trial court;

(9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion;

(10) the findings of the CA are beyond the issues of the case; and

(11) such findings are contrary to the admissions of both parties.[16] (Emphasis supplied)

In the present case, the ninth exception applies. The CA manifestly overlooked the undisputed facts that: (1) the firearm subject of this case was seized from Picardal after he was frisked by the police officers for allegedly urinating in a public place; and (2) the aforementioned case for "urinating in a public place" filed against Picardal was subsequently dismissed by the Metropolitan Trial Court of Manila.[17] The act supposedly committed by Picardal — urinating in a public place — is punished only by Section 2(a) of Metro Manila Development Authority (MMDA) Regulation No. 96-009[18] (MMDA Regulation), which provides that:

Sec. 2. Prohibited Acts

a) **It is unlawful** to dump, throw or litter, garbage, refuse, or any form of solid waste in public places and immediate surroundings, including vacant lots, rivers, canals, drainage and other water ways

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[16] *Id*. at 828.

[17] *Rollo*, pp. 31-32.

[18] PROHIBITING LITTERING/DUMPING/THROWING OF GARBAGE, RUBBISH OR ANY KIND OF WASTE IN OPEN OR PUBLIC PLACES, AND REQUIRING ALL OWNER'S, LESSEES, OCCUPANTS OF RESIDENTIAL, COMMERCIAL ESTABLISHMENT, WHETHER PRIVATE OR PUBLIC TO CLEAN AND MAINTAIN THE CLEANLINESS OF THEIR FRONTAGE AND IMMEDIATE SURROUNDINGS AND PROVIDING PENALTIES FOR VIOLATION THEREOF.

as defined in Section 1 of this Regulation and **to urinate**, defecate and spit **in public places**. (Emphasis supplied)

The MMDA Regulation, however, provides that the penalty for a violation of the said section is only a **fine** of five hundred pesos (PhP500.00) or community service of one (1) day. The said regulation did not provide that the violator may be imprisoned for violating the same, precisely because it is merely a regulation issued by the MMDA. **Stated differently, the MMDA Regulation is, as its name implies, a mere regulation, and not a law or an ordinance**.

Therefore, even if it were true that the accused-appellant did urinate in a public place, the police officers involved in this case still conducted an illegal search when they frisked Picardal for allegedly violating the regulation. It was not a search incidental to a lawful arrest as there was no or there could not have been any lawful arrest to speak of.

In *Luz v. People*,[19] 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:

> ***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

[19] 683 Phil. 399 (2012).

the arrest. Neither the application of actual force, manual touching of 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.[20] (Additional emphasis and underscoring supplied)

The same principle applies in the present case. There was similarly no lawful arrest in this case as Picardal's violation, if at all committed, was only punishable by fine.

In this connection, the Court, in *Sindac v. People*,[21] 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

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[20] *Id*. at 406-409.

[21] 794 Phil. 421 (2016).

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**.[22] (Emphasis and underscoring in the original)

Thus, as the firearm was discovered through an illegal search, the same cannot be used in **any** prosecution against him as mandated by Section 3(2), Article III of the 1987 Constitution. As there is no longer any evidence against Picardal in this case, he must perforce be acquitted.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The Decision dated May 31, 2017 and Resolution dated October 27, 2017 of the Court of Appeals in CA-G.R. CR No. 38123 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Ramon Picardal *y* Baluyot 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.

SO ORDERED.

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

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[22] *Id.* at 428.

SECOND DIVISION

[G.R. No. 237975. June 19, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JIMMY FULINARA** *y* **FABELANIA,**[1] *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); PROCEDURE THAT MUST BE FOLLOWED TO PRESERVE THE INTEGRITY OF THE CONFISCATED DRUGS AND/OR PARAPHERNALIA USED AS EVIDENCE.—In cases involving dangerous drugs, the confiscated drug constitutes the very *corpusdelicti* 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, as amended by RA 10640, the applicable law at the time of the commission of the alleged crimes, 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 or a representative from the National Prosecution Service** (NPS) 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.The

[1] Also stated as "Fabelenia'' in some parts of the records.

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. **In this connection, this also means that the two 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.

2. **ID.; ID.; ID.; COMPLIANCE WITH THE PROCEDURE MAY BE EXCUSED AS LONG AS THERE IS A JUSTIFIABLE GROUND, PROVEN AS A FACT, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; OTHERWISE, ACQUITTAL OF THE ACCUSED IS PROPER.—**[T]he courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites are present: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team**. If these elements are present, the seizure and custody of the confiscated drugs shall not be rendered void and invalid regardless of the non-compliance with the mandatory requirementsof Section 21. In this regard, it has also been emphasized that the State bears the burden of proving the justifiable cause.Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.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* would have been compromised.

3. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE; LAPSES IN THE PROCEDURES UNDERTAKEN BY THE BUY-BUST TEAM ARE AFFIRMATIVE PROOFS OF IRREGULARITY; CASE AT BAR.—The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.A review of the facts of the case negates the presumption of regularity in the performance of official duties supposedly in favor of the arresting officers. The procedural lapses committed by the apprehending team resulted in glaring gaps in the chain of custody thereby casting doubt on whether the dangerous drugs allegedly seized from Jimmy were the same drugs brought to the crime laboratory and eventually offered in court as evidence. Corollary, 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.

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[2] under Section 13(c), Rule 124 of the Rules of Court from the Decision[3] dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08722, which affirmed the Joint Decision[4] dated October 10, 2016 rendered by the Regional Trial Court, Branch 270, Valenzuela City (RTC) in Criminal Case Nos. 302-V-16 and 303-V-16 finding herein accused-appellant Jimmy Fulinara *y* Fabelania (Jimmy) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the *Comprehensive Dangerous Drugs Act of 200*2, as amended.

The Facts

Jimmy was charged with violation of Sections 5 and 11, Article II of RA 9165, in two separate Informations, which read as follows:

Criminal Case No. 302-V-16 [Illegal Sale of Dangerous Drugs]

That on or about March 4, 2016 in No. 3065 Manggahan St., Karuhatan, Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, for and in consideration of two hundred pesos (Php 200.00), consisting of (2) pcs. of One Hundred [Peso] bill (100.00) with serial numbers LS950956 and RA163447, respectively, marked as (JC-6) and (JC-7) did then and there willfully, unlawfully and feloniously sell

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[2] See Notice of Appeal dated December 19, 2017, *rollo*, pp. 17-19.

[3] *Rollo*, pp. 2-16. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Franchito N. Diamante and Zenaida T. Galapate-Laguilles concurring.

[4] CA *rollo*, pp. 63-75. Penned by Presiding Judge Evangeline M. Francisco.

[5] 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).

to PO2 JULIUS R. CONGSON, who posed as buyer, a zero point zero six (0.06) gram of Methamphetamine Hydrochloride (*Shabu*) marked as A(JC-1) [with] date and signature, knowing the same to be dangerous drugs.

CONTRARY TO LAW.[6]

Criminal Case No. 303-V-16 [Illegal Possession of Dangerous Drugs]

That on or about March 4, 2016 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there willfully, unlawfully and feloniously have in his possession and control one (1) heat-sealed transparent plastic sachet containing zero point zero six (0.06) gram of white crystalline substance verified as [M]ethamphetamine Hydrochloride marked as (JC-2) with date and signature, knowing the same to be dangerous drugs.

CONTRARY TO LAW.[7]

Upon arraignment, Jimmy pleaded not guilty to both charges.[8]

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

On March 4, 2016, at around 3:00 p.m., PO2 Julius A. Congson ("PO2 Julius") and PO3 Socobos ("PO3 Socobos") were at the office of the Anti-Illegal Drugs, Special Operation Task Group ("SAID-SOTG"), Valenzuela City Police Station when their regular confidential informant ("RCI") arrived and informed them about the illegal drug activities of a certain *alias* "Boyet" in Manggahan Street, Karuhatan, Valenzuela. Boyet was later identified as Jimmy.

Upon informing their Unit Chief, PCI Ruba, about the information, they planned the buy-bust operation. PO2 Julius, duly coordinated with Philippine Drug Enforcement Agency ("PDEA") and prepared a Coordination Form and a Pre-Operation Report. PO2 Julius was then assigned as the poseur-buyer since he was just transferred from another battalion, making his identity more unknown to the target.

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[6] *Rollo*, p. 3.

[7] *Id*.

[8] *Id*.

When the team arrived at the place of Jimmy, he was identified by the RCI. While at the gate of the house of Jimmy, the RCI proceeded to call for Jimmy. Jimmy answered the call and PO2 Julius was told by the RCI that he was the target.

The RCI then [told] Jimmy that the poseur-buyer, PO2 Julius, would like to buy *shabu* worth Php 200.00. He used two (2) one hundred (100) peso bills, duly marked with PO2 Julius' initials. After giving the marked money to Jimmy, the latter placed the said money in his left pocket. Thereafter, Jimmy took out a black coin purse from his right side pocket and pulled out one (1) plastic sachet containing *shabu*, which was handed over to PO2 Julius.

After receiving the plastic sachet, PO2 Julius made the pre-arranged signal for arrest by lifting his cap and held the hand of Jimmy. The other operatives later handcuffed Jimmy. PO2 Julius proceeded to frisk Jimmy and was able to recover from the latter's right pocket the black coin purse, containing another plastic sachet of suspected *shabu* and two (2) aluminum foil strips. PO2 Julius also recovered from Jimmy the marked money.

As people around the closely built houses were starting to gather and cause a commotion, the buy[-]bust team was instructed by their lead operative to continue the inventory of the confiscated items at PCP-9. PO2 Julius testified that he had the sachet of *shabu* subject of sale in his right pocket while he was holding the black coin purse containing the other sachet of suspected *shabu*.

In the police station, inventory was conducted in the presence of Kagawad Rommel Mercado ("Kagawad Rommel"). The Department of Justice ("DOJ") Representative and Media Representative were also called to witness the inventory, but their numbers were busy. PO2 Julius duly marked the sachet of suspected *shabu* from his pocket as JC-1, the sachet of suspected *shabu* he recovered from the black coin purse as JC-2, the aluminum foils as JC-3 and JCV-5 and the coin purse itself as JC-4. PO2 Julius put all the evidence in a brown envelope and sealed it. Subsequently, PO2 Julius turned over the pieces of evidence to the investigator-on-case, [who], in turn, prepared the other pieces of evidence.

Meanwhile, PO3 Fortunato Candido ("PO3 Fortunato") prepared the following documents: Memorandum Request for the Conduct of

Inventory, Request for Examination, Philippine National Police ("PNP") Arrest and Booking Sheet and the mug shot of Jimmy.[9]

Version of the Defense

On the other hand, the defense's version, as summarized by the CA, is as follows:

> Jimmy denied the allegations against him. He testified that on March 4, 2016, he was walking towards the pharmacy to buy Salbutamol since his son had an asthma attack. Jimmy noticed that an Innova car was following him. Suddenly, two (2) men alighted and slammed him to the wall. When Jimmy asked them if they were police officers, one of the men took out a gun and pointed the same at his stomach. Jimmy was brought inside the car and [the policemen] started to question him about a certain Sugar. Jimmy replied that he [does] not know [Sugar] because many people eat at his "*lugawan.*"
>
> One of the officers demanded Php 10,000.00 if he could not point to them a certain Sugar. Jimmy was brought to Total Gasoline Station in front of SM Valenzuela and boarded in another vehicle.
>
> Jimmy only had Php 170.00 in his pocket when he was arrested. He would use the said amount to buy Salbutamol. The sachets of *shabu* recovered from Jimmy were not his. Jimmy saw the said sachets for the first time when he was brought to Block 9.
>
> On the other hand, Rosalinda Lague ("Rosalinda") testified that she is the live-in partner of Jimmy. It was not true that Jimmy was involved in selling drugs. On March 4, 2016, Rosalinda instructed Jimmy to buy Salbutamol because their son was experiencing an asthma attack. Rosalinda wondered why it took Jimmy so long to buy the medicine. Rosalinda learned about the arrest of Jimmy through a niece. At the precinct, Rosalinda told the police officers that Jimmy was just tending to his "*lugawan*" and had never been involved in selling drugs.[10]

Ruling of the RTC

In the assailed Joint Decision[11] dated October 10, 2016, the RTC ruled that all the elements of Illegal Sale of Dangerous

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

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

[11] CA *rollo*, pp. 63-75.

Drugs were established.[12] Similarly, all the elements of Illegal Possession of Dangerous Drugs were proven by the prosecution.[13] It further ruled that the defense of Jimmy that the evidence against him was merely planted after he was not able to produce the money that PO3 Julius R. Congson (PO3 Congson) demanded from him is without merit.[14] The defenses of frame-up and extortion interposed by an accused are usually viewed with disfavor as they can easily be concocted and are common and standard defense ploys in most prosecution of violation of the Dangerous Drugs Act.[15] It also held that the testimony of Jimmy's wife is self-serving.[16]

The RTC further ruled that the fact that the marking of the recovered drugs was only done at the PCP-9 office and not immediately after their confiscation does not in any way taint their weight as evidence against Jimmy.[17] It held that the prosecution substantially complied with the requirements under RA 9165 and sufficiently established the crucial links in the chain of custody. Thus, the integrity and evidentiary value of the seized *shabu* remained unimpaired.[18]

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows, to wit:

In Criminal Case No. 302-V-16 finding accused JIMMY FULINARA *y* FABELENIA GUILTY beyond reasonable doubt of violation of Section 5, Article II of RA 9165 and, this Court sentences him to suffer the penalty of life imprisonment and a FINE of ₱500,000.00.

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[12] *Id*. at 70.

[13] *Id*. at 71.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 72.

[17] *Id*.

[18] *Id*.

In Criminal Case No. 303-V-16, finding accused JIMMY FULINARA *y* FABELENIA GUILTY beyond reasonable doubt of violation of Section 11, Article II of RA 9165 and, this Court sentences him to suffer imprisonment of 12 years and One (1) day to Twenty (20) years and a FINE of ₱300,000.00.

Pursuant to Article 29 of the Revised Penal Code, as amended, [his] preventive imprisonment shall be credited in full to his favor.

The subject sachets of *shabu* are hereby ordered confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.[19]

Aggrieved, Jimmy appealed to the CA.

Ruling of the CA

In the Decision[20] dated November 29, 2017, the CA affirmed Jimmy's conviction. The dispositive portion of the Decision reads:

WHEREFORE, the appeal is **DENIED**. The RTC *Joint Decision* dated October 10, 2016 is **AFFIRMED** *in toto*.

SO ORDERED.[21]

The CA ruled that all the elements of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs were proven by the prosecution.[22] It further ruled that the defenses of denial and frame-up, like alibi, are considered weak defenses and have been invariably viewed by the courts with disfavor since they can just easily be concocted but are difficult to prove.[23] Lastly, it ruled that the prosecution was able to account for every link in the chain of custody of the plastic sachets of *shabu* from the time they were seized by the police officers from Jimmy up to the time that the same were turned over to

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[19] *Id*. at 74-75.

[20] *Rollo*, pp. 2-16.

[21] *Id*. at 15.

[22] *Id*. at 10-11.

[23] *Id*. at 12.

the RTC, thereby establishing the *corpus delicti* and preserving the integrity and evidentiary value of the evidence.[24]

Hence, the instant appeal.

Issue

Whether Jimmy's guilt for violation of Sections 5 and 11 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious. The accused is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[25] and the fact of its existence is vital to sustain a judgment of conviction.[26] It is essential, therefore, that the identity and integrity of the seized drug be established with moral certainty.[27] 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.[28]

In this regard, Section 21,[29] Article II of RA 9165, as amended by RA 10640, the applicable law at the time of the commission

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[24] *Id*. at 14.

[25] *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

[26] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[27] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, 850 SCRA 464, 479.

[28] *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

[29] The said section reads as follows:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/

of the alleged crimes, 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 or a representative from the National Prosecution Service** (NPS) 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.[30]

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 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.[31] **In this connection, this also means that the two required witnesses should already be physically present at the time**

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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[.]

[30] See RA 9165, Art. II, Sec. 21(1) and (2), as amended by RA 10640, Sec. 1.

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

of the conduct of the inventory of the seized items which, again, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Verily, a buy-bust team normally has sufficient time to gather and bring with them the said witnesses.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;[32] and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody 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.[33] It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.[34] Without any justifiable explanation, which must be proven as a fact,[35] the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[36]

The buy-bust team failed to comply with the mandatory requirements under Section 21.

In the present case, the buy-bust team failed to strictly comply with the mandatory requirements under Section 21(1) of RA 9165.

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[32] *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[33] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

[34] *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[35] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[36] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

First, none of the two required witnesses was present at the time of arrest of the accused and the seizure of the drugs. The *barangay kagawad* was merely "called-in" at the police station. As testified by PO2 Congson himself:

Q After arriving at PCP-9 for the inventory, what did you do next?

A We called for the barangay kagawad, Sir.

Q Who is this Barangay Kagawad?

A Barangay Kagawad Rommel Mercado, Sir.[37] (Emphasis supplied)

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[38] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,[39] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA 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**

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[37] TSN, June 17, 2016, pp. 22-23; records, pp. 72-73.

[38] G.R. No. 228890, April 18, 2018.

[39] 736 Phil. 749, 764 (2014).

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".[40] (Emphasis and underscoring in the original)

Second, the police officers offered the flimsy excuse that an alleged commotion occurred as the reason why they decided to conduct the marking, inventory, and photography of the seized items at the police station instead of the place of arrest. The Court points out that PO2 Congson's account of the events that transpired was full of inconsistencies and is thus, hardly believable, *viz*.:

Q Why did you decide to proceed to PCP-9 instead of doing the inventory at the place of arrest?

A Sir because a commotion broke out and people from the area started to approach us.

Q Earlier, you said that you went in the area together with five other Police Officers and you will just arrest one person.

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[40] *People v. Tomawis*, *supra* note 38, at 11-13.

Why is it that the other Police Officers were not able to isolate the place so you could conduct the inventory there?

A That is the decision of our team leader, SPO1 Estrella to proceed at PCP-9, Sir.

The Court:

What is that commotion about?

Witness:

Upon handcuffing the target, the people went near us, Your Honor.

The Court:

Without even telling, "Move away, we are doing an operation?"

Witness:

We did tell them, Your Honor but they did not move away.

The Court:

How many people were there?

Witness:

Around 10-15 persons, Your Honor.[41]

x x x x x x x x x

The Court:

Earlier, you mentioned that there were no other people around?

Witness:

During the transaction, no other persons were there, Your Honor and it was only during the time when we were subduing *alias* Boyet and placing him in handcuffs when people started coming near us because *alias* Boyet was then shouting, Your Honor.

The Court:

Where do these people come from?

Witness:

From the house of *alias* Boyet and from nearby houses, Your Honor.[42]

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[41] TSN, June 17, 2016, pp. 15-16; records, pp. 65-66.

[42] *Id*. at 16; *id*. at 66.

During his cross-examination, PO2 Congson admitted that there was no real compelling reason for them to postpone the marking, inventory and photography of the seized items at the police station, *viz.*:

Atty. Kuong:

Q Since there is a wall facing the house of the accused, the persons who went near the area would only come either from the left or right direction of the house, correct?
A Yes Sir.

Q Despite of that, your four companions failed to cordon the area in order for you to mark the seized evidence in that area?
A Not anymore, Sir.

The Court:
All five of you in the operation?
Witness:
We are six, Your Honor.

The Court:
Who are your companions?

Witness:
SPO1 Estrella, PO3 Vizconde, PO2 Sacobos, PO3 Candido, PO2 Cabusao and I, your Honor.

The Court:
All of you were armed?

Witness:
Yes, Your Honor.[43]

x x x x x x x x x

Atty. Kuong:

Q You said that a commotion occurred in such a way that you were able to subdue the accused, did I understand it correctly?
A Yes Sir.

The Court:
How does he resist?

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[43] *Id*. at 36; *id*. at 86.

Witness:

He was trying to free himself from my grasp and he was shouting, Your Honor.

The Court:

***Yun lang, hindi naman talagang nanlaban na nanutok, nagpupumiglas lang*?**

Witness:

Yes, Your Honor.[44]

x x x x x x x x x

The Court:

So there was no compelling reason for you not to be able to mark the evidence in the area?

Witness:

Basta po...

The Court:

Just answer me, is there any compelling reason for you not to be able to mark the seized evidence in the place of seizure and arrest?

Witness:

Yung lang pong pag-lapit ng mga tao at ...

The Court:

Is that a compelling reason? As a Police Officer and there were six of you, all armed?

Witness:

Your Honor, we decided to...

The Court:

Just answer me, you are the arresting and seizing officer.

Witness:

"Wala po siguro, Your Honor, pero iyon po ang desisyon ng team leader namin na pumunta na po kami sa presinto para mag-conduct ng inventory."[45]

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[44] *Id*. at 37; *id*. at 87.

[45] *Id*. at 38-39; *id*. at 88-89.

It bears stressing that the prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Romy Lim*:[46]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seize4 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**.[47] (Underscoring supplied)

In the present case, the police officers' excuse for postponing the inventory, marking, and photography of the seized items is weak and unbelievable.

Based on PO2 Congson's own account, the commotion only involved a group of 10 persons, who were five meters away from the buy-bust team.[48] Also, although the accused initially resisted, they were immediately able to subdue him by handcuffing him. It is thus highly questionable as to why the buy-bust team of six members, five of whom were armed, decided to vacate the place of arrest and proceed to the police station. **Moreover,**

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

[47] *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[48] TSN, June 17, 2016, pp. 16-17; records, pp. 66-67.

the Court also points out that PO2 Congson expressly admitted himself that there was really no compelling reason for them to transfer to the police station and that they did it merely because they were instructed by their team leader to do so.

The saving clause does not apply to this case.

As earlier stated, following the IRR of RA 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites are present: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team**.[49] If these elements are present, the seizure and custody of the confiscated drugs shall not be rendered void and invalid regardless of the non-compliance with the mandatory requirements of Section 21. In this regard, it has also been emphasized that the State bears the burden of proving the justifiable cause.[50] Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and justify or explain the same.[51]

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* would have been compromised.[52] As the Court explained in *People v. Reyes*:[53]

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[49] RA 9165, Sec. 21(1) as implemented by its IRR.

[50] *People v. Beran*, 724 Phil. 788, 822 (2014).

[51] *People v. Reyes*, 797 Phil. 671, 690 (2016).

[52] *People v. Sumili*, G.R. No. 212160, February 4, 2015.

[53] *Supra* note 51.

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[54] (Emphasis supplied)

In the present case, as admitted by PO2 Congson, the conduct of the marking, inventory, and photography was not done in the presence of a representative of the NPS or a media representative — it was only done before a *Barangay Kagawad*.[55] Neither can it be shown from the respective testimonies of the arresting officers that reasonable efforts were exerted to contact these representatives. PO2 Congson merely mentioned that they contacted the Barangay *Kagawad* only when they arrived at the police station. However, when they tried calling the other mandatory witnesses, they received no answer.

Clearly, the buy-bust team only contacted the required witnesses after the operation was conducted when they were already at the police station. It was a mere afterthought. Moreover, no other proof that the NPS representative and media representative were contacted aside from the mere self-serving testimony of PO2 Congson.

In this connection, it has been repeatedly held by the Court that the practice of police operatives of not bringing to the intended place of arrest the required witnesses, when they could

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[54] *Id*. at 690.

[55] See RA 9165, Sec. 21(1), as amended by RA 10640, Sec. 1.

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.[56]

Thus, the prosecution failed to present any tangible proof to justify the non-compliance with the strict requirements of RA 9165 as amended by RA 10640 and its implementing rules. Moreover, the records of the present case are bereft of evidence showing that the buy-bust team followed the outlined procedure despite its mandatory terms.

Hence, the integrity and evidentiary value of the *corpus delicti* have been compromised, thus necessitating the acquittal of Jimmy.

The presumption of innocence of the accused vis-a-vis the presumption of regularity in the performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[57] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[58]

Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[59] The

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[56] *People v. Musor*, G.R. No. 231843, November 7, 2018, p. 13.

[57] 1987 CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[58] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[59] *People v. Mendoza*, *supra* note 39, at 770.

presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[60] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[61]

A review of the facts of the case negates the presumption of regularity in the performance of official duties supposedly in favor of the arresting officers. The procedural lapses committed by the apprehending team resulted in glaring gaps in the chain of custody thereby casting doubt on whether the dangerous drugs allegedly seized from Jimmy were the same drugs brought to the crime laboratory and eventually offered in court as evidence.

Corollary, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. The Court has ruled in *People v. Zheng Bai Hui*[62] that it will not presume to set an *a priori* basis on what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

All told, the prosecution failed to prove the *corpus delicti* of the crimes of sale and possession 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 drugs. In other words, the prosecution was not able to overcome the presumption of innocence of Jimmy.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions

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[60] *Id*.

[61] See *People v. Catalan*, 699 Phil. 603, 621 (2012).

[62] 393 Phil. 68, 133 (2000).

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.[63]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated November 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08722, is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Jimmy Fulinara *y* Fabelania** 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, Reyes, J. Jr.,* and *Lazaro-Javier, JJ.,* concur.

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[63] *People v. Otico*, G.R. No. 231133, June 6, 2018, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 337-338.

SECOND DIVISION

[G.R. No. 238171. June 19, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNALDO ENRIQUEZ, JR.,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; SINCE APPEALS IN CRIMINAL CASES THROW THE WHOLE CASE OPEN FOR REVIEW, THE APPELLATE COURT HAS FULL JURISDICTION TO EXAMINE THE RECORDS AND REVISE THE JUDGMENT APPEALED FROM.—** It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result. This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; CONDITIONS THAT MUST EXIST TO QUALIFY AN OFFENSE.—** There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to

defend himself and thereby ensuring its commission without risk of himself. In order to appreciate treachery, both elements must be present. It is not enough that the attack was "sudden," "unexpected," and "without any warning or provocation." There must also be a showing that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.

3. **ID.; ID.; ID.; ELEMENTS OF TREACHERY, NOT ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE; ACCUSED SHOULD ONLY BE LIABLE FOR THE CRIME OF HOMICIDE.—** [T]he abovementioned elements of treachery were not proven by clear and convincing evidence in the case at bar. As Luisa and Jessica were only able to witness the events that transpired after the initial attack inside the house, it was not established whether Enriquez deliberately or consciously employed the particular method he used so as to deprive the victim any opportunity to defend himself. Even more telling is the fact that the victim was able to escape from Enriquez and even ask for help from his uncle's house before collapsing. In view of the foregoing, Enriquez should only be liable for the crime of Homicide.

4. **ID.; HOMICIDE; PENALTY AND CIVIL LIABILITY.—** With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years. Thus, Enriquez shall suffer the indeterminate penalty of eight (8) 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. Finally, in view of the downgrading of the crime to Homicide, the Court's ruling in *People v. Jugueta* directs that the damages awarded in the questioned Decision should be, as it is, hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 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

CAGUIOA, *J.*:

Before the Court is an appeal[1] filed under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated November 9, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08261, which affirmed the Decision[3] dated October 25, 2015 of the Regional Trial Court, Branch 105, Quezon City (RTC), in Criminal Case No. Q-07-144720, finding herein accused-appellant Arnaldo Enriquez, Jr. (Enriquez) guilty of the crime of Murder under Article 248 of the Revised Penal Code (RPC).

The Facts

Enriquez was charged with the crime of Murder under the following Information:

> That on or about the 30th day of December 2006, in Quezon City, Philippines, the above-named accused, with intent to kill, with the qualifying aggravating circumstances of evident premeditation and treachery[,] did then and there wilfully, unlawfully and feloniously attack, assault, and employ personal violence upon the person of FLORENCIO DELA CRUZ *y* DELA CRUZ by then and there stabbing the latter with a bladed weapon on the neck, thorax and different parts of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said victim.

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[1] See Notice of Appeal dated December 11, 2017; *rollo*, pp. 10-12.

[2] *Rollo*, pp. 2-9. Penned by Associate Justice Marlene B. Gonzales-Sison, with Associate Justices Socorro B. Inting and Rafael Antonio M. Santos concurring.

[3] CA *rollo*, pp. 55-58. Penned by Presiding Judge Rosa M. Samson.

CONTRARY TO LAW.[4]

Upon arraignment, Enriquez pleaded not guilty.

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

> On December 30, 2006, at around 9:30 in the evening, Luisa and her daughter, Jessica, were in their house watching the television when they heard someone moaning at a nearby house. As they peeped out of the window, they saw a bloodied Dela Cruz corning out of his house and upon reaching the door got stabbed in the back by Enriquez with a bread knife. Dela Cruz managed to ask for help from his uncle's house before collapsing. He was then brought to the hospital but was unfortunately pronounced dead on arrival caused by multiple stab wounds in the neck and thorax.
>
> On the same date, at around 10:30 in the evening, Barangay Security Development Officer Obar received a call about a killing incident in Carreon Village. He went to the reported place and upon arrival, he saw a person being mauled and learned from an unnamed woman [that said person is] the one involved in the killing. He arrested this person whom he later identified as Enriquez. After bringing him to the barangay, Obar returned to the place and recovered a knife. Meanwhile, Enriquez was transferred to Camp Karingal.[5]

Version of the Defense

The version of the defense, as summarized by the CA, is as follows:

> On December 30, 2006, Enriquez and his two children went to the house of Dela Cruz. He left the house between 9 o'clock and 10 o'clock in the evening. On the same day, he was brought to Camp Karingal because he was being suspected of killing Dela Cruz. He was informed by his wife of Dela Cruz' death. He told his wife that he could not have killed him because he was on duty as security guard at that time.[6]

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[4] *Rollo*, p. 3.

[5] *Id*. at 4.

[6] *Id*.

Ruling of the RTC

After trial on the merits, in its Decision[7] dated October 25, 2015, the RTC convicted Enriquez of the crime of Murder. The dispositive portion of said Decision reads:

> WHEREFORE, judgment is hereby rendered finding accused ARNALDO ENRIQUEZ JR. **GUILTY** beyond reasonable doubt of the crime of Murder and he is sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay the heirs of Florencio Dela Cruz the sum of Php75,000.00 by way of civil indemnity; and the award of Php50,000.00 as moral damages with interest at the rate of six percent (6%) per annum on all the damages awarded from the date of finality of this judgment until fully paid.
>
> SO ORDERED.[8]

The RTC ruled that the defenses of denial and alibi proffered by Enriquez deserve scant consideration.[9] It further ruled that there is no suggestion that the prosecution's witnesses, Luisa Tolentino (Luisa) and Jessica Tolentino (Jessica), had some ill motive to testify falsely against Enriquez.[10] Lastly, it ruled that treachery attended the commission of the crime as the victim was suddenly stabbed from behind by Enriquez.[11] Thus, the victim had no chance to defend himself or repel the assault against him.[12]

Aggrieved, Enriquez appealed to the CA.

Ruling of the CA

On appeal, in its Decision[13] dated November 9, 2017, the CA affirmed the conviction by the RTC with modifications:

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[7] CA *rollo*, pp. 55-58.

[8] *Id*. at 58.

[9] *Id*. at 57.

[10] *Id*.

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

[12] *Id*. at 58.

[13] *Rollo*, pp. 2-9.

WHEREFORE, premises considered, the appeal is **DENIED** and the October 25, 2015 Decision of the Regional Trial Court, Branch 105, Quezon City in Criminal Case No. Q-07-144720 is **AFFIRMED** with **MODIFICATION** as to the amount of damages as follows:

1. civil indemnity in the amount of PhP 75,000.00;
2. moral damages in the amount of PhP 75,000.00;
3. exemplary damages in the amount of PhP 75,000.00;
4. temperate damages in the amount of PhP 50,000.00
5. interest of six percent (6%) per annum on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.[14]

The CA ruled that the prosecution was able to establish all the elements of Murder.[15] It further ruled that the trial court's assessment of the credibility of witnesses and the probative weight of their testimonies is entitled to great respect and will not be disturbed on appeal.[16] Lastly, it ruled that treachery attended the commission of the crime.[17]

Hence, this appeal.

Issues

Whether the CA erred in affirming Enriquez's conviction for Murder.

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record

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[14] *Id*. at 8.

[15] *Id*. at 6.

[16] *Id*. at 7.

[17] *Id*. at 8.

that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.[18] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.[19] 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.[20]

After a careful review and scrutiny of the records, the Court affirms the conviction of Enriquez, but only for the crime of Homicide, instead of Murder, as the qualifying circumstance of treachery was not proven in the killing of Dela Cruz.

Treachery was not established by clear and convincing evidence

In the assailed Decision, the CA affirmed the RTC's finding that the qualifying circumstance of treachery was present thereby making Enriquez liable for Murder instead of Homicide. The CA held:

> We likewise sustain the RTC's finding of treachery. The unarmed DelaCruz was attacked from behind in a sudden and unexpected manner, thus completely depriving him of the chance to defend himself. x x x[21]

It is established that the qualifying circumstance of treachery must be proven by clear and convincing evidence.[22] Thus, for Enriquez to be convicted of Murder, the prosecution must not

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[18] *People v. Duran, Jr.,* G.R. No. 215748, November 20, 2017, 845 SCRA 188, 211.

[19] *Id*. at 211.

[20] *Ramos v. People*, 803 Phil. 775, 783 (2017).

[21] *Rollo*, p. 8.

[22] *People v. Latag*, 465 Phil. 683, 685 (2004).

only establish that he killed Dela Cruz; it must also be proven that the killing of Dela Cruz was attended by treachery.

In a catena of cases,[23] the Court has consistently held that treachery cannot be appreciated where the prosecution only proved the events after the attack happened, but not the manner of how the attack commenced or how the act which resulted in the victim's death unfolded. In treachery, there must be clear and convincing evidence on how the aggression was made, how it began, and how it developed. Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed, it cannot be established from suppositions drawn only from circumstances prior to the very moment of the aggression, that an accused perpetrated the killing with treachery. Accordingly, treachery cannot be considered where the lone witness did not see the commencement of the assault.[24]

In the instant case, the evidence presented by the prosecution only proved the events after the initial attack had already happened. The prosecution witnesses, Luisa and Jessica, did not see the manner of how the attack commenced or how the acts which resulted in the victim's death unfolded as the attack started inside the house of the victim. **They merely saw Dela Cruz, already bloodied, coming out of his house.**[25] **It was only at this point that they saw Enriquez stab the victim again with a bread knife.**[26] Thus, what happened inside the house is unknown to the prosecution witnesses.

Moreover, the finding of the trial court, sustained by the CA, that treachery was present proceeds only from the fact

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[23] *People v. Calpito*, 462 Phil. 172, 179-180 (2003); *People v. Verino*, 425 Phil. 473, 486 (2002); *People v. Cordero,* 291 Phil. 1, 8 (1993).

[24] *People v. Latag*, *supra* note 22, at 694, citing *U.S. v. Perdon*, 4 Phil. 141, 143-144 (1905); *People v. Duran, Jr.*, *supra* note 18, at 206-207; *People v. Simon,* 284-A Phil. 597, 612 (1992).

[25] *Rollo*, p. 4.

[26] *Id*. at 4, 7.

that the witnesses saw Enriquez stab the already bloodied victim from behind as he was about to exit his house.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.[27] To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[28] The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.[29]

In order to appreciate treachery, both elements must be present.[30] It is not enough that the attack was "sudden," "unexpected," and "without any warning or provocation."[31] There must also be a showing that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.

However, the abovementioned elements of treachery were not proven by clear and convincing evidence in the case at bar. As Luisa and Jessica were only able to witness the events that transpired after the initial attack inside the house, it was not established whether Enriquez deliberately or consciously employed the particular method he used so as to deprive the

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[27] *People v. Duran, Jr., supra* note 18, at 205-206.

[28] *Id*. at 206, citing *People v. Dulin*, 762 Phil. 24, 40 (2015).

[29] *Id*., citing *People v. Escote, Jr.*, 448 Phil. 749, 786 (2003).

[30] *Id*. at 205-206, citing REVISED PENAL CODE, Art. 14, par. 16.

[31] See *People v. Sabanal*, 254 Phil. 433, 436-437 (1989).

victim any opportunity to defend himself. Even more telling is the fact that the victim was able to escape from Enriquez and even ask for help from his uncle's house before collapsing.[32]

In view of the foregoing, Enriquez should only be liable for the crime of Homicide.

Proper penalty and award of damages

With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years.

Thus, Enriquez shall suffer the indeterminate penalty of eight (8) 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.

Finally, in view of the downgrading of the crime to Homicide, the Court's ruling in *People v. Jugueta*[33] directs that the damages awarded in the questioned Decision should be, as it is, hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED**. The Court **DECLARES** accused-appellant **ARNALDO ENRIQUEZ, JR. GUILTY of HOMICIDE**, for which he is sentenced to suffer the indeterminate penalty of eight (8) 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.

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[32] *Rollo*, p. 4.

[33] 783 Phil. 806 (2016).

He is further ordered to pay the heirs of Florencio Dela Cruz the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 239787. June 19, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN NIEVES *y* ACUAVERA *a.k.a.* "ADING",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE STATE BEARS THE BURDEN OF PROVING THESE ELEMENTS AND THE *CORPUS DELICTI* OF THE CRIME WHICH IS THE DANGEROUS DRUG ITSELF.— Nieves was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 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. It bears emphasis that 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.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE, EXPLAINED.—** 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.

3. **ID.; ID.; ID.; REQUIREMENTS OF THE CHAIN OF CUSTODY RULE UNDER SECTION 21 OF RA 9165, ELABORATED.—** 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. x x x 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.

4. **ID.; ID.; ID.; ID.; INVENTORY AND PHOTOGRAPHING OF THE SEIZED DRUGS "IMMEDIATELY AFTER SEIZURE AND CONFISCATION," 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 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.

5. **ID.; ID.; ID.; ID.; ID.; A "WRITTEN MANIFESTO" OF MEDIA REPRESENTATIVES IN THE AREA REQUESTING THAT THEY BE EXCLUDED FROM ANTI-DRUG OPERATIONS CANNOT JUSTIFY NON-COMPLIANCE WITH WITNESSES' REQUIREMENT.—** [A] careful perusal of the records would reveal that the supposed buy-bust operation was conducted ***without the presence of any of the three insulating witnesses***. x x x The "written manifesto" x x x did not justify the police officers' deviation from the prescribed procedure. *First*, the "written manifesto" was undated, and was never even mentioned in any of the affidavits and documents related to the case prior to PO2 Devera's testimony. It was only introduced after it was pointed out during PO1 Angulo's testimony that no media representative was present in the inventory. *Second*, only seven (7) media practitioners signed the "written manifesto" and it was indicated therein that it binds only "all mediamen whose name and signature appears thereon." There is no proof, or even an intimation, that these signatories constitute all of the media practitioners in Iba, Zambales. ***Third*, and most importantly, the requirements of the law cannot be set aside by the simple expedient of a "written manifesto"**. It is important to stress 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. x x x It bears stressing that the prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. x x x [T]he Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always do so within the bounds of the law. 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 would again rear 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 failure 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.

6. ID.; ID.; ID.; ID.; BREACHES OF THE PROCEDURE UNDER SECTION 21 OF RA 9165 COUPLED WITH APPARENT INCONSISTENCIES BETWEEN THE TESTIMONIES OF PROSECUTION WITNESSES MILITATE AGAINST THE FINDING OF GUILT BEYOND REASONABLE DOUBT; ACCUSED MUST BE ACQUITTED.— Section 21 of the IRR of RA 9165 provides that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." 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. Breaches of the procedure contained 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. x x x What further militates against a finding of guilt beyond reasonable doubt for Nieves in this case is the apparent inconsistencies between the testimonies of PO1 Angulo and PO2 Devera on the conduct of the supposed buy-bust operation itself. PO1 Angulo claimed

numerous times that he was the poseur-buyer. Yet, he later on testified on cross-examination that it was the confidential informant who was transacting with Nieves, but that the marked money was in his possession. PO2 Devera, who was supposedly watching from a distance of mere 10 meters, testified, on the other hand, that it was the confidential informant who bought the *shabu* from Nieves, and who likewise handed the marked money to the latter. These discrepancies, along with the inconsistency in their testimonies on whether a media representative was present in the conduct of the inventory, cast doubt on the reliability of their testimonies as witnesses for the prosecution. The RTC and the CA thus erred in their wholesale acceptance of their testimonies to justify Nieves' conviction. x x x 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* has thus been compromised. Furthermore, the inconsistencies in the police officers' testimonies cast reasonable doubt on Nieves' guilt. In light of these, Nieves 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 accused-appellant Edwin Nieves *y* Acuavera (Nieves) assailing the Decision[2] dated February 7, 2018 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08983, which affirmed the Joint Decision[3]

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[1] See Notice of Appeal dated February 19, 2018, *rollo*, pp. 17-19.

[2] *Rollo*, pp. 2-16. Penned by Presiding Justice Romeo F. Barza, with Associate Justices Mario V. Lopez and Victoria Isabel A. Paredes concurring.

[3] CA *rollo*, pp. 63-70. Penned by Judge Marifi P. Chua.

dated June 17, 2016 of the Regional Trial Court of Iba, Zambales, Branch 70 (RTC) in Criminal Case Nos. RTC-7493-I and RTC-7494-I, finding Nieves guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, as amended.

The Facts

Two Informations were filed against Nieves in this case, the accusatory portions of which read as follows:

CRIM. CASE NO. RTC-7493-I

That on or about 9th day of July 2013 at about 1:00 o'clock in the afternoon, in Brgy. Lipay, Dingin, Municipality of Iba, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously, sell Methylamphetamine Hydrochloride, a dangerous drug, placed in one (1) heat sealed transparent plastic sachet, containing 0.029 gram, which was subsequently marked as "RDA", without any lawful authority, permit nor prescription to sell the same from the appropriate agency.

CONTRARY TO LAW.[5]

CRIM CASE NO. RTC-7494-I

That on or about 9th day of July 2013 at about l:00 o'clock in the afternoon, in Brgy. Lipay, Dingin, Municipality of Iba, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, when apprehended by the police officers, was found to have willfully, unlawfully and feloniously, use or introduce into his body Methylamphetamine, a dangerous drug, without being unlawfully (*sic*) allowed to use said substance.[6]

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[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, p. 2,

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

When arraigned, Nieves pleaded not guilty. Pre-trial and trial on the merits then ensued.

The prosecution's version, as summarized by the CA, is as follows:

PO1 Rudico D. Angulo ("PO1 Angulo") of the Philippine National Police, Iba Municipality Station, testified that on 09 July 2013, their Office conducted a buy-bust operation for the arrest of Accused-Appellant, who was infamous for being a drug pusher in Barangay Lipay Dingin, Iba, Zambales. The operation was conducted at around 1:00 o'clock in the afternoon along the road near Accused-Appellant's residence. After the preparation of the Pre-Operation Report, Coordination Form, the Request for Conduct of Dusting Powder on the money, and the marked bill worth Five Hundred Pesos (Php500.00), PO1 Angulo, the designated poseur-buyer, along with the Confidential Informant ("CI") and four (4) deployed personnel, carried out the said operation.

Upon identification of the Accused-Appellant, the CI and PO1 Angulo approached him. CI introduced PO1 Angulo as the buyer of the drug after which the latter handed to Accused-Appellant the marked money bearing his initials "RDA." Having received payment, Accused-Appellant pocketed the same and in turn, handed to PO1 Angulo a small plastic sachet containing a white crystalline substance. PO1 Angulo proceeded to perform the pre-arranged signal which prompted the four (4) personnel, all of whom were waiting a few meters away from the operation, to cause the arrest of Accused-Appellant. Subsequent to the arrest, PO1 Angulo affixed his initials on the plastic sachet. Upon reaching the police station, an inventory of the confiscated items were (sic) done in the presence of PO2 Wilfredo F. Devera ("PO2 Devera"), one of the officers during the operation, Department of Justice ("DOJ") Representative Asst. State Prosecutor Olivia V. Non, and Elected Barangay Official Bgy. Kagawad Victor Buenaventura.

To corroborate on the fact of the buy-bust operation and the subsequent apprehension of Accused-Appellant, PO2 Devera narrates that on 09 July 2013, at 1:00 o'clock in the afternoon, a buy-bust operation was conducted, specifically targeting Accused-Appellant. As one of the designated back-up personnel, he was tasked to proceed to the target area, wait for the execution of the pre-arranged signal, search the suspect after the transaction is consummated, and thereby

arrest him upon reading his Constitutional rights. During the said operation, he confirms having personally seen the transaction between the CI, PO1 Angulo, and Accused-Appellant. Upon the execution of PO1 Angulo of the pre-arranged signal, PO2 Devera, along with the other back-up personnel, effected the arrest and frisked the suspect, finding the marked Five Hundred Peso (Php500.00) bill, one (1) One Hundred Peso (Php100.00) bill, one (1) lighter and one (1) flashlight in his possession. Accused-Appellant was subsequently brought to the police station where the items taken from his person were inventoried.

Police Chief Inspector Vernon Rey Santiago ("PCI Santiago"), a forensic chemist from the Zambales Provincial Crime Laboratory Office, affirms that their office had received a written request for drug test, for the application of dust powder on one (1) Five Hundred Peso (Php500.00) bill, for an ultraviolet test on the body of Accused-Appellant, and for a laboratory examination on a certain specimen weighing .029 [gram] contained in a heat-sealed transparent plastic sachet marked as "RDA." Aside from such written requests, the office likewise received the specimen and the marked bill itself. Anent the results, PCI Santiago attests that the results yielded positive for presence of ultraviolet fluorescent powder and that the specimen weighing .029 [gram] tested positive for Methylamphetamine Hydrochloride.[7]

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

Accused-Appellant alleges that on 09 July 2013, at around 1 o'clock in the afternoon, he was alone at the backyard of his house sweeping. During that time, he saw certain police officers coming towards him shouting "*wag kang tumakbo Jun Jun Nieves!*" He continued sweeping, ignoring such warnings as they were referring to his brother, Jun Jun. When the officers were near him, Accused-Appellant was surprised when they removed his belt, tied both his hands, and dragged him towards their parked vehicle. He was brought to Camp Conrado Yap where he was mauled. Also present in the Camp was the police officers' asset, Armin Sarmiento. The latter questioned Accused-Appellant's arrest instead of his brother, who was the actual perpetrator of the crime charged. Upon realizing their mistake, the

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

police officers returned to Accused-Appellant's house to look for Jun Jun, but failed to locate his whereabouts. Accused-Appellant was subsequently brought to the Iba Police Station where the same officers forced him to admit that he was his brother.

Accused-Appellant's wife Sheila Lynn D. Nieves ("Shiela") affirms that on 09 July 2013, at around 9 o'clock in the morning, she awoke to find her husband cooking. After eating breakfast and while sending her newborn to sleep, she recalls Accused-Appellant stepping outside to sweep in the backyard. Upon hearing several police officers, and having been informed by their neighbor Daisy Milano, she went outside of the house and saw them stopping her husband from sweeping and making him kneel on the ground. They asked him to remove his belt which they used to tie his hands. Alarmed, she went to her husband's side and demanded a reason for such abuse. In response, one of them took out a cellphone from his pocket and said that they were looking for a certain Jun Jun Nieves, to which she responded, *"hindi naman po si Jun Nieves ang kinukuha ninyo eh, si Edwin Nieves po yan, kaya pakawalan po ninyo ang asawa ko."* The officer replied, *"sumunod na lang po kayo sa amin, dun nalang kayo magpaliwanag."* Shortly after Accused-Appellant and the police officers left, Shiela rushed to the house of her parents-in-law to apprise them of her husband's arrest. They went to the camp only to find out that Accused-Appellant was already brought to the police station for further questioning.[8]

Ruling of the RTC

After trial on the merits, in its Joint Decision[9] dated June 17, 2016, the RTC convicted Nieves of the crime of Illegal Sale of Dangerous Drugs, but acquitted him of the case for Use of Dangerous Drugs. The dispositive portion of the said Decision reads:

WHEREFORE, judgment is hereby rendered, finding accused Edwin Nieves *y* Acuavera *alias* "Ading" **GUILTY** beyond reasonable doubt for violation of Section 5 of Article II of R.A. 9165, (selling of dangerous drugs) and is hereby sentenced to suffer the penalty of

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

[9] CA *rollo*, pp. 63-70.

Life Imprisonment and to pay a fine of Five Hundred Thousand (Php500,000.00) pesos without subsidiary imprisonment in case of insolvency. Since accused has been in detention since July 9, 2013, his period of detention shall be credited in full.

FURTHER, Criminal Case No. RTC-7494-I is hereby DISMISSED since the accused is already convicted under Sec. 5 of Republic Act No. 9165.

FINALLY, the confiscated illegal drug subject matter of this case is forfeited in favor of the State and shall be disposed of accordingly.

SO ORDERED.[10]

The RTC ruled that the prosecution proved that the chain of custody rule in drugs cases was followed by the police officers involved in this case. The RTC traced the chain of custody of the seized item from the place of apprehension to its transmission to court.[11] It also excused the absence of the media representative in the conduct of the inventory. It reasoned:

The absence of the media representative during the inventory was explained by PO2 Devera. He stated that media practitioners executed a letter (Exhibit "Q") refraining from any participation in the conduct of inventory of drugs. Nonetheless, the absence of the media representative may be excused under the situation since the subject drug was already marked right at the place of the incident and the inventory was done in front of the accused, State Prosecutor Non-Fiñones, Kagawad Buenaventura and PO1 Angulo. x x x[12]

Aggrieved, Nieves appealed to the CA.

Ruling of the CA

In the questioned Decision[13] dated February 7, 2018, the CA affirmed the RTC's conviction of Nieves. The CA gave

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[10] *Id*. at 69-70.

[11] *Id*. at 67-68.

[12] *Id*. at 68-69.

[13] *Rollo*, pp. 2-16.

more credence to the testimony of the police officers that the buy-bust operation did happen. The CA viewed Nieves' defense as self-serving, and thus weak, especially as compared with the testimonies of prosecution witnesses. The CA likewise ruled that the chain of custody of the dangerous drugs was sufficiently proven to be unbroken. Thus:

> Here, PO1 Angulo, as the poseur-buyer, testified that immediately upon confiscation of the plastic sachet containing *shabu*, he made the appropriate markings by placing his initials "RDA" on the same. Upon arrival at the police station, an inventory report was conducted in the presence of Accused-Appellant as well as a representative from the DOJ and the Barangay. Subsequently, no less than PO1 Angulo himself turned over the marked sachet to the Zambales Provincial Crime Laboratory together with a written request for its examination. To fortify the establishment of the links in the chain of custody, PCI Santiago, the forensic chemist of the said crime laboratory was presented in court and testified as to the fact of examination. The prosecution likewise proffered into evidence the chemistry report on the substance found in the marked sachet, yielding a positive result to the test for the presence of *shabu*. Finally, the same sachet bearing the initials of PO1 Angulo was also presented; in court and was identified by PCI Santiago during his direct examination.[14]

Hence, the instant appeal.

Issue

For resolution of this Court is the issue of whether the RTC and the CA erred in convicting Nieves.

The Court's Ruling

The appeal is meritorious.

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

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

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.[15]

It bears emphasis that 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.[16] In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.[17] 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,[18] the law nevertheless also requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded.[19]

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]

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[15] *People v. Malana*, G.R. No. 233747, December 5, 2018, p. 5.

[16] *People v. Reyes*, G.R. No. 225736, October 15, 2018, p. 7.

[17] *Id*., citing *People v. Guzon*, 719 Phil. 441, 451 (2013).

[18] *Id*., citing *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

[19] *Id.*

[20] *People v. Guzon*, *supra* note 17, at 451, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

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

In this connection, Section 21,[22] 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.

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

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[22] 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[.]

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

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**.[24] 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.[25] 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**.[26] 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, as the CA itself pointed out, 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.[27] The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.[28]

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[24] *People v. Reyes*, *supra* note 16, at 8. Emphasis and underscoring supplied.

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

[26] *People v. Reyes*, *supra* note 16, at 8.

[27] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

[28] *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6; *People v. Crispo*, G.R. No. 230065, March 14, 2018, p. 8; *People v.*

In the present case, a careful perusal of the records would reveal that the supposed buy-bust operation was conducted ***without the presence of any of the three insulating witnesses***. In PO1 Rudico D. Angulo's (PO1 Angulo) and PO2 Wilfredo F. Devera's (PO2 Devera) *Pinagsamang Sinumpaang Salaysay ng Pag-Aresto*,[29] the aforementioned apprehending officers claimed that they were only accompanied by "*ilang operatiba ng PIBZPPO at ilang meyembro ng Iba MPS* [a few members of the PIBZPPO and other members of the Iba MPS]."[30] This fact was confirmed in both of their testimonies in court.[31] PO2 Devera testified:

Q Now, Mr. Witness, you (*sic*) participation in this buy-bust operation was that you are the arresting officer/back-up officer, correct?

A Yes, Sir.

Q You said that you were ten (10) meters away from where the alleged transaction of buying and selling drug was happening?

A Yes, Sir.

Q And you also said you (*sic*) were other operatives coming from the PNP of Iba, Zambales?

A Yes, Sir.

Año, G.R. No. 230070, March 14, 2018, p. 6; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 6; *People v. Magsano*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Manansala*, G.R. No. 229092, February 21, 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. Jugo*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Alvaro,* G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[29] Records, pp. 8-9.

[30] *Id*. at 8.

[31] See TSN, June 17, 2014, p. 13, records, p. 105; TSN, August 5, 2014, p. 11, *id*. at 134.

Q To be exact, Mr. Witness, how many were you at that time?

A I cannot anymore recall how many are we, maybe there were five (5) of us, Sir.

Q So, there were five (5) of you?

A Yes, Sir.[32]

Further, the inventory was subsequently conducted at the police station without any explanation as to why it was impracticable to do the same at the place of apprehension. More importantly, only two of the three required witnesses — the DOJ representative and the elective official — were present in the conduct of inventory, as evidenced by the signatures in the *Receipt/Inventory of Property Seized*.[33]

Curiously, PO1 Angulo testified that there was a media representative present in the conduct of the inventory, only that he was unable to remember his/her name:

Q And you were able to secure the presence of a representative from the DOJ?

A Yes, Sir.

Q But you were not able to present that inventory because it was a week day?

A Yes, Sir.

Q But you were not able to secure the presence of a media representative, is that correct?

A There was, Sir.

Q What's the name of that media representative?

A I could no longer recall, Sir.

Q But you remember him or her signing the inventory?

A Yes, Sir if I will able (*sic*) to see that.[34] (Emphasis supplied)

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[32] TSN, August 5, 2014, p. 11, *id*. at 134.

[33] Records, p. 20.

[34] TSN, June 17, 2014, pp. 17-18, records, pp. 109-110.

Upon continuation of the presentation of prosecution witnesses two months later, PO2 Devera then testified that there was no media representative. He explained, however, that this was because the media representatives in the area executed a written manifesto requesting that they be excluded from anti-drug operations. PO2 Devera testified:

Q Why did you not secure any representative from the media, Mr. Witness?

A I do not know, Sir but they executed a letter.

Q Because of that letter, you did not even try to contact anymore any media representative?

A Yes, Sir.

Q Do you know every media practitioner in Zambales?

A Some of them, Sir.

Q Am I also correct to say, Mr. Witness that not all of them affixed their signatures in this letter that you just mentioned in your direct testimony, correct?

A Yes, Sir.

Q And yet you did not try to secure the presence of those media practitioners who did not sign this letter, correct?

A Yes, Sir.[35]

The "written manifesto" referred to by PO2 Devera reads:

The Provincial Director
Philippine National Police
Zambales Police Provincial Office
Camp Conrado D. Yap, Iba, Zambales

Sir:

WE are members representing media group covering the Zambales province desiring to clear out issues concerning drug operations in the province.

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[35] TSN, August 5, 2014, p. 16, *id*. at 139.

WHEREAS, we members of the Zambales media, do hereby appeal our position with the members of Zambales PNP to spare our ranks from witnessing arrested drug pushers and other matters related to it.

WHEREAS, all mediamen whose name and signature appears hereon signifies that effective immediately, will cease and desist from signing documents pertinent to anti-drug operations in the province pending settlement of their resolution.

HENCE, we hereby affix our signature to assert our position concerning said media interest on said issue.[36]

The "written manifesto" above, however, did not justify the police officers' deviation from the prescribed procedure. *First*, the "written manifesto" was undated, and was never even mentioned in any of the affidavits and documents related to the case prior to PO2 Devera's testimony. It was only introduced after it was pointed out during PO1 Angulo's testimony that no media representative was present in the inventory. *Second*, only seven (7) media practitioners signed the "written manifesto" and it was indicated therein that it binds only "all mediamen whose name and signature appears thereon." There is no proof, or even an intimation, that these signatories constitute all of the media practitioners in Iba, Zambales.

***Third*, and most importantly, the requirements of the law cannot be set aside by the simple expedient of a "written manifesto**". It is important to stress that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[37] 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

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[36] Records, p. 169.

[37] G.R. No. 228890, April 18, 2018.

planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,[38] 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 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."[39]

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[38] 736 Phil. 749,764 (2014).

[39] *People v. Tomawis*, *supra* note 37, at 11-12.

It bears stressing that the prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance.[40] The Court, in *People v. Umipang,*[41] reminds:

> 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 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**.[42] (Emphasis and underscoring supplied)

In addition, the Court *en banc* unanimously held in the case of *People v. Lim*[43] that:

> It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

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[40] *People v. Reyes*, *supra* note 16, at 13.

[41] 686 Phil. 1024 (2012).

[42] *Id*. at 1052-1053.

[43] 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**.[44] (Emphasis in the original; underscoring supplied)

It is apparent that a "written manifesto" is not included in the above list, nor is it a cause that may be considered similar or akin to the foregoing.

At this juncture, the Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always do so within the bounds of the law.[45] 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 would again rear 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 failure 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.[46]

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[44] *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[45] *People v. Ramos*, 791 Phil. 162, 175 (2016).

[46] *People v. Mendoza*, *supra* note 38, at 764.

Concededly, Section 21 of the IRR of RA 9165 provides that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." 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.[47] Breaches of the procedure contained 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.[48] As the Court explained in *People v. Reyes*:[49]

> 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[50] (Emphasis supplied)

What further militates against a finding of guilt beyond reasonable doubt for Nieves in this case is the apparent inconsistencies between the testimonies of PO1 Angulo and PO2 Devera on the conduct of the supposed buy-bust operation

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[47] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[48] See *People v. Sumili*, 753 Phil. 342, 350 (2015).

[49] 797 Phil. 671 (2016).

[50] *Id*. at 690.

itself. PO1 Angulo claimed numerous times that he was the poseur-buyer.[51] Yet, he later on testified on cross-examination that it was the confidential informant who was transacting with Nieves, but that the marked money was in his possession.[52] PO2 Devera, who was supposedly watching from a distance of mere 10 meters, testified,: on the other hand, that it was the confidential informant who bought the *shabu* from Nieves, and who likewise handed the marked money to the latter.[53]

These discrepancies, along with the inconsistency in their testimonies on whether a media representative was present in the conduct of the inventory, cast doubt on the reliability of their testimonies as witnesses for the prosecution. The RTC and the CA thus erred in their wholesale acceptance of their testimonies to justify Nieves' conviction.

In addition, the Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.[54] The RTC and the CA therefore erred in simply brushing aside Nieves' defense of mistake in identity, especially when the testimonies of both Nieves and his wife were consistent in that the police officers were initially trying to apprehend Nieves' brother instead of him. In this connection, the Court reminds the trial courts to exercise extra vigilance in trying drug cases, and directs the Philippine National Police to conduct an investigation on this incident and other similar cases, lest an innocent person be made to suffer the unusually severe penalties for drug offenses.

Finally, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its IRR, which is fundamental

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[51] *Pinagsamang Sinumpaang Salaysay ng Pag-Aresto*, records, p. 8; Affidavit dated June 16, 2014, p. 2, records, p. 86; Direct Testimony in TSN, June 17, 2014, p. 6, records, p. 98.

[52] TSN, June 17, 2014, p. 16, *id*. at 108.

[53] TSN, August 5, 2014, pp. 11, 14, *id*. at 134, 137.

[54] *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

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.[55]

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* has thus been compromised. Furthermore, the inconsistencies in the police officers' testimonies cast reasonable doubt on Nieves' guilt. In light of these, Nieves must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated February 7, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 08983 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Edwin Nieves *y* Acuavera 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

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[55] *People v. Otico*, G.R. No. 231133, June 6, 2018, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, 853 SCRA 321, 337-338.

REPORT to this Court within five (5) days from receipt of this Decision the action he has taken.

Further, the National Police Commission is hereby **DIRECTED** to **CONDUCT AN INVESTIGATION** on the police officers involved in the buy-bust operation conducted in this case.

SO ORDERED.

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

EN BANC

[A.C. No. 8869. June 25, 2019]
(Formerly CBD Case No. 17-5382)

RADIAL GOLDEN MARINE SERVICES CORPORATION, *complainant, vs.* **ATTY. MICHAEL M. CABUGOY,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; WILLFUL DISOBEDIENCE; RESPONDENT'S DISREGARD OF THE COURT'S RESOLUTION AS WELL AS IBP'S DIRECTIVES CONSTITUTES WILLFUL DISOBEDIENCE; SUSPENSION FROM THE PRACTICE OF LAW FOR TWO YEARS WITH STERN WARNING, IMPOSED.— Atty. Cabugoy's disregard of the Court's Resolutions directing him to file his Comment and to show cause for his failure to do so, as well as the IBP's directives to file his position paper and to attend the mandatory conference, despite due notice, without justification or valid reason, indicates a lack of respect for the Court and the IBP's rules and procedures. As an officer of the Court, Atty. Cabugoy

> is expected to know that said Resolutions of the Court, and the IBP, as the investigating arm of the Court in administrative cases against lawyers, is not a mere request but an order which should be complied with promptly and completely. As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. Clearly, Atty. Cabugoy's acts constitute willful disobedience of the lawful orders of this Court which, under Section 27, Rule 138 of the Rules of Court, is in itself alone a sufficient cause for suspension or disbarment. His cavalier attitude in ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Atty. Cabugoy's conduct indicates a high degree of irresponsibility. His obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in his character; it also underscores his disrespect of the Court's lawful orders which is only too deserving of reproof." x x x Considering Atty. Cabugoy's disregard not only of the lawful orders of the Court but also of the directives of the IBP, his conduct runs counter to the precepts of the Code of Professional Responsibility and violates the lawyer's oath which imposes upon every member of the bar the duty to delay no man for money or malice. Atty. Cabugoy has failed to live up to the values and norms of the legal profession as embodied in the Code of Professional Responsibility. x x x Respondent Atty. Michael M. Cabugoy is hereby **SUSPENDED** from the practice of law for a period of **TWO (2) YEARS** effective from notice, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is a Complaint[1] for disciplinary action dated January 12, 2011 filed by Radial Golden Marine Services Corporation's officers, stockholders and employees, as

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[1] *Rollo*, pp. 1-3.

represented by Eugene R. Avenido, President-Stockholder of Radial, *et al*. (*complainants*) against respondent Atty. Michael M. Cabugoy (*Atty. Cabugoy*) for gross misconduct and ignorance of the law.

The antecedent facts are as follows:

Complainants alleged that during the annual general meeting of Radial Golden Marine Services Corporation, Atty. Cabugoy, together with a certain Sheila Masacote and Virgilo Anonuevo, entered into the office premises of Radial Golden Marine Services, and claimed that they are stockholders of Radial. Complainants alleged that Atty. Cabugoy and his group insisted on attending the stockholders' meeting and participate in the election despite not being stockholders of Radial. They further alleged that Atty. Cabugoy ordered that the meeting be stopped, and even declared the proceedings to be illegal, causing disruption of the stockholders' meeting, and thus, prevented the stockholders from deliberating on the dividends and the election of the board of directors of Radial.

In a Resolution[2] dated February 7, 2011, the Court required Atty. Cabugoy to comment on the allegations against him.

On August 31, 2011, the Court issued another Resolution[3] requiring Atty. Cabugoy to show cause as to why he should not be held in contempt, or disciplinary dealt with, for his failure to comply with the Resolution dated February 7, 2011 to file his Comment. Atty. Cabugoy was, likewise, required to comply with the submission of his comment within ten (10) days from notice of the Resolution.

On July 25, 2016, in light of the inability of the Court to determine if the Resolution dated August 31, 2011 was received by Atty. Cabugoy, since the pertinent registry receipt was already disposed for condemnation by the postmaster, Deputy Clerk of Court and the Bar Confidant, Atty. Ma. Cristina B. Layusa,

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[2] *Id.* at 10-11.

[3] *Id.* at 13.

recommended that Resolution dated August 31, 2011 be resent to Atty. Cabugoy.[4]

In a Resolution[5] dated September 7, 2016, the Third Division of the Court resolved to resend the Resolution dated August 31, 2011 to Atty. Cabugoy, and directed compliance thereto.

In the Status Report[6] dated February 22, 2017, Atty. Amor P. Entila, SC Assistant Chief of Office, Office of the Bar Confidant, manifested that the Court's Resolution dated September 7, 2016 was received by Atty. Cabugoy on November 28, 2016 as per Court's Return Card No. 42136, and the period for Atty. Cabugoy to comply with the Court's directive has already expired on December 8, 2016.

Thus, in a Resolution[7] dated March 29, 2017, the Court resolved to deem as waived the filing of comment of Atty. Cabugoy on the complaint for disbarment against him, and referred the instant case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation.

In compliance, the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) issued a Notice of Mandatory Conference[8] dated September 15, 2017, which required the parties to appear on October 23, 2017 and submit their respective mandatory conference briefs.

On October 23, 2017, the mandatory conference was conducted, but neither of the parties appeared, nor did they submit their respective mandatory conference briefs. Records indicate that the Notice of Mandatory Conference was not delivered to complainants and was returned to the IBP with the annotation "moved out."

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[4] *Id.* at 14.

[5] *Id.* at 16.

[6] *Id.* at 17.

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

[8] *Id.* at 22.

Despite the non-appearance of the parties and non-submission of the pertinent pleadings, the IBP-CBD, being duty-bound to comply with the Court's directive, submitted its report and recommendation based on available records and documents.

In its Report and Recommendation[9] dated October 30, 2017, the IBP-CBD recommended that Atty. Cabugoy be suspended from the practice of law for a period of one (1) year and six (6) months. The IBP-CBD found that despite the failure of the complainants to further substantiate its allegations against Atty. Cabugoy, it still found sufficient evidence to recommend disciplinary action against the latter, more so, considering Atty. Cabugoy's failure to attend the mandatory conference despite notice.

In a Resolution[10] dated May 19, 2018, the Board of Governors of the IBP adopted the findings of the IBP-CBD with modification to reduce the recommended penalty. Instead of suspension from the practice of law for one (1) year and six (6) months, it recommended instead to impose the penalty of suspension for a period of one (1) year only and a fine of Fifteen Thousand Pesos (₱15,000.00) for ignoring the Orders, Processes and Directives of the IBP-CBD.

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.[11]

Thus, complainants' failure to provide clear and convincing evidentiary support to their allegations of misconduct against

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[9] *Id.* at 29-34.

[10] *Id.* at 27-28.

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

Atty. Cabugoy due to their failure to attend the hearings and to submit their position papers/judicial affidavits, would have been fatal to this case. Even the attached supporting documents failed to convince as they are mere photocopies, not certified true copies, which cannot be given credence. However, while the allegations against Atty. Cabugoy are unsubstantiated and would have warranted the dismissal of the instant complaint, We cannot look past Atty. Cabugoy's nonchalant attitude in complying with the IBP's directives, as well as the Court's numerous Resolutions.

Atty. Cabugoy's disregard of the Court's Resolutions directing him to file his Comment and to show cause for his failure to do so, as well as the IBP's directives to file his position paper and to attend the mandatory conference, despite due notice, without justification or valid reason, indicates a lack of respect for the Court and the IBP's rules and procedures. As an officer of the Court, Atty. Cabugoy is expected to know that said Resolutions of the Court, and the IBP, as the investigating arm of the Court in administrative cases against lawyers, is not a mere request but an order which should be complied with promptly and completely. As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes.

Clearly, Atty. Cabugoy's acts constitute willful disobedience of the lawful orders of this Court which, under Section 27, Rule 138 of the Rules of Court, is in itself alone a sufficient cause for suspension or disbarment. His cavalier attitude in ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Atty. Cabugoy's conduct indicates a high degree of irresponsibility. His obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in his character; it also underscores his disrespect of the Court's lawful orders which is only too deserving of reproof."[12]

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[12] *See Sebastian v. Bajar*, 559 Phil. 211, 224 (2007).

Section 27, Rule 138 of the Rules of Court provides:

> Sec. 27. *Disbarment or suspension of attorneys by Supreme Court grounds therefor.* - A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

In *Ngayan v. Atty. Tugade*,[13] We ruled that "[a lawyer's] failure to answer the complaint against him and his failure to appear at the investigation are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Section 3, Rule 138, Rules of Court."

Considering Atty. Cabugoy's disregard not only of the lawful orders of the Court but also of the directives of the IBP, his conduct runs counter to the precepts of the Code of Professional Responsibility and violates the lawyer's oath which imposes upon every member of the bar the duty to delay no man for money or malice. Atty. Cabugoy has failed to live up to the values and norms of the legal profession as embodied in the Code of Professional Responsibility.

We said in *Figueras, et al. v. Atty. Jimenez*[14] that the "determination of whether an attorney should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion. This Court has imposed the penalties ranging from reprimand, warning with fine, suspension and, in grave cases, disbarment for a lawyer's failure to file a brief or other pleading."[15] Here, given Atty. Cabugoy's impertinent attitude

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[13] 271 Phil. 654, 659 (1991).

[14] 729 Phil. 101 (2014).

[15] *Id.* at 108.

towards the Court and the IBP, We find the penalty of suspension from the practice of law for a period of two (2) years to be more appropriate.

WHEREFORE, respondent Atty. Michael M. Cabugoy is hereby **SUSPENDED** from the practice of law for a period of **TWO (2) YEARS** effective from notice, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to Atty. Cabugoy's personal record as a member of the Bar, the Integrated Bar of the Philippines, the Office of the Court Administrator, the Department of Justice and all courts in the country for their information and guidance.

SO ORDERED.

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

Jardeleza, J., on wellness leave.

EN BANC

[A.M. No. 18-06-07-CA. June 25, 2019]

RE: UNAUTHORIZED ABSENCES OF CHRISTOPHER MARLOWE J. SANGALANG, CLERK III, COURT OF APPEALS, MANILA.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; NATURE OF THE OFFICE AS A PUBLIC TRUST, REITERATED.— [T]his Court has made the pronouncement that any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the Judiciary, shall not be countenanced. Public office is a public trust. Public officers must, at all times, be accountable to the people, serve them with utmost degree of responsibility, integrity, loyalty and efficiency. A court employee's repeated absences without leave constitutes conduct prejudicial to the best interest of public service and warrants the penalty of dismissal from the service with forfeiture of benefits.

2. ID.; ID.; ID.; HABITUAL UNAUTHORIZED ABSENCES CONSTITUTE CONDUCT PREJUDICIAL TO THE PUBLIC SERVICE SINCE IT VIOLATES THE NORM OF PUBLIC ACCOUNTABILITY AND DIMINISHES PEOPLE'S FAITH IN THE JUDICIARY.— Conduct is prejudicial to the public service if it violates the norm of public accountability and diminishes — or tends to diminish — the people's faith in the Judiciary. By the habituality and frequency of his unauthorized absences, Sangalang did not live up to the degree of accountability, efficiency, and integrity that the Judiciary has required of its officials and employees. His position as Clerk III was essential and indispensable to the Judiciary's primary mandate of the proper administration of justice. This mandate dictated that he as a court employee should devote his office hours strictly to the public service, if only to repay and serve the people whose taxes were used to maintain the Judiciary. His habitual absenteeism severely compromised the integrity and image that the Judiciary sought to preserve, and, thus, violated this mandate.

3. ID.; ID.; ID.; ID.; PENALTY; WHERE THE OFFENDER COMMITTED HABITUAL ABSENTEEISM AND TARDINESS FOR THE SECOND TIME, HE DESERVES DISMISSAL FROM THE SERVICE WITH FORFEITURE OF BENEFITS EXCEPT ACCRUED LEAVES.— Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service punishes habitual

absenteeism and conduct prejudicial to the best interest of public service with suspension of six months and one day to one year for the first offense, and dismissal from the service for the second infraction. In the instant case, however, this is not Sangalang's first offense. On April 25, 2014, in Investigation Reference No. 08-2013-ABR, "*Re: Report of Personnel Division dated November 29, 2013 regarding the Habitual Absenteeism and Tardiness of Christopher J. Sangalang*," he was sternly warned that a repetition of his habitual absenteeism and tardiness will be dealt with more severely. x x x Moral obligations, humanitarian considerations, among others, are not sufficient to warrant exemption of an employee from regularly reporting for work. More so, in this case, where Sangalang failed to offer any explanation for his infractions, yet, had the gall to request that the imposition of his suspension be delayed in order for him to receive his benefits for 2018. Clearly, Sangalang's non-chalant attitude on his infractions do not deserve mercy and compassion from this Court. He, thus, deserves dismissal from the service, with forfeiture of benefits, except accrued leaves as prescribed for the second offense of frequent unauthorized absences.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is the Report[1] dated April 30, 2018 submitted by Juanita P. Tibayan-Castro, Chief Judicial Staff Officer, Personnel Division of the Court of Appeals with reference to respondent Christopher Marlowe J. Sangalang's (*Sangalang*) frequent unauthorized absences (habitual absenteeism) from January 2017 to March 2018.

Based on the report, from January 2017 to March 2018, Sangalang's total absences were 108.9 or an average of 7.26 days per month, exceeding the allowable absences of 2.5 days per month. From July 2017 to March 2018, he failed to file the required application for leave of absence for all incurred absences. Sangalang was warned both verbally and in writing

[1] *Rollo*, pp. 11-14.

of his absences, and was also reminded to file his application for leave of absence but such warnings were unheeded. With regard to his tardiness, he has been tardy 91 times in the 187 days he reported to office, almost half of the time he was present he was late.[2]

Further, in the Follow-up Report[3] dated May 9, 2018, Chief Judicial Staff Officer Tibayan-Castro also averred that on April 1, 2016, an Inter-Office Memorandum was issued to Sangalang which required him to explain in writing why he punched his bundy card but did not report to work, and failed to inform the office of his whereabouts. In his Answer[4] dated April 4, 2016, Sangalang admitted his oversight and begged the indulgence of the Office and promised that the same will not happen anymore.

Because of Sangalang's failure to improve his attendance in reporting for work despite warnings, Chief Judicial Staff Officer Tibayan-Castro recommended that Sangalang be suspended for a period of six (6) months and one (1) day for frequent unauthorized absences in violation of Section 50(B), Rule 10 of the Administrative Offenses and Penalties of the 2017 Rules on Administrative Cases in the Civil Service.[5]

On May 15, 2018, in the Report and Recommendation[6] docketed as INV. REF. No. 02-2018-RFB, Atty. Teresita R. Marigomen, Clerk of Court of the Court of Appeals, recommended that Sangalang be suspended for a period of six (6) months and one (1) day for unauthorized absences (habitual absenteeism).[7]

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[2] *Id.*

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

[4] *Id.* at 22.

[5] *Id.* at 10.

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

[7] Approved by Justice Romeo F. Barza, Presiding Justice of the Court of Appeals, Justice Mariflor Punzalan Castillo, Chairperson-Committee

On June 8, 2018, Justice Romeo F. Barza, Presiding Justice of the Court of Appeals, referred to the Office of the Court Administrator (*OCA*), the Report and Recommendation dated May 15, 2018 and the records on Investigation Reference No. 02-2018-RFB.[8]

On July 27, 2018, the OCA referred to Sangalang the Letter dated April 30, 2018 of Ms. Juanita P. Tibayan-Castro, charging him of unauthorized absences, and required him to comment on the allegation against him.[9]

In his Answer[10] dated August 8, 2018, Sangalang manifested that he would not contest the charge of unauthorized absences against him. He manifested acceptance of the recommended suspension from office albeit requested that the suspension be imposed much later in order for him to receive the benefits due him for the year 2018. He also promised to be a better person after he reports back to work from suspension.

On January 17, 2019, the OCA recommended that the instant matter be redocketed as a regular administrative matter against Sangalang. It also recommended that Sangalang be found guilty of habitual absenteeism and be suspended from office for a period of six (6) months and one (1) day, with a warning that a repetition of the same offense shall warrant his dismissal from the service.

RULING

Administrative Circular No. 14-2002[11] provides that an employee in the Civil Service shall be considered habitually

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on Ethics and Special Concerns, and Justices Ma. Luisa Quijano-Padilla (on leave), and Rafael Antonio M. Santos, as Members of the Committee on Ethics and Special Concerns.

[8] *Rollo*, p. 27.

[9] *Id.* at 24.

[10] *Id.* at 25.

[11] Issued on March 18, 2002 by the Court reiterating the Civil Service Commission's policy on habitual absenteeism (effective on April 1, 2002).

absent if he or she incurs "unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the law for at least three (3) months in a semester or at least three (3) consecutive months during the year."

In the instant case, the OCA found that Sangalang had incurred absences totaling to 75.9 days spread from January to December 2017, and a total of 33 days of absences for the period January to March 2018.[12] From the total of 108.9 absences from January 2017 to March 2018, Sangalang failed to file the required application for leave of absence for all his absences incurred within the period of nine (9) months, or from July 2017 to March 2018. Thus, Sangalang's absences from July 2017 to March 2018, which totaled to 75 days are all unauthorized due to lack of leave approval. Significantly, when the OCA required Sangalang to answer the charges against him, he offered no explanation and unabashedly requested that his suspension be imposed on a later date to enable him to receive the benefits due him for 2018. The OCA observed that Sangalang was anything but remorseful in his comment on his unauthorized absences.

Time and again, this Court has made the pronouncement that any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the Judiciary, shall not be countenanced. Public office is a public trust. Public officers must, at all times, be accountable to the people, serve them with utmost degree of responsibility, integrity, loyalty and efficiency. A court employee's repeated absences without leave constitutes conduct prejudicial to the best interest of public service and warrants the penalty of dismissal from the service with forfeiture of benefits.[13]

Conduct is prejudicial to the public service if it violates the norm of public accountability and diminishes — or tends to diminish — the people's faith in the Judiciary. By the habituality and frequency of his unauthorized absences, Sangalang did not

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[12] *Rollo*, pp. 12-13.

[13] *Leave Division-O.A.S., OCA v. Sarceno*, 754 Phil. 1, 9 (2015).

live up to the degree of accountability, efficiency, and integrity that the Judiciary has required of its officials and employees. His position as Clerk III was essential and indispensable to the Judiciary's primary mandate of the proper administration of justice. This mandate dictated that he as a court employee should devote his office hours strictly to the public service, if only to repay and serve the people whose taxes were used to maintain the Judiciary. His habitual absenteeism severely compromised the integrity and image that the Judiciary sought to preserve, and, thus, violated this mandate.[14]

Section 52 of the Revised Uniform Rules on Administrative Cases in the Civil Service[15] punishes habitual absenteeism and conduct prejudicial to the best interest of public service with suspension of six months and one day to one year for the first offense, and dismissal from the service for the second infraction.

In the instant case, however, this is not Sangalang's first offense. On April 25, 2014, in Investigation Reference No. 08-2013-ABR,[16] "*Re: Report of Personnel Division dated November 29, 2013 regarding the Habitual Absenteeism and Tardiness of Christopher J. Sangalang*," he was sternly warned that a repetition of his habitual absenteeism and tardiness will be dealt with more severely. Although the complaint was dismissed, the dismissal appeared to be due to insufficient notice or warning to Sangalang. The fact that Sangalang had incurred 63.5 days of absences from January to October 2013 was, however, undisputed as per records and his very own admission.[17]

Moral obligations, humanitarian considerations, among others, are not sufficient to warrant exemption of an employee from regularly reporting for work.[18] More so, in this case, where

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[14] *Id.* at 10.

[15] CSC Memorandum No. 19, Series of 1999.

[16] *Rollo*, pp. 16-19.

[17] *Id.* at 17.

[18] *Judge Monserate v. Adolfo*, 478 Phil. 161, 165 (2004).

Sangalang failed to offer any explanation for his infractions, yet, had the gall to request that the imposition of his suspension be delayed in order for him to receive his benefits for 2018. Clearly, Sangalang's non-chalant attitude on his infractions do not deserve mercy and compassion from this Court. He, thus, deserves dismissal from the service, with forfeiture of benefits, except accrued leaves as prescribed for the second offense of frequent unauthorized absences.

It must be emphasized that the Court has imposed dismissal from the service on court employees who had gone absent without leave (*AWOL*) even if the offenses were their first. In *Judge Loyao, Jr. v. Manatad*,[19] a court interpreter was dismissed from the service due to unauthorized absences because there is no record of any application for leave of absence, despite being his first offense. We reached a similar stance in *Leave Division-O.A.S., OCA v. Sarceno*,[20] where Sarceno, Clerk III, went on AWOL again despite having expressed his repentance with a resolve to correct his shortcomings.

We have often held that by reason of the nature and functions of their office, officials and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust. Inherent in this mandate is the observance of prescribed office hours and the efficient use of every moment thereof for public service, if only to recompense the Government, and ultimately, the people who shoulder the cost of maintaining the Judiciary. Thus, to inspire public respect for the justice system, court officials and employees are, at all times, behooved to strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible.[21]

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[19] 387 Phil. 337 (2000).

[20] *Supra* note 13.

[21] *Re: Habitual Absenteeism of Rabindranath A. Tuzon, Offlcer-in-Charge (OIC)/Court Legal Researcher II, Branch 91, Regional Trial Court, Baler, Aurora*, A.M. No. 14-10-322-RTC, December 5, 2017, 847 SCRA 512, 515.

WHEREFORE, premises considered, the Court finds Christopher Marlowe J. Sangalang, Clerk III of the Court of Appeals, **GUILTY** of **HABITUAL ABSENTEEISM and CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE PUBLIC SERVICE** and is hereby **DISMISSED** from the service, with forfeiture of retirement benefits, except earned leave credits, if any, and with prejudice to reinstatement or re-employment in any agency of the government, including government-owned or controlled corporations.

SO ORDERED.

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

Jardeleza, J., on wellness leave.

EN BANC

[A.M. No. 19-02-03-CA. June 25, 2019]

RE: EXPENSES OF RETIREMENT OF COURT OF APPEALS JUSTICES.

SYLLABUS

LEGAL ETHICS; JUSTICES; RETIREMENT; THE COURT GRANTS THE REQUEST TO INCREASE THE ALLOCATED RETIREMENT PROGRAM BUDGET FOR THE RETIRING PRESIDING JUSTICE AND RETIRING ASSOCIATE JUSTICES OF THE COURT OF APPEALS.— The current retirement program budget for the retiring Presiding and Associate Justices of the Court of Appeals is Two Hundred

> Thousand Pesos (PhP200,000.00) each, which is below what Justices of other courts of equal and higher ranks receive, x x x[.] Thus, it is readily apparent that the retirement program budget for retiring members of the Court of Appeals is due for an update and/or adjustment. Per the Chief of the Fiscal Management and Budget Division of the Court of Appeals, the increased retirement program budget for the retiring Presiding or Associate Justice will cover his/her (a) luncheon/dinner reception; (b) judicial tokens; (c) miscellaneous expenses of the *En Banc* Special Session; (d) souvenir for guests; and (e) food stubs for employees. x x x [T]he Court resolves to **GRANT**, **effective on July 1, 2019**, the request of the Court of Appeals, through Presiding Justice Romeo F. Barza, to increase its allocated retirement program budget, as follows: (a) For a retiring Presiding Justice - not to exceed **ONE MILLION FIVE HUNDRED THOUSAND PESOS (PhP1,500,000.00)**; and (b) For a retiring Associate Justice - not to exceed **ONE MILLION TWO HUNDRED THOUSAND PESOS (PhP1,200,000.00)**.

R E S O L U T I O N

HERNANDO, *J.*:

In a letter dated February 15, 2019 to Chief Justice Lucas P. Bersamin, Presiding Justice Romeo F. Barza (Barza) of the Court of Appeals made the following request:

> May I respectfully request that the Court of Appeals be allowed to budget the following amounts to defray the cost of the expenses relative to the retirement of the Presiding Justice and Associate Justices, to wit:
>
> a) For a retiring Presiding Justice — not to exceed Two Million Pesos (₱2,000,000.00); and
>
> b) For a retiring Associate Justice — not to exceed One Million Eight Hundred [Thousand] Pesos (₱1,800,000.00)
>
> subject to liquidation in accordance with applicable accounting and auditing rules.
>
> May I further request for a yearly increase of ten percent (10%)

in the aforesaid budget to cushion the effects of inflation.

A certification from our Chief of Fiscal Management and Budget Division and the Chief Accountant as to the availability of funds for the said purpose is attached to this letter.[1]

Acting on the aforequoted letter, the Court issued a Resolution[2] dated February 19, 2019 requiring the Fiscal Management and Budget Office (FMBO) to comment thereon within 30 days from notice.

Atty. Corazon G. Ferrer-Flores (Ferrer-Flores), Deputy Clerk of Court and Chief, FMBO, submitted her Comment dated May 21, 2019. Taking into account the current budgets of the Sandiganbayan, the Court of Tax Appeals (CTA), and the Supreme Court for their respective Retirement Programs; plus the budgetary history of the Court of Appeals and the impact of the proposed increase in the retirement program budgets for retiring Court of Appeals Presiding and Associate Justices on the present as well as future overall budgets of the said appellate court, Atty. Ferrer-Flores ultimately made the following recommendations:

IN VIEW OF THE FOREGOING, we respectfully recommend the following budgets for the activities in connection with the retirement of the Presiding Justice and Associate Justice of the Court of Appeals, subject to a yearly increase of ten percent (10%) to cushion the effects of inflation, chargeable against the savings from the regular appropriations of the Court of Appeals and subject further to availability of funds:

1) For a retiring Presiding Justice — not to exceed **ONE MILLION TWO HUNDRED THOUSAND PESOS (₱1,200,000.00)**; and

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[1] *Rollo*, p. 1.

[2] *Id.* at 3.

[3] *Id.* at 10.

2) For a retiring Associate Justice — not to exceed **ONE MILLION PESOS (₱1,000,000.00).00**.[3]

After a judicious consideration of all important factors, the Court deems it appropriate to grant an increase in the retirement program budgets for the retiring members of the Court of Appeals in the amounts of One Million Five Hundred Thousand Pesos (PhP1,500,000.00) for a Presiding Justice and One Million Two Hundred Thousand Pesos (PhP1,200,000.00) for an Associate Justice. These amounts are partway between Presiding Justice Barza's proposed budgets and Atty. Ferrer-Flores's recommended budgets.

The current retirement program budget for the retiring Presiding and Associate Justices of the Court of Appeals is Two Hundred Thousand Pesos (PhP200,000.00) each, which is below what Justices of other courts of equal and higher ranks receive, to wit:

Court/Position	**Number of Justices**	**Current Budget (PhP)**
Supreme Court Chief Justice	1	2,420,000.00
Supreme Court Associate Justice	14	2,200,000.00
Court of Appeals Presiding or Associate Justice	69	200,000.00
Sandiganbayan Presiding or Associate Justice	21	450,000.00
CTA Presiding or Associate Justice	9	650,000.00

Thus, it is readily apparent that the retirement program budget for retiring members of the Court of Appeals is due for an update and/or adjustment.

Per the Chief of the Fiscal Management and Budget Division of the Court of Appeals, the increased retirement program budget for the retiring Presiding or Associate Justice will cover his/her (a) luncheon/dinner reception; (b) judicial tokens; (c) miscellaneous expenses of the *En Banc* Special Session; (d) souvenir for guests; and (e) food stubs for employees. Given

that the Sandiganbayan, with 421 employees, has a retirement program budget of Four Hundred Fifty Thousand Pesos (PhP450,000.00) for each of its retiring Presiding or Associate Justice; and the CTA, with 271 employees, has a retirement program budget of Six Hundred Fifty Thousand Pesos (PhP650,000.00) for each of its retiring Presiding or Associate Justice, it is justifiable that the Court of Appeals, with 1,660 employees (four and six times more than those in the Sandiganbayan and the CTA, respectively) will need a higher retirement program budget for its retiring Presiding or Associate Justice compared to the two other courts.

The Court, however, refrains from granting the Court of Appeals the automatic ten percent (10%) annual increase on its new retirement program budget purportedly to cushion the effects of inflation. Any subsequent increase will still be subject to the review and approval of the Court and will depend on the availability of funds and prevailing circumstances.

WHEREFORE, the Court resolves to **GRANT**, **effective on July 1, 2019**, the request of the Court of Appeals, through Presiding Justice Romeo F. Barza, to increase its allocated retirement program budget, as follows:

a) For a retiring Presiding Justice — not to exceed **ONE MILLION FIVE HUNDRED THOUSAND PESOS (PhP1,500,000.00)**; and

b) For a retiring Associate Justice — not to exceed **ONE MILLION TWO HUNDRED THOUSAND PESOS (PhP1,200,000.00)**.

SO ORDERED.

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

Jardeleza, J., on wellness leave.

EN BANC

[A.M. No. P-19-3989. June 25, 2019]
(Formerly OCA IPI No. 16-4524-P)

RENATO NUEZCA, *complainant, vs.* **MERLITA R. VERCELES, STENOGRAPHER III, BRANCH 49, REGIONAL TRIAL COURT, URDANETA CITY, PANGASINAN,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; COURT STENOGRAPHER; SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 24-90 DIRECTS COURT STENOGRAPHERS TO ATTACH THE TRANSCRIPT TO THE CASE RECORDS NOT LATER THAN TWENTY (20) DAYS FROM THE TIME NOTES WERE TAKEN.— A stenographer is an officer of this Court who is burdened with great responsibilities. His or her neglect of duties may result in a delay in dispensing justice, as what happened in this case, which has been unjustly pending since 2009. x x x Respondent's duties greatly affect the courts' timely resolution of cases. Supreme Court Administrative Circular No. 24-90 directs court stenographers to attach the transcript to the case records not later than 20 days from the time the notes were taken: x x x It was incumbent upon respondent to ensure that the transcript of stenographic notes was properly taken and expeditiously submitted, even without request of the court.

2. ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL; CANON IV, SECTION 1 PROVIDES THAT COURT PERSONNEL SHALL AT ALL TIMES PERFORM OFFICIAL DUTIES PROPERLY AND WITH DILIGENCE; FAILURE OF A COURT STENOGRAPHER TO IMMEDIATELY COMPLY WITH THE COURT'S ORDER TO PROVIDE THE TRANSCRIBED STENOGRAPHIC NOTES IS A VIOLATION OF THE CODE OF CONDUCT FOR COURT PERSONNEL.— Moreover, respondent is bound by the Code of Conduct for Court Personnel. Canon IV, Section 1 provides: 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. We underscore that respondent took four (4) years to comply with the court's order to provide the transcribed stenographic notes. Even then, she completed the transcript of stenographic notes of only one (1) of the two (2) witnesses. She was constantly given the chance to comply, the case was reset several times, and the retaking of the witnesses' testimonies was repeatedly ordered. All these caused years' worth of delay in the promulgation of the judgment in the criminal case. Certainly, respondent's conduct falls short of her mandate to properly and diligently perform her official duties. As an employee of the court, respondent's actions reflect upon the credibility of the institution she represents. Court employees are held to a higher standard, and everyone from the "highest magistrate to the lowliest clerk . . . are expected to abide scrupulously [by] the law." x x x Respondent's duty is categorical. She cannot use misplacing her original notes as an excuse, considering that the court has repeatedly allowed the retaking of testimonies.

3. ID.; ID.; 2017 REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GROSS NEGLECT OF DUTY; GROSS NEGLECT OF DUTY AS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL FROM SERVICE ON THE FIRST OFFENSE; ACCESSORY PENALTIES, ENUMERATED.— Under the 2017 Revised Rules on Administrative Cases in the Civil Service, gross neglect of duty is a grave offense punishable by dismissal from service on the first offense. The penalty of dismissal includes other accessory penalties: (1) cancellation of eligibility; (2) perpetual disqualification from holding any other public office; (3) prohibition from taking civil service examinations; and (4) forfeiture of retirement benefits. However, terminal leave benefits and personal contributions to retirement benefits system shall not be forfeited. Physical illness is not a mitigating circumstance in offenses punishable by dismissal from the service.

R E S O L U T I O N

***PER CURIAM*:**

A stenographer's failure to submit transcribed stenographic notes within the period prescribed by the court constitutes gross neglect of duty, punishable by dismissal from service.

This Court resolves an Administrative Complaint filed by Renato Nuezca (Nuezca) against Merlita R. Verceles (Verceles), Stenographer III of Branch 49, Regional Trial Court, Urdaneta City, Pangasinan for gross neglect of duty after her repeated failure to submit the transcript of stenographic notes on time.[1]

Nuezca is the father of the private complainant in Criminal Case No. U-12300, entitled *People v. Romeo Viernes*, a case of reckless imprudence resulting in serious physical injuries, which is pending before Branch 49 of the Regional Trial Court, Urdaneta City, Pangasinan.[2]

In a September 16, 2015 Letter-Complaint,[3] Nuezca filed an administrative case against Verceles.

Nuezca alleged that on August 18, 2005, the prosecution formally offered before the Regional Trial Court its evidence in Criminal Case No. U-12300. The defense did not present evidence. Thus, the case was deemed submitted for decision on July 30, 2009. The Branch Clerk of Court was directed to ensure that the transcript of stenographic notes were complete.[4]

Nuezca further narrated that on December 15, 2009, the Regional Trial Court ordered the retaking of testimonies since there were no transcript of stenographic notes on record. He claimed that on March 28, 2011, Verceles undertook to submit the complete transcript for the next scheduled hearing on

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[1] *Rollo*, pp. 2-3.

[2] *Id*. at 2.

[3] *Id*. at 2-3.

[4] *Id*. at 2.

May 2, 2011. However, she did not report to work on the day of the hearing.[5]

The case was postponed to June 16, 2011, then to August 29, 2011, and finally, to May 17, 2012.[6] On June 27, 2013, the trial court issued an Order[7] setting the retaking of the testimonies of witnesses Dr. Ferdinand Florendo (Dr. Florendo) and Tracy Sinagub (Sinagub) on August 29, 2013. Verceles was instructed anew "to retake the proceedings taken on April 24, 2003 and May 6, 2003."[8]

However, Verceles still failed to submit the complete transcript of stenographic notes and presented only that of Sinagub's testimony.[9] Hence, the trial court issued an Order[10] postponing the retaking of Dr. Florendo's testimony to November 21, 2013.

In the April 27, 2015 hearing, the Prosecutor moved that Presiding Judge Tita R. Villarin (Presiding Judge Villarin) inhibit from the case. Presiding Judge Villarin allegedly denied the Motion and instead postponed the hearing to October 16, 2015.[11]

In her Letter-Complaint, Nuezca prayed that Verceles be penalized for her neglect of duty and disregard of court orders.[12]

The documents Nuezca attached to his Letter-Complaint revealed that the Deputy City Prosecutor filed an Objection to the Order of Retaking of Testimony, a Motion to Cite for Contempt Court Stenographer Merlita R. Verceles, and a Motion to Inhibit Presiding Judge. The Deputy City Prosecutor alleged that Judge Villarin is Verceles' sister.[13]

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[5] *Id*.

[6] *Id*.

[7] *Id*. at 13.

[8] *Id*.

[9] *Id*. at 14 and 45.

[10] *Id*. at 14.

[11] *Id*. at 3.

[12] *Id*.

[13] *Id*. at 15.

In its April 4, 2016 Order, the Regional Trial Court forwarded the criminal case records to the Office of the Clerk of Court for reassignment.[14]

On October 19, 2015, the Office of the Chief Justice received the Letter-Complaint.[15] This was referred to the Office of the Court Administrator on December 7, 2015.[16]

On January 13, 2016, the Court Administrator directed Verceles to comment on the Complaint filed against her.[17] Verceles filed a Motion for Extension of Time to File Comment on May 23, 2016.[18]

In her Comment,[19] Verceles countered that she did not neglect her duty. She attributed her failure to submit the transcript of stenographic notes to her old age and deteriorating health. She claimed that her knees and back would ache, and that she had hearing difficulties, high blood pressure, and frequent migraine. She further claimed that Branch 49 had a small office space and no records room conducive for keeping the files needed, which was why she could not find her original notes despite repeated search. She added that she even searched her house to find them.[20]

Verceles further averred that she reported the matter to the Presiding Judge and their Legal Researcher, which led to the court's directive to retake the testimonies. She also attempted to seek assistance from the witness who testified before the court and the records office of the hospital involved. Unfortunately, she said, they did not keep a copy of the records either.[21]

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[14] *Id*.

[15] *Id*. at 2.

[16] *Id*. at 1.

[17] *Id*. at 5.

[18] *Id*. at 30.

[19] *Id*. at 6-10.

[20] *Id*. at 7-8.

[21] *Id*. at 8.

Verceles alleged that she started getting sick upon reaching the age of 45 or 50. However, she could not quit work since she was a single mother of two (2) children who did not finish school.[22]

While the case was pending, Verceles, on April 15, 2016, filed before the Court Administrator a Request for Optional Retirement.[23] She requested that the office allow her "to retire under the Optional Retirement Benefit of the Supreme Court effective July 1, 2016, for health reasons."[24] She attributed her "severe forgetfulness, difficulty in hearing, hypertension, back pains, knee pains, and others"[25] to her old age. She conceded that her illnesses hampered her work and resulted in her failure to do her work on time.[26]

Verceles stated that she turned 60 years old on January 13, 2016 and has served the trial court for more than 25 years since October 19, 1991.[27]

In his April 30, 2018 Report and Recommendation,[28] the Court Administrator recommended that Verceles be found guilty of gross neglect of duty and be dismissed from service, with forfeiture of all retirement benefits, except the money value of accrued leave credits.[29]

The Court Administrator found that Verceles' "explanations that she is already getting old, sickly and forgetful, and that she misplaced her transcript of stenographic notes are unacceptable."[30] He underscored how she had been previously

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[22] *Id*. at 9.

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

[24] *Id*. at 16.

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

[26] *Id*. at 17.

[27] *Id*. at 16.

[28] *Id*. at 44-46.

[29] *Id*. at 46.

[30] *Id*. at 45.

penalized by reprimand, a fine of ₱5,000.00, and a one (1)-year suspension in Administrative Matter Nos. P-06-2210, P-13-3104, and P-14-3228, respectively, for failing to transcribe the stenographic notes, among others.[31]

The sole issue for this Court's resolution is whether or not respondent Court Stenographer III Merlita R. Verceles should be dismissed from service for gross neglect of duty in failing to submit the transcript of stenographic notes in Criminal Case No. U-12300.

This Court adopts the findings and recommendations of the Court Administrator.

A stenographer is an officer of this Court who is burdened with great responsibilities. His or her neglect of duties may result in a delay in dispensing justice, as what happened in this case, which has been unjustly pending since 2009. This Court has previously explained the significance of the stenographer's task:

> A great number of "Inherited Cases" (those heard and tried by Judges but left undecided due to resignation, retirement, and transfer/promotion to new assignments) has accumulated and cannot be decided or resolved promptly by incumbent Judges appointed or designated to replace their predecessors because of lack of transcripts of stenographic notes caused by the death or the absence of the recording stenographers who have resigned or retired and whose whereabouts are unknown. This has delayed review of appealed cases as the records are transmitted without the required transcripts of stenographic notes.[32]

Respondent's duties greatly affect the courts' timely resolution of cases. Supreme Court Administrative Circular No. 24-90 directs court stenographers to attach the transcript to the case records not later than 20 days from the time the notes were taken:

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

[32] Supreme Court Administrative Circular No. 24-90 (1990).

Sec. 17. Stenographers — It shall be the duty of the stenographer who has attended a session of Court either in the morning or in the afternoon, to deliver to the Clerk of Court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case, and it shall likewise be the duty of the Clerk to demand that the stenographer comply with said duty. The Clerk of Court shall stamp the date on which notes are received by him. When such notes are transcribed, the transcript shall be delivered to the Clerk, duly initialed on each page thereof, to be attached to the records of the case.

(a) *All stenographers are required to transcribe all stenographic notes and to attach the transcripts to the record of the case not later than twenty (20) days from the time the notes are taken.* The attaching may be done by putting all said transcripts in a separate folder or envelope, which will then be joined to the record of the case.[33] (Emphasis supplied)

It was incumbent upon respondent to ensure that the transcript of stenographic notes was properly taken and expeditiously submitted, even without request of the court.

Moreover, respondent is bound by the Code of Conduct for Court Personnel.[34] Canon IV, Section 1 provides:

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.

We underscore that respondent took four (4) years to comply with the court's order to provide the transcribed stenographic notes. Even then, she completed the transcript of stenographic

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[33] Supreme Court Administrative Circular No. 24-90 (1990), amending Rule 136, Section 17 of the Rules of Court.

[34] Administrative Matter No. 03-06-13-SC (2004), Sec. 1 states:

SECTION 1. This Code of Conduct for Court Personnel shall apply to all personnel in the judiciary who are not justices or judges. Court personnel who are no longer employed in the Judiciary but who acquired, while still so employed, confidential information as defined in the second paragraph of Section 1 of Canon II on Confidentiality are subject to Section 4 thereof.

notes of only one (1) of the two (2) witnesses. She was constantly given the chance to comply, the case was reset several times, and the retaking of the witnesses' testimonies was repeatedly ordered. All these caused years' worth of delay in the promulgation of the judgment in the criminal case. Certainly, respondent's conduct falls short of her mandate to properly and diligently perform her official duties.

As an employee of the court, respondent's actions reflect upon the credibility of the institution she represents. Court employees are held to a higher standard, and everyone from the "highest magistrate to the lowliest clerk . . . are expected to abide scrupulously [by] the law."[35]

In *Rapsing v. Walse-Lutero*,[36] we discussed the administrative charge of neglect of duty:

> Simple neglect of duty is defined as the failure of an employee to give one's attention to a task expected of him or her. Gross neglect of duty is such neglect which, "from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare." In *GSIS v. Manalo*:
>
> Gross neglect of duty or gross negligence 'refers to negligence characterized by the 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 wil[l]fully 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*.' It denotes a *flagrant and culpable refusal or unwillingness of a person to perform a duty*. In cases involving public officials, gross negligence occurs when a *breach of duty is flagrant and palpable*.[37] (Emphasis in the original, citations omitted)

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[35] *Judge Perfecto v. Esidera*, 764 Phil. 384, 406 (2015) [Per J. Leonen, Second Division] *citing* J. Carpio, Dissenting Opinion in *Estrada v. Escritor*, 455 Phil. 411, 651 (2003) [Per J. Puno, *En Banc*].

[36] 808 Phil. 389 (2017) [Per J. Leonen, *En Banc*].

[37] *Id.* at 403.

Respondent's duty is categorical. She cannot use misplacing her original notes as an excuse, considering that the court has repeatedly allowed the retaking of testimonies.

Besides, this was not the first time that this has happened. The Court Administrator found that respondent has previously been penalized in three (3) different administrative cases for the same act. This exhibits a total absence of concern over the consequences of her lapses. This demonstrates a habit "so serious in its character as to endanger or threaten the public welfare[,]"[38] as it has caused undue delay in several cases before the Regional Trial Court.

In *Judge Absin v. Montalla*:[39]

> The Court has ruled, in a number of cases, that the failure to submit the TSNs within the period prescribed under Administrative Circular No. 24-90 constitutes gross neglect of duty. Gross neglect of duty is classified as a grave offense and punishable by dismissal even if for the first offense pursuant to Section 52 (A) (2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.
>
> This is not the first time that Montalla was charged with neglect of duty for delay in the submission of the TSNs. He was previously warned of a repetition of the same or similar infraction. . . .
>
> . . . . . .
>
> . . . His utter disregard of the court directives and the reminders from his superiors and his lapses in the performance of his duty as a court stenographer caused delay in the speedy disposition of the case. *This is no longer simple neglect of duty. Montalla, in repeatedly failing to submit the required TSNs for several years now, no longer deserves the compassion and understanding of the Court.*
>
> As a stenographer, Montalla should realize that the performance of his duty is essential to the prompt and proper administration of justice, and his inaction hampers the administration of justice and erodes public faith in the judiciary. The Court has expressed its dismay over the negligence and indifference of persons involved in the

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[38] *Id.*

[39] 667 Phil. 560 (2011) [*Per Curiam*, *En Banc*].

administration of justice. No less than the Constitution mandates that public officers must serve the people with utmost respect and responsibility. Public office is a public trust, and Montalla has without a doubt violated this trust by his failure to fulfill his duty as a court stenographer.[40] (Emphasis supplied, citations omitted)

Under the 2017 Revised Rules on Administrative Cases in the Civil Service, gross neglect of duty is a grave offense punishable by dismissal from service on the first offense.[41] The penalty of dismissal includes other accessory penalties: (1) cancellation of eligibility; (2) perpetual disqualification from holding any other public office; (3) prohibition from taking civil service examinations; and (4) forfeiture of retirement benefits.[42] However, terminal leave benefits and personal contributions to retirement benefits system shall not be forfeited.[43] Physical illness is not a mitigating circumstance in offenses punishable by dismissal from the service.[44]

As to her Request for Optional Retirement, Administrative Circular No. 24-90 is relevant:

5. No stenographer shall be allowed to resign from the service or allowed to retire optionally without having transcribed all transcript of stenographic notes taken by him [or her]. A stenographer due for compulsory retirement must submit to the Judge/Clerk all pending transcribed stenographic notes, three (3) months before retirement date.

No terminal leave or retirement pay shall be paid to a stenographer without a verified statement that all his [or her] transcript of

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[40] *Id*. at 564-565.

[41] RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017), Rule 10, Sec. 50(A)(2).

[42] RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017), Rule 10, Sec. 57(A).

[43] RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017), Rule 10, Sec. 57(A).

[44] RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017), Rule 10, Sec. 53.

stenographic notes have been transcribed and delivered to the proper court, confirmed by the Executive Judge of the Court concerned.[45]

We deny respondent's application for optional retirement. She is directed to clear her pending transcript of stenographic notes. She will not receive any form of payment from the court until there is a verified statement that all transcribed stenographic notes have been delivered to the court, to be confirmed by the Presiding Judge of Branch 49, Regional Trial Court, Urdaneta City, Pangasinan.

WHEREFORE, respondent Court Stenographer III Merlita R. Verceles is found **GUILTY** of gross neglect of duty and is **DISMISSED** from service for her repeated failure to submit the transcript of stenographic notes within reasonable time. She is **PERPETUALLY DISQUALIFIED** from holding any other public office.

Respondent's Request for Optional Retirement is **DENIED**. Her retirement benefits are **FORFEITED**. Moreover, she is directed to comply with pending responsibilities before Branch 49 of the Regional Trial Court, Urdaneta City, Pangasinan before she may receive any form of payment pertaining to benefits that are not forfeited.

Let copies of this Resolution be served on the Office of the Court Administrator for its information and guidance, and attached to respondent's personal record as Court Stenographer

SO ORDERED.

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

Jardeleza, J., on wellness leave.

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[45] Supreme Court Administrative Circular No. 24-90 (1990).

EN BANC

[G.R. No. 212719. June 25, 2019]

INMATES OF THE NEW BILIBID PRISON, MUNTINLUPA CITY, namely: VENANCIO A. ROXAS, SATURNINO V. PARAS, EDGARDO G. MANUEL, HERMINILDO V. CRUZ, ALLAN F. TEJADA, ROBERTO C. MARQUEZ, JULITO P. MONDEJAR, ARMANDO M. CABUANG, JONATHAN O. CRISANTO, EDGAR ECHENIQUE, JANMARK SARACHO, JOSENEL ALVARAN, and CRISENCIO NERI, JR., *petitioners, vs.* **SECRETARY LEILA M. DE LIMA, DEPARTMENT OF JUSTICE; and SECRETARY MANUEL A. ROXAS II, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT,** *respondents.* **ATTY. RENE A.V. SAGUISAG, SR.,** *petitioner-intervenor,* **WILLIAM M. MONTINOLA, FORTUNATO P. VISTO, and ARESENIO C. CABANILLA,** *petitioners-intervenors.*

[G.R. No. 214637. June 25, 2019]

REYNALDO D. EDAGO, PETER R. TORIDA, JIMMY E. ACLAO, WILFREDO V. OMERES, PASCUA B. GALLADAN, VICTOR M. MACOY, JR., EDWIN C. TRABUNCON, WILFREDO A. PATERNO, FEDERICO ELLIOT, and ROMEO R. MACOLBAS, *petitioners, vs.* **SECRETARY LEILA M. DE LIMA, DEPARTMENT OF JUSTICE; SECRETARY MANUEL A. ROXAS II, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT; ACTING DIRECTOR FRANKLIN JESUS B. BUCAYU, BUREAU OF CORRECTIONS; and JAIL CHIEF SUPERINTENDENT DIONY DACANAY MAMARIL, BUREAU OF JAIL MANAGEMENT AND PENOLOGY,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUISITES FOR JUDICIAL INQUIRY.—** It is well settled that no question involving the constitutionality or validity of a law or governmental act may be heard and decided unless the following requisites for judicial inquiry are present: (*a*) there must be an actual case or controversy calling for the exercise of judicial power; (*b*) the person challenging the act must have the standing to question the validity of the subject act or issuance; (*c*) the question of constitutionality must be raised at the earliest opportunity; and (*d*) the issue of constitutionality must be the very *lis mota* of the case.

2. **ID.; ID.; ID.; ID.; ID.; THERE IS AN ACTUAL CASE OR CONTROVERSY THAT IS RIPE FOR ADJUDICATION IN CASE AT BAR.—** There is an actual case or controversy in the case at bar because there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Respondents stand for the prospective application of the grant of GCTA, TASTM, and STAL while petitioners and intervenors view that such provision violates the Constitution and Article 22 of the RPC. The legal issue posed is ripe for adjudication as the challenged regulation has a direct adverse effect on petitioners and those detained and convicted prisoners who are similarly situated. There exists an immediate and/or threatened injury and they have sustained or are immediately in danger of sustaining direct injury as a result of the act complained of. In fact, while the case is pending, petitioners are languishing in jail. If their assertion proved to be true, their illegal confinement or detention in the meantime is oppressive. With the prisoners' continued incarceration, any delay in resolving the case would cause them great prejudice. Justice demands that they be released soonest, if not on time.

3. **ID.; ID.; ID.; ID.; ID.; PETITIONERS HAVE LEGAL STANDING SINCE THEY ARE DIRECTLY AFFECTED BY THE ASSAILED PROVISION OF THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT NO. (RA) 10592 (LAW AMENDING ARTICLES 29, 94, 97, 98 AND 99 OF THE REVISED PENAL CODE ON GOOD CONDUCT TIME ALLOWANCE).—** [P]etitioners are directly affected by

Section 4, Rule 1 of the IRR because they are prisoners currently serving their respective sentences at the NBP. They have a personal stake in the outcome of this case as their stay in prison will potentially be shortened (if the assailed provision of the IRR is declared unlawful and void) or their dates of release will be delayed (if R.A. No. 10592 is applied prospectively). It is erroneous to assert that the questioned provision has no direct adverse effect on petitioners since there were no GCTAs granted to them. There is none precisely because of the prospective application of R.A. No. 10592. It is a proof of the act complained of rather than an evidence that petitioners lack legal standing. Further, the submission of certified prison records is immaterial in determining whether or not petitioners' rights were breached by the IRR because, to repeat, the possible violation was already *fait accompli* by the issuance of the IRR. The prison records were merely furnished to show that respondents have prospectively applied R.A. No. 10592 and that petitioners will be affected thereby.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* AND PROHIBITION; NOT PROPER REMEDY TO ASSAIL THE VALIDITY OF THE SUBJECT IRR.— [A] petition for *certiorari* and prohibition is not an appropriate remedy to assail the validity of the subject IRR as it was issued in the exercise of respondents' rule-making or quasi-legislative function. Nevertheless, the Court has consistently held that "petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review, prohibit or nullify the acts of legislative and executive officials."

5. ID.; COURTS; HIERARCHY OF COURTS; A PETITION SEEKING TO DECLARE THE UNCONSTITUTIONALITY OF THE ASSAILED PROVISION OF THE SUBJECT IRR IS IN THE NATURE OF DECLARATORY RELIEF WHICH IS GENERALLY COGNIZABLE BY THE REGIONAL TRIAL COURT.— An action assailing the validity of an administrative issuance is one that is incapable of pecuniary estimation, which, under *Batas Pambansa Bilang* (*B.P. Blg.*) 129, the Regional Trial Court (*RTC*) has exclusive original jurisdiction. Further, a petition for declaratory relief filed before the RTC, pursuant to Section 1, Rule 63 of the *Rules*, is the proper remedy to question the validity of the IRR. Indeed, under Section 19(1) of *B.P. Blg.* 129, the question presented here is a matter incapable

of pecuniary estimation, which exclusively and originally pertained to the proper RTC. Fundamentally, there is no doubt that this consolidated case captioned as petition for *certiorari* and prohibition seeks to declare the unconstitutionality and illegality of Section 4 Rule 1 of the IRR; thus, partaking the nature of a petition for declaratory relief over which We only have appellate jurisdiction pursuant to Section 5(2)(a), Article VIII of the Constitution. In accordance with Section 1, Rule 63 of the *Rules*, the special civil action of declaratory relief falls under the exclusive jurisdiction of the RTC.

6. ID.; ID.; ID.; ID.; SPECIAL AND IMPORTANT REASONS IN CASE AT BAR WARRANT DIRECT RECOURSE TO THIS COURT.— Nevertheless, the judicial policy has been to entertain a direct resort to this Court in exceptional and compelling circumstances, such as cases of national interest and of serious implications, and those of transcendental importance and of first impression. As the petitions clearly and specifically set out special and important reasons therefor, We may overlook the *Rules*. Here, petitioners Edago *et al.* are correct in asserting that R.A. No. 10592 and its IRR affect the entire correctional system of the Philippines. Not only the social, economic, and moral well-being of the convicts and detainees are involved but also their victims and their own families, the jails, and the society at large. The nationwide implications of the petitions, the extensive scope of the subject matter, the upholding of public policy, and the repercussions on the society are factors warranting direct recourse to Us. Yet more than anything, there is an urgent necessity to dispense substantive justice on the numerous affected inmates. It is a must to treat this consolidated case with a circumspect leniency, granting petitioners the fullest opportunity to establish the merits of their case rather than lose their liberty on the basis of technicalities. It need not be said that while this case has been pending, their right to liberty is on the line. An extended period of detention or one that is beyond the period allowed by law violates the accused person's right to liberty. Hence, We shunt the rigidity of the rules of procedure so as not to deprive such birthright. The Court zealously guards against the curtailment of a person's basic constitutional and natural right to liberty. The right to liberty, which stands second only to life in the hierarchy of constitutional rights, cannot be lightly taken away. At its core, substantive

due process guarantees a right to liberty that cannot be taken away or unduly constricted, except through valid causes provided by law.

7. CRIMINAL LAW; REVISED PENAL CODE (RPC); UNDER ARTICLE 22 OF THE RPC, A PENAL LAW THAT IS FAVORABLE TO THE ACCUSED SHALL BE GIVEN RETROACTIVE EFFECT; RATIONALE.— Every new law has a prospective effect. Under Article 22 of the RPC, however, a penal law that is favorable or advantageous to the accused shall be given retroactive effect if he is not a habitual criminal. These are the rules, the exception, and the exception to the exception on the effectivity of laws. In criminal law, the principle *favorabilia sunt amplianda adiosa restrigenda* (penal laws which are favorable to the accused are given retroactive effect) is well entrenched. It has been sanctioned since the old Penal Code. x x x According to Mr. Chief Justice Manuel Araullo, the principle is "not as a right" of the offender, "but founded on the very principles on which the right of the State to punish and the commination of the penalty are based, and regards it not as an exception based on political considerations, but as a rule founded on principles of strict justice."

8. ID.; ID.; ID.; PENAL LAW, DEFINED; PENAL LAWS MENTIONED IN ARTICLE 22 OF THE RPC REFER TO SUBSTANTIVE LAWS, NOT PROCEDURAL RULES.— But what exactly is a penal law? A penal provision or statute has been consistently defined by jurisprudence as follows: A penal provision defines a crime or provides a punishment for one. Penal laws and laws which, while not penal in nature, have provisions defining offenses and prescribing penalties for their violation. Properly speaking, a statute is penal when it imposes punishment for an offense committed against the state which, under the Constitution, the Executive has the power to pardon. In common use, however, this sense has been enlarged to include within the term "penal statutes" all statutes which command or prohibit certain acts, and establish penalties for their violation, and even those which, without expressly prohibiting certain acts, impose a penalty upon their commission. Penal laws are those acts of the Legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment. The "penal laws" mentioned in Article 22 of the

RPC refer to *substantive* laws, not procedural rules. Moreover, the mere fact that a law contains penal provisions does not make it penal in nature.

9. ID.; ID.; ID.; ID.; WHILE RA 10592 DOES NOT DEFINE A CRIME OR PRESCRIBE A PENALTY, ITS PROVISIONS, HOWEVER HAVE THE PURPOSE AND EFFECT OF DIMINISHING PUNISHMENT ATTACHED TO THE CRIME AND ULTIMATELY BENEFICIAL TO PRISONERS; HENCE, CALLS FOR THE APPLICATION OF ARTICLE 22 OF THE RPC.— While R.A. No. 10592 does not define a crime/offense or provide/prescribe/establish a penalty as it addresses the rehabilitation component of our correctional system, its provisions have the purpose and effect of diminishing the punishment attached to the crime. The further reduction on the length of the penalty of imprisonment is, in the ultimate analysis, beneficial to the detention and convicted prisoners alike; hence, calls for the application of Article 22 of the RPC. The prospective application of the beneficial provisions of R.A. No. 10592 actually works to the disadvantage of petitioners and those who are similarly situated. It precludes the decrease in the penalty attached to their respective crimes and lengthens their prison stay; thus, making more onerous the punishment for the crimes they committed. Depriving them of time off to which they are justly entitled as a practical matter results in extending their sentence and increasing their punishment. Evidently, this transgresses the clear mandate of Article 22 of the RPC.

10. POLITICAL LAW; ADMINISTRATIVE LAW; LEGALITY OF THE IRR OF RA 10592; THE CREATION OF THE MANAGEMENT, SCREENING AND EVALUATION COMMITTEE (MSEC) DOES NOT JUSTIFY THE PROSPECTIVE APPLICATION OF RA 10592; AS RESPONDENTS WENT OUTSIDE THE BOUNDS OF THEIR LEGAL MANDATE WHEN THEY PROVIDED RULES BEYOND WHAT WAS CONTEMPLATED BY THE LAW, SECTION 4, RULE 1 OF THE SUBJECT IRR OF RA 10592 IS DECLARED INVALID.— Under the IRR of R.A. No. 10592, the MSECs are established to act as the recommending body for the grant of GCTA and TASTM. They are tasked to manage, screen and evaluate the behavior and conduct of a detention or convicted prisoner and to monitor and certify whether said prisoner has actually studied, taught or performed mentoring activities. The

creation of the MSEC, however, does not justify the prospective application of R.A. No. 10592. Nowhere in the amendatory law was its formation set as a precondition before its beneficial provisions are applied. What R.A. No. 10592 only provides is that the Secretaries of the DOJ and the DILG are authorized to promulgate rules and regulations on the classification system for good conduct and time allowances, as may be necessary to implement its provisions. Clearly, respondents went outside the bounds of their legal mandate when they provided for rules beyond what was contemplated by the law to be enforced. x x x Section 4, Rule 1 of the Implementing Rules and Regulations of Republic Act No. 10592 is **DECLARED** invalid insofar as it provides for the prospective application of the grant of good conduct time allowance, time allowance for study, teaching and mentoring, and special time allowance for loyalty.

LEONEN, *J., concurring opinion*:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW AS AN ASPECT OF JUDICIAL POWER, EXPLAINED.—** [T]he courts' authority to "settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights" is an aspect of judicial power that is anchored on Article VIII, Section 1 of the Constitution[.] x x x Judicial review, as an aspect of judicial power, is the competence to: (1) settle actual controversies and enforce rights conferred by law; and (2) determine grave abuse of discretion by any government instrumentality. Jurisprudence refers to these two (2) judicial powers as the courts' traditional and expanded powers of judicial review, respectively.

2. **ID.; ID.; ID.; ID.; TRADITIONAL POWER OF JUDICIAL REVIEW, ELABORATED; IN THE EXERCISE THEREOF, THE COURT PASSES UPON THE CONSTITUTIONALITY OF A STATUTE IF IT IS DIRECTLY AND NECESSARILY INVOLVED IN A JUSTICIABLE CONTROVERSY AND IS ESSENTIAL TO THE PROTECTION OF THE RIGHTS OF THE PARTIES CONCERNED.—** The courts' traditional power of judicial review applies whether the offense alleged violates a statute or the Constitution, or both. Clearly, the source of rights

that are legally demandable and enforceable may be a constitutional provision, a statute, or an administrative issuance. The traditional power of judicial review may not involve a constitutional question. Thus, a trial court may simply determine the facts based on the evidence presented, and interpret and apply the relevant law invoked. Similarly, the Supreme Court's original jurisdiction for *mandamus* may entail a reading of the relevant law and its application to a given set of facts. In such cases, when there is concurrent jurisdiction and when only a statute is involved, this Court will seriously inquire as to whether the judicial principle of respect for the hierarchy of courts should be applied. x x x In the exercise of our traditional power of judicial review for constitutional adjudication, this Court only passes upon the constitutionality of a statute if "it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned."

3. **ID.; ID.; ID.; ID.; ELEMENTS THAT MUST CONCUR FOR A CONTROVERSY TO BE DEEMED JUSTICIABLE.—** A controversy is deemed justiciable if the following are present: (1) an actual case or controversy over legal rights, which require the exercise of judicial power; (2) standing or *locus standi* to bring up the constitutional issue; (3) the constitutionality issue was raised at the earliest opportunity; and (4) resolving the constitutionality issue is essential to the disposition of the case or its *lis mota*. Additionally, an actual case or controversy is present when the issues raised are ripe for adjudication or the challenged statute has a direct, adverse effect on the party that raised its constitutionality. Absent an actual case or controversy, this Court's decision would be a mere advisory opinion that "is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law."

4. **ID.; ID.; ID.; ID.; THE COURT'S EXPANDED POWER OF JUDICIAL REVIEW REQUIRES A *PRIMA FACIE* SHOWING OF GRAVE ABUSE OF DISCRETION BY ANY GOVERNMENT BRANCH OR INSTRUMENTALITY; THIS POWER IS MORE EXPANSIVE THAN THE REMEDY OF *CERTIORARI* UNDER RULE 65 OF THE REVISED RULES OF COURT.—** [T]his Court's expanded power of judicial review requires a *prima facie* showing of grave abuse of discretion by any government branch or instrumentality. This expanded power is often mistaken for the remedy of *certiorari* under Rule 65 of the 1997 Revised

Rules of Civil Procedure. But the expanded power is decidedly more expansive than a Rule 65 petition, which is limited to the review of judicial and quasi-judicial acts. Nonetheless, despite this Court's broad power under its expanded power of judicial review, an actual case or controversy, or "a legally demandable and enforceable right[,] must exist as basis, and must be shown to have been violated" for the case to be justiciable.

5. ID.; CONSTITUTIONAL LAW; CONSTITUTIONALITY OF THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT NO. (RA) 10592 (LAW AMENDING ARTICLES 29, 94, 97, 98 AND 99 OF THE REVISED PENAL CODE ON GOOD CONDUCT TIME ALLOWANCE); RULE 1, SECTION 4 OF THE IRR VIOLATES THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE CONSTITUTION; REQUISITES FOR A CLASSIFICATION TO BE VALID, NOT COMPLIED WITH.— I also concur with the *ponencia* that Rule I, Section 4 of the Implementing Rules and Regulations of Republic Act No. 10592 violates the well-entrenched principle that laws are applied prospectively. Nonetheless, penal laws that are favorable to the accused are given retroactive effect, as contained in Article 22 of the Revised Penal Code. Moreover, Article 22 of the Revised Penal Code is not the sole basis for the invalidity of Republic Act No. 10592's prospective application. It also violates the inmates' constitutional rights to equal protection of the laws and against "cruel, degrading[,] or inhuman punishment." Equal protection is covered under the mantle of due process, as unfair discrimination goes against the very nature of justice and fair play. Equal protection demands that similar subjects be treated similarly; to do otherwise would be to confer an unwarranted favor to some at the expense of others who are similarly situated. The equal protection clause ensures equality, not identity of rights. Hence, it is not required for a statute to affect every single person the same way. Since a classification is a tacit recognition of an existing inequality or difference, its validity shall be upheld if it is based on a reasonable or rational basis[.] x x x Thus, a valid classification must contain the following requisites to hurdle the test of reasonableness: (1) it is based on substantial differences; (2) it is relevant to the purpose of the law; (3) it is not limited to existing conditions; and (4) it equally applies to all members of the same class. x x x [B]y directing a prospective

application of the statute, the Implementing Rules and Regulations distinguishes prisoners who were detained or convicted before Republic Act No. 10592 took effect from those who were detained or convicted after its effectivity. x x x [I]f the statute's intention was to "redeem and uplift valuable human material towards economic and social usefulness[,]" there was no reasonable basis to distinguish between the detained or convicted prisoners before and after Republic Act No. 10592 took effect. Not only was the distinction irrelevant to the statute's purpose, it also unjustly treats similarly situated prisoners under different standards, all because it used the arbitrary metric of when they were detained or convicted.

6. ID.; ID.; ID.; THE UNREASONABLE DISCRIMINATION CREATED BY THE ASSAILED IRR ALSO VIOLATES PETITIONERS' RIGHTS AGAINST CRUEL, DEGRADING OR INHUMAN PUNISHMENT; RULE 1, SECTION 4 OF THE IRR MUST BE STRUCK DOWN.— [T]he unreasonable discrimination created by the law's Implementing Rules and Regulations violates petitioners' right against "cruel, degrading[,] or inhuman punishment." Republic Act No. 10592 aims to uphold the State policy of restorative and compassionate justice by promoting prisoner rehabilitation and successful reintegration into mainstream society. But despite its avowed purpose, it capriciously denies the same opportunity of rehabilitation and reintegration to a big segment of the inmate population. This blatant discrimination amounts to a cruel and unusual punishment, creating a disproportionate impact on inmates who were detained or incarcerated prior to Republic Act No. 10592's enactment. They end up serving sentences lengthier than inmates who were convicted after Republic Act No. 10592 took effect, despite committing similar crimes. Although not a penalty, the prospective application of Republic Act No. 10592 penalizes inmates by withholding from them the benefits of the good conduct time credits without any justifiable reason, squarely placing it under the constitutional ban for being "flagrantly and plainly oppressive[.]" Finally, the prospective application of Republic Act No. 10592 does not advance its guiding policy of restorative and compassionate justice. This is because it implies that all inmates detained or convicted prior to its effectivity can no longer be rehabilitated for a successful reintegration into society, effectively trampling upon their dignity

as human beings. As such, Section 4 of the Implementing Rules and Regulations of Republic Act No. 10592 must be struck down, and its retroactive application be allowed to benefit prisoners who are not habitual criminals.

APPEARANCES OF COUNSEL

Jose P. Villamor, Jr. for petitioners in G.R. No. 214637.

Michael J. Evangelista for petitioners in G.R. No. 212719

Free Legal Assistance Group (FLAG) for petitioners-in-intervention.

The Solicitor General for respondents.

D E C I S I O N

PERALTA, *J.*:

The sole issue for resolution in these consolidated cases[1] is the legality of Section 4, Rule 1 of the Implementing Rules and Regulations (*IRR*) of Republic Act (*R.A.*) No. 10592,[2] which states:

SECTION 4. *Prospective Application*. — Considering that these Rules provide for new procedures and standards of behavior for the grant of good conduct time allowance as provided in Section 4 of Rule V hereof and require the creation of a Management, Screening and Evaluation Committee (MSEC) as provided in Section 3 of the same Rule, the grant of good conduct time allowance under Republic Act No. 10592 shall be prospective in application.

The grant of time allowance of study, teaching and mentoring and of special time allowance for loyalty shall also be prospective in application as these privileges are likewise subject to the management, screening and evaluation of the MSEC.[3]

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[1] G.R. No. 212719 and G.R. No. 214637 were consolidated per Resolution dated June 16, 2015 (*Rollo* [G.R. No. 214637], pp. 281-284).

[2] *AN ACT AMENDING ARTICLES 29, 94, 97, 98 AND 99 OF ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE.*

[3] *Rollo* (G.R. No. 212719), p. 46; *rollo* (G.R. No. 214637), p. 220.

The Case

On May 29, 2013, then President Benigno S. Aquino III signed into law R.A. No. 10592, amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, or the *Revised Penal Code* (*RPC*).[4] For reference, the modifications are underscored as follows:

ART. 29. *Period of preventive imprisonment deducted from term of imprisonment*. — Offenders **or accused** who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing **after being informed of the effects thereof and with the assistance of counsel** to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:

1. When they are recidivists, or have been convicted previously twice or more times of any crime; and

2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall **do so in writing with the assistance of a counsel and shall** be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment.

Credit for preventive imprisonment for the penalty of *reclusion perpetua* shall be deducted from thirty (30) years.

Whenever an accused has undergone preventive imprisonment for a period equal to the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. **Computation of preventive imprisonment for purposes of immediate release under this paragraph shall be the actual period of detention with good conduct time allowance: *Provided*,**

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[4] R.A. No. 10592 took effect on June 6, 2013 (See *Rollo* [G.R. No. 212719], pp. 25, 29, 188, 623 and *rollo* [G.R. No. 214637], p. 415).

***however*, That if the accused is absent without justifiable cause at any stage of the trial, the court may *motu proprio* order the rearrest of the accused: *Provided, finally*, That recidivists, habitual delinquents, escapees and persons charged with heinous crimes are excluded from the coverage of this Act.** In case the maximum penalty to which the accused may be sentenced is *destierro*, he shall be released after thirty (30) days of preventive imprisonment.

ART. 94. *Partial extinction of criminal liability.* — Criminal liability is extinguished partially:

1. By conditional pardon;

2. By commutation of the sentence; and

3. For good conduct allowances which the culprit may earn while he is **undergoing preventive imprisonment or** serving his sentence.

ART. 97. *Allowance for good conduct.* — The good conduct of any **offender qualified for credit for preventive imprisonment pursuant to Article 29 of this Code, or of any convicted** prisoner in any penal institution, **rehabilitation or detention center or any other local jail** shall entitle him to the following deductions from the period of his sentence:

1. During the first two years of (his) imprisonment, he shall be allowed a deduction of **twenty** days for each month of good behavior **during detention**;

2. During the third to the fifth year, inclusive, of his imprisonment, he shall be allowed a deduction of **twenty-three** days for each month of good behavior **during detention**;

3. During the following years until the tenth year, inclusive, of his imprisonment, he shall be allowed a deduction of **twenty-five** days for each month of good behavior **during detention**;

4. During the eleventh and successive years of his imprisonment, he shall be allowed a deduction of **thirty** days for each month of good behavior **during detention**; and

5. At any time during the period of imprisonment, he shall be allowed another deduction of fifteen days, in addition to numbers one to four hereof, for each month of study, teaching or mentoring service time rendered.

An appeal by the accused shall not deprive him of entitlement to the above allowances for good conduct.

ART. 98. *Special time allowance for loyalty*.— A deduction of one fifth of the period of his sentence shall be granted to any prisoner who, having evaded **his preventive imprisonment or** the service of his sentence under the circumstances mentioned in Article 158 of this Code, gives himself up to the authorities within 48 hours following the issuance of a proclamation announcing the passing away of the calamity or catastrophe referred to in said article. **A deduction of two-fifths of the period of his sentence shall be granted in case said prisoner chose to stay in the place of his confinement notwithstanding the existence of a calamity or catastrophe enumerated in Article 158 of this Code.**

This Article shall apply to any prisoner whether undergoing preventive imprisonment or serving sentence.

ART. 99. *Who grants time allowances*.— Whenever lawfully justified, the **Director of the Bureau of Corrections, the Chief of the Bureau of Jail Management and Penology and/or the Warden of a provincial, district, municipal or city jail** shall grant allowances for good conduct. Such allowances once granted shall not be revoked. (Emphases ours)

Pursuant to the amendatory law, an IRR was jointly issued by respondents Department of Justice (*DOJ*) Secretary Leila M. De Lima and Department of the Interior and Local Government (*DILG*) Secretary Manuel A. Roxas II on March 26, 2014 and became effective on April 18, 2014.[5] Petitioners and intervenors assail the validity of its Section 4, Rule 1 that directs the prospective application of the grant of good conduct time allowance (*GCTA*), time allowance for study, teaching and mentoring (*TASTM*), and special time allowance for loyalty (*STAL*) mainly on the ground that it violates Article 22 of the RPC.[6]

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[5] *Rollo* (G.R. No. 212719), pp. 21, 25, 188, 623; *rollo* (G.R. No. 214637), pp. 12, 18, 241, 415.

[6] **Article 22.** *Retroactive effect of penal laws.* — Penal Laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

G.R. No. 212719

On June 18, 2014, a Petition for *Certiorari* and Prohibition (with Prayer for the Issuance of a Preliminary Injunction)[7] was filed against respondents DOJ Secretary De Lima and DILG Secretary Roxas by Atty. Michael J. Evangelista acting as the attorney-in-fact[8] of convicted prisoners in the New Bilibid Prison (*NBP*), namely: Venancio A. Roxas, Saturnino V. Paras, Edgardo G. Manuel, Herminildo V. Cruz, Allan F. Tejada, Roberto C. Marquez, Julito P. Mondejar, Armando M. Cabuang, Jonathan O. Crisanto, Edgar Echenique, Janmark Saracho, Josenel Alvaran, and Crisencio Neri, Jr. (*Roxas et al.*). Petitioners filed the case as real parties-in-interest and as representatives of their member organizations and the organizations' individual members, as a class suit for themselves and in behalf of all who are similarly situated. They contend that the provisions of R.A. No. 10592 are penal in nature and beneficial to the inmates; hence, should be given retroactive effect in accordance with Article 22 of the RPC. For them, the IRR contradicts the law it implements. They are puzzled why it would be complex for the Bureau of Corrections (*BUCOR*) and the Bureau of Jail Management and Penology (*BJMP*) to retroactively apply the law when the prisoners' records are complete and the distinctions between the pertinent provisions of the RPC and R.A. No. 10592 are easily identifiable. Petitioners submit that the simple standards added by the new law, which are matters of record, and the creation of the Management, Screening and Evaluation Committee (*MSEC*) should not override the constitutional guarantee of the rights to liberty and due process of law aside from the principle that penal laws beneficial to the accused are given retroactive effect.

Almost a month after, or on July 11, 2014, Atty. Rene A.V. Saguisag, Sr. filed a Petition (In Intervention).[9] He incorporates

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[7] *Rollo* (G.R. No. 212719), pp. 3-45.

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

[9] *Id*. at 144-148.

by reference the Roxas *et al*. petition, impleads the same respondents, and adds that nowhere from the legislative history of R.A. No. 10592 that it intends to be prospective in character. On July 22, 2014, the Court resolved to grant the leave to intervene and require the adverse parties to comment thereon.[10]

Another Petition-in-Intervention[11] was filed on October 21, 2014. This time, the Free Legal Assistance Group (*FLAG*) served as counsel for William M. Montinola, Fortunato P. Visto, and Arsenio C. Cabanilla (*Montinola et al.*), who are also inmates of the NBP. The petition argues that Section 4, Rule I of the IRR is facially void for being contrary to the equal protection clause of the 1987 Constitution; it discriminates, without any reasonable basis, against those who would have been benefited from the retroactive application of the law; and is also *ultra vires*, as it was issued beyond the authority of respondents to promulgate. In a Resolution dated November 25, 2014, We required the adverse parties to comment on the petition-in-intervention.[12]

On January 30, 2015, the Office of the Solicitor General (*OSG*) filed a Consolidated Comment[13] to the Petition of Roxas *et al.* and Petition-in-Intervention of Atty. Saguisag, Sr. More than two years later, or on July 7, 2017, it filed a Comment[14] to the Petition-in-Intervention of Montinola *et al.*

G.R. No. 214637

On October 24, 2014, a Petition for *Certiorari* and Prohibition[15] was filed by Reynaldo D. Edago, Peter R. Torida, Jimmy E. Aclao, Wilfredo V. Omeres, Pascua B. Galladan, Victor M.

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[10] *Id*. at 152-153-C.

[11] *Id*. at 186-193.

[12] *Id*. at 202-203-C.

[13] *Id*. at 264-279.

[14] *Id*. at 622-643; *rollo* (G.R. No. 214637), pp. 414-433.

[15] *Rollo* (G.R. No. 214637), pp. 3-80.

Macoy, Jr., Edwin C. Trabuncon, Wilfredo A. Paterno, Federico Elliot, and Romeo R. Macolbas (*Edago et al.*), who are all inmates at the Maximum Security Compound of the NBP, against DOJ Secretary De Lima, DILG Secretary Roxas, BUCOR Acting Director Franklin Jesus B. Bucayu, and BJMP Chief Superintendent (Officer-in-Charge) Diony Dacanay Mamaril. The grounds of the petition are as follows:

A.

SECTION 4, RULE I OF THE IRR PROVIDING FOR A PROSPECTIVE APPLICATION OF THE PROVISIONS OF R.A. 10592 WAS ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION AND THEREBY VOID AND ILLEGAL FOR BEING CONTRARY AND ANATHEMA TO R.A. 10592.

a. R.A. 10592 does not state that its provisions shall have prospective application.

b. Section 4 of the IRR of R.A. 10592 is contrary to Article 22 of the Revised Penal Code providing that penal laws that are beneficial to the accused shall have retroactive application.

c. Section 4, Rule I of the IRR contravenes public policy and the intent of Congress when it enacted R.A. 10592.

B.

SECTION 4, RULE I OF THE IRR WAS ISSUED BY RESPONDENTS WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BECAUSE IT IS PATENTLY UNCONSTITUTIONAL.

a. Section 4, Rule I of the IRR violates the Equal Protection Clause of the Constitution.

b. Section 4, Rule I of the IRR violates substantive due process.[16]

Per Resolution[17] dated November 11, 2014, respondents were ordered to file their comment to the petition. In compliance,

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

[17] *Id*. at 142-144.

BJMP Chief Mamaril filed a Comment[18] on December 10, 2014, while the OSG did the same on February 9, 2015[19] in behalf of all the respondents.

Subsequently, Edago *et al*. filed a Motion with Leave of Court to File and Admit Reply,[20] attaching therein said Reply. On July 28, 2015, We granted the motion and noted the Reply.[21]

The Court's Ruling

The petition is granted.

Procedural Matters

Actual case or controversy

Respondents contend that the petition of Edago *et al.* did not comply with all the elements of justiciability as the requirement of an actual case or controversy *vis-a-vis* the requirement of ripeness has not been complied with. For them, the claimed injury of petitioners has not ripened to an actual case requiring this Court's intervention: *First*, the MSEC has not been constituted yet so there is effectively no authority or specialized body to screen, evaluate and recommend any applications for time credits based on R.A. No. 10592. *Second*, none of petitioners has applied for the revised credits, making their claim of injury premature, if not anticipatory. And *third*, the prison records annexed to the petition are neither signed nor certified by the BUCOR Director which belie the claim of actual injury resulting from alleged extended incarceration. What petitioners did was they immediately filed this case after obtaining their prison records and computing the purported application of the revised credits for GCTA under R.A. No. 10592.

We disagree.

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[18] *Id*. at 163-215.

[19] *Id*. at 238-268.

[20] *Id*. at 285-334.

[21] *Id* at 335-336.

It is well settled that no question involving the constitutionality or validity of a law or governmental act may be heard and decided unless the following requisites for judicial inquiry are present: (*a*) there must be an actual case or controversy calling for the exercise of judicial power; (*b*) the person challenging the act must have the standing to question the validity of the subject act or issuance; (*c*) the question of constitutionality must be raised at the earliest opportunity; and (*d*) the issue of constitutionality must be the very *lis mota* of the case.[22] As to the requirement of actual case or controversy, the Court stated in *Province of North Cotabato, et al. v. Gov't. of the Rep. of the Phils. Peace Panel on Ancestral Domain (GRP), et al.*:[23]

> The power of judicial review is limited to actual cases or controversies. Courts decline to issue advisory opinions or to resolve hypothetical or feigned problems, or mere academic questions. The limitation of the power of judicial review to actual cases and controversies defines the role assigned to the judiciary in a tripartite allocation of power, to assure that the courts will not intrude into areas committed to the other branches of government.
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> An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence, x x x.
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> Related to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. He must show that he has sustained or is

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[22] *Ocampo, et al. v. Rear Admiral Enriquez, et al.*, 798 Phil. 227, 287-288 (2016).

[23] 589 Phil. 387 (2008).

immediately in danger of sustaining some direct injury as a result of the act complained of.[24]

There is an actual case or controversy in the case at bar because there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Respondents stand for the prospective application of the grant of GCTA, TASTM, and STAL while petitioners and intervenors view that such provision violates the Constitution and Article 22 of the RPC. The legal issue posed is ripe for adjudication as the challenged regulation has a direct adverse effect on petitioners and those detained and convicted prisoners who are similarly situated. There exists an immediate and/or threatened injury and they have sustained or are immediately in danger of sustaining direct injury as a result of the act complained of. In fact, while the case is pending, petitioners are languishing in jail. If their assertion proved to be true, their illegal confinement or detention in the meantime is oppressive. With the prisoners' continued incarceration, any delay in resolving the case would cause them great prejudice. Justice demands that they be released soonest, if not on time.

There is no need to wait and see the actual organization and operation of the MSEC. Petitioners Edago, *et al.* correctly invoked Our ruling in *Pimentel, Jr. v. Hon. Aguirre*.[25] There, We dismissed the novel theory that people should wait for the implementing evil to befall on them before they could question acts that are illegal or unconstitutional, and held that "[by] the mere enactment of the questioned law or the approval of the

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[24] *Id*. at 480-481.

[25] 391 Phil. 84 (2000). The case was cited in *John Hay Peoples Alternative Coalition v. Lim*, 460 Phil. 530, 546 (2003); *La Bugal-B'laan Tribal Asso., Inc. v. Ramos*, 486 Phil. 754, 789-790 (2004); *Didipio Earth-Savers' Multi-Purpose Ass'n., Inc. v. Sec. Gozun*, 520 Phil. 457, 472 (2006); *Province of North Cotabato, et al. v. Gov't. of the Rep. of the Phils. Peace Panel on Ancestral Domain (GRP), et al., supra* note 23, at 483-484; and *Chamber of Real Estate and Builders' Ass'n., Inc. v. Hon. Executive Sec. Romulo, et al.*, 628 Phil. 508, 524 (2010).

challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act." Similar to *Pimentel, Jr.*, the real issue in this case is whether the Constitution and the RPC are contravened by Section 4, Rule 1 of the IRR, not whether they are violated by the acts implementing it. Concrete acts are not necessary to render the present controversy ripe.[26] An actual case may exist even in the absence of tangible instances when the assailed IRR has actually and adversely affected petitioners. The mere issuance of the subject IRR has led to the ripening of a judicial controversy even without any other overt act. If this Court cannot await the adverse consequences of the law in order to consider the controversy actual and ripe for judicial intervention,[27] the same can be said for an IRR. Here, petitioners need not wait for the creation of the MSEC and be individually rejected in their applications. They do not need to actually apply for the revised credits, considering that such application would be an exercise in futility in view of respondents' insistence that the law should be prospectively applied. If the assailed provision is indeed unconstitutional and illegal, there is no better time than the present action to settle such question once and for all.[28]

Legal standing

We do not subscribe to respondents' supposition that it is the Congress which may claim any injury from the alleged executive encroachment of the legislative function to amend, modify or repeal laws and that the challenged acts of respondents have no direct adverse effect on petitioners, considering that based on records, there was no GCTA granted to them.

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[26] See *Province of North Cotabato, et al. v. Gov't. of the Rep. of the Phils. Peace Panel on Ancestral Domain (GRP), et al., supra* note 23, at 483-484.

[27] See *Didipio Earth-Savers' Multi-Purpose Assoc., Inc. v. Sec. Gozun, supra* note 25.

[28] See *Chamber of Real Estate and Builders' Assoc., Inc. v. Hon. Executive Sec. Romulo, et al., supra* note 25.

It is a general rule that every action must be prosecuted or defended in the name of the real party-in-interest, who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.

Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest." "To qualify a person to be a real party-in-interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced."

"Legal standing" or *locus standi* calls for more than just a generalized grievance. The concept has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.

A party challenging the constitutionality of a law, act, or statute must show "not only that the law is invalid, but also that he has sustained or is in immediate, or imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way." It must [be] shown that he has been, or is about to be, denied some right or privilege to which he is lawfully entitled, or that he is about to be subjected to some burdens or penalties by reason of the statute complained of.[29]

In this case, petitioners are directly affected by Section 4, Rule 1 of the IRR because they are prisoners currently serving their respective sentences at the NBP. They have a personal stake in the outcome of this case as their stay in prison will potentially be shortened (if the assailed provision of the IRR

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[29] *Rosales, et al. v. Energy Regulatory Board (ERC), et al.*, 783 Phil. 774, 788 (2016), citing *Ferrer, Jr. v. Mayor Bautista, et al.*, 762 Phil. 233, 248-249 (2015).

is declared unlawful and void) or their dates of release will be delayed (if R.A. No. 10592 is applied prospectively). It is erroneous to assert that the questioned provision has no direct adverse effect on petitioners since there were no GCTAs granted to them. There is none precisely because of the prospective application of R.A. No. 10592. It is a proof of the act complained of rather than an evidence that petitioners lack legal standing. Further, the submission of certified prison records is immaterial in determining whether or not petitioners' rights were breached by the IRR because, to repeat, the possible violation was already *fait accompli* by the issuance of the IRR. The prison records were merely furnished to show that respondents have prospectively applied R.A. No. 10592 and that petitioners will be affected thereby.

Propriety of legal remedy:

Respondents argue that the petitions for *certiorari* and prohibition, as well as the petitions-in-intervention, should be dismissed because such petitions are proper only against a tribunal, board or officer exercising judicial or quasi-judicial functions. Section 4, Rule 1 of the IRR is an administrative issuance of respondents made in the exercise of their rule-making or quasi-legislative functions.

True, a petition for *certiorari* and prohibition is not an appropriate remedy to assail the validity of the subject IRR as it was issued in the exercise of respondents' rule-making or quasi-legislative function. Nevertheless, the Court has consistently held that "petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review, prohibit or nullify the acts of legislative and executive officials."[30] In *Araullo v. Aquino III*,[31] former Associate Justice, now Chief Justice, Lucas P. Bersamin, explained the remedies of *certiorari* and prohibition, thus:

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[30] *Tañada v. Angara*, 338 Phil. 546, 575 (1997); *Ermita v. Aldecoa-Delorino*, 666 Phil. 122, 132 (2011).

[31] *Araullo v. Aquino III*, 737 Phil. 457 (2014).

What are the remedies by which the grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government may be determined under the Constitution?

The present *Rules of Court* uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. These are the special civil actions for *certiorari* and prohibition, and both are governed by Rule 65. A similar remedy of *certiorari* exists under Rule 64, but the remedy is expressly applicable only to the judgments and final orders or resolutions of the Commission on Elections and the Commission on Audit.

The ordinary nature and function of the writ of *certiorari* in our present system are aptly explained in *Delos Santos v. Metropolitan Bank and Trust Company*:

> In the common law, from which the remedy of *certiorari* evolved, the writ of *certiorari* was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the record of a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority. The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available. If the inferior court acted without authority, the record was then revised and corrected in matters of law. The writ of *certiorari*was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.
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> The concept of the remedy of *certiorari* in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of *certiorari* is largely regulated by laying down the instances or situations in the *Rules of Court* in which a superior court may issue the writ of *certiorari* to an inferior court or officer. Section 1, Rule 65 of the *Rules of Court* compellingly provides the requirements for that purpose, *viz.*:
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> The sole office of the writ of *certiorari* is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

Although similar to prohibition in that it will lie for want or excess of jurisdiction, *certiorari* is to be distinguished from prohibition by the fact that it is a corrective remedy used for the re-examination of some action of an inferior tribunal, and is directed to the cause or proceeding in the lower court and not to the court itself, while prohibition is a preventative remedy issuing to restrain future action, and is directed to the court itself. The Court expounded on the nature and function of the writ of prohibition in *Holy Spirit Homeowners Association, Inc. v. Defensor*:

> A petition for prohibition is also not the proper remedy to assail an IRR issued in the exercise of a quasi-legislative function. Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Prohibition lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions. Generally, the purpose of a writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. Prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters clearly within its cognizance the inferior court transgresses the bounds prescribed to it by the law, or where there is no adequate

> remedy available in the ordinary course of law by which such relief can be obtained. Where the principal relief sought is to invalidate an IRR, petitioners' remedy is an ordinary action for its nullification, an action which properly falls under the jurisdiction of the Regional Trial Court. In any case, petitioners' allegation that "respondents are performing or threatening to perform functions without or in excess of their jurisdiction" may appropriately be enjoined by the trial court through a writ of injunction or a temporary restraining order.

With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions.* This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.

Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.

Necessarily, in discharging its duty under Section 1, *supra*, to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.[32]

In view of the foregoing, We shall proceed to discuss the substantive issues raised herein so as to finally resolve the question on the validity of Section 4, Rule 1 of the IRR, which

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[32] *Id*. at 528-531. (Citations omitted; italics in the original)

is purely legal in nature. This is also because of the public importance of the issues raised,[33] and the interest of substantial justice,[34] not to mention the absence of any dispute as to any underlying fact.[35]

Hierarchy of courts

Respondents contend that the petition for *certiorari* and prohibition, as well as the petitions-in-intervention, should still be dismissed for failure to observe the rule on hierarchy of courts. According to them, this Court's jurisdiction over actions assailing the validity of administrative issuances is primarily appellate in nature by virtue of Section 5(2)(a), Article VIII of the Constitution.[36] An action assailing the validity of an administrative issuance is one that is incapable of pecuniary estimation, which, under *Batas Pambansa Bilang* (*B.P. Blg.*) 129, the Regional Trial Court (*RTC*) has exclusive original jurisdiction. Further, a petition for declaratory relief filed before

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[33] See *GMA Network, Inc. v. COMELEC*, 742 Phil. 174, 210 (2014), citing *Dela Llana v. The Chairperson, Commission on Audit, et al.*, 681 Phil. 186, 193-195 (2012).

[34] See *The Chairman and Executive Director, Palawan Council for Sustainable Development, et al. v. Lim*, 793 Phil. 690, 698-701 (2016); *Quinto, et al. v. COMELEC*, 621 Phil. 236, 259-260 (2009); and *Metropolitan Bank and Trust Co., Inc. v. National Wages and Productivity Commission*, 543 Phil. 318, 328-332 (2007).

[35] *Gios-Samar, Inc., represented by its Chairperson Gerardo M. Malinao v. Department of Transportation and Communications, and Civil Aviation Authority of the Philippines*, G.R. No. 217158, March 12, 2019.

[36] SECTION 5. The Supreme Court shall have the following powers:

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(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

x x x x x x x x x

the RTC, pursuant to Section 1, Rule 63 of the *Rules*, is the proper remedy to question the validity of the IRR.[37]

Indeed, under Section 19(1) of *B.P. Blg.* 129, the question presented here is a matter incapable of pecuniary estimation, which exclusively and originally pertained to the proper RTC.[38] Fundamentally, there is no doubt that this consolidated case captioned as petition for *certiorari* and prohibition seeks to declare the unconstitutionality and illegality of Section 4 Rule 1 of the IRR; thus, partaking the nature of a petition for declaratory relief over which We only have appellate jurisdiction pursuant to Section 5(2)(a), Article VIII of the Constitution. In accordance with Section 1, Rule 63 of the *Rules*, the special civil action of declaratory relief falls under the exclusive jurisdiction of the RTC.

Nevertheless, the judicial policy has been to entertain a direct resort to this Court in exceptional and compelling circumstances, such as cases of national interest and of serious implications, and those of transcendental importance and of first impression.[39] As the petitions clearly and specifically set out special and important reasons therefor, We may overlook the *Rules*. Here, petitioners Edago *et al.* are correct in asserting that R.A. No. 10592 and its IRR affect the entire correctional system of the

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[37] **Section 1.** *Who may file petition.* — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

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[38] See *The Chairman and Executive Director, Palawan Council for Sustainable Development, et al. v. Lim, supra* note 34.

[39] See *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018; *Clark Investors and Locators Ass'n., Inc. v. Sec. of Finance, et al.*, 763 Phil. 79, 94 (2015); and *Holy Spirit Homeowners Association, Inc. v. Sec. Defensor*, 529 Phil. 573, 586 (2006).

Philippines. Not only the social, economic, and moral well-being of the convicts and detainees are involved but also their victims and their own families, the jails, and the society at large. The nationwide implications of the petitions, the extensive scope of the subject matter, the upholding of public policy, and the repercussions on the society are factors warranting direct recourse to Us.

Yet more than anything, there is an urgent necessity to dispense substantive justice on the numerous affected inmates. It is a must to treat this consolidated case with a circumspect leniency, granting petitioners the fullest opportunity to establish the merits of their case rather than lose their liberty on the basis of technicalities.[40] It need not be said that while this case has been pending, their right to liberty is on the line. An extended period of detention or one that is beyond the period allowed by law violates the accused person's right to liberty.[41] Hence, We shunt the rigidity of the rules of procedure so as not to deprive such birthright.[42] The Court zealously guards against the curtailment of a person's basic constitutional and natural right to liberty.[43] The right to liberty, which stands second only to life in the hierarchy of constitutional rights, cannot be lightly taken away.[44] At its core, substantive due process guarantees

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[40] See *Five Star Mktg. Co., Inc. v. Booc*, 561 Phil. 167, 184 (2007).

[41] See *Gov't. of Hongkong Special Administrative Region v. Hon. Olalia, Jr.*, 550 Phil. 63 (2007) and *Integrated Bar of the Philippines Pangasinan Legal Aid v. Department of Justice*, G.R. No. 232413, July 25, 2017, 832 SCRA 396.

[42] See *Bongalon v. People*, 707 Phil. 11, 19 (2013).

[43] See *People v. De los Santos*, 277 Phil. 493, 502 (1991). It is not amiss to point further that aside from being constitutionally protected, the right to liberty is recognized by the Universal Declaration of Human Rights (*UDHR*) and the International Covenant on Civil and Political Rights (*ICCPR*), both of which the Philippines is a signatory (*See Secretary of National Defense v. Manalo, et al.*, 589 Phil 1, 51 [2008] and *Barbieto v. The Hon. Court of Appeals, et al.*, 619 Phil. 819, 840 [2009]).

[44] *Quidet v. People*, 632 Phil. 1, 12 (2010); *People v. Jesalva*, 811 Phil. 299, 307 (2017); *Rimando v. People*, G.R. No. 229701, November 29, 2017;

a right to liberty that cannot be taken away or unduly constricted, except through valid causes provided by law.[45]

Substantive Issues

Every new law has a prospective effect. Under Article 22 of the RPC, however, a penal law that is favorable or advantageous to the accused shall be given retroactive effect if he is not a habitual criminal. These are the rules, the exception, and the exception to the exception on the effectivity of laws.[46]

In criminal law, the principle *favorabilia sunt amplianda adiosa restrigenda* (penal laws which are favorable to the accused are given retroactive effect) is well entrenched.[47] It has been sanctioned since the old Penal Code.[48]

> x x x as far back as the year 1884, when the Penal Code took effect in these Islands until the 31st of December, 1931, the principle underlying our laws granting to the accused in certain cases an exception to the general rule that laws shall not be retroactive when the law in question favors the accused, has evidently been carried over into the Revised Penal Code at present in force in the Philippines through article 22 x x x. This is an exception to the general rule that all laws are prospective, not retrospective, variously contained in the following maxims: *Lex prospicit, non respicit* (the law looks

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People v. Gimpaya, G.R. No. 227395, January 10, 2018; and *Villarosa v. People*, G.R. Nos. 233155-63, July 17, 2018 (*En Banc* Resolution).

[45] *Brown Madonna Press, Inc., et al. v. Casas*, 759 Phil. 479, 501 (2015).

[46] See *Sr. Insp. Valeroso v. People*, 570 Phil. 58, 61-62 (2008) and *People v. Alcaraz*, 56 Phil. 520, 522 (1932). See also *United States v. Macasaet*, 11 Phil. 447, 449-450 (1908); *People v. Carballo*, 62 Phil. 651, 653 (1935); *Benedicto v. Court of Appeals*, 416 Phil. 722, 749 (2001); and *Nasi-Villar v. People*, 591 Phil. 804, 811 (2008).

[47] *People v. Quiachon*, 532 Phil. 414, 427 (2006), as cited in *Ortega v. People*, 584 Phil. 429, 453 (2008); *People v. Tinsay*, 587 Phil. 615, 630 (2008); and *People v. Adviento, et al.*, 684 Phil. 507, 524 (2012). See also *People v. Bagares*, 305 Phil. 31, 39 (1994); *People v. Zervoulakos*, 311 Phil. 724, 734 (1995); and *People v. Canuto*, 555 Phil. 337, 348 (2007).

[48] *Escalante v. Santos*, 56 Phil. 483, 488 (1932), citing *Laceste v. Santos*, 56 Phil. 472 (1932).

forward, not backward); *lex de futuro, judex de proeterito* (the law provides for the future, the judge for the past); and adopted in a modified form with a prudent limitation in our Civil Code (article 3). Conscience and good law justify this exception, which is contained in the well-known aphorism: *Favorabilia sunt amplianda, odiosa restringenda*. As one distinguished author has put it, the exception was inspired by sentiments of humanity, and accepted by science.[49]

According to Mr. Chief Justice Manuel Araullo, the principle is "not as a right" of the offender, "but founded on the very principles on which the right of the State to punish and the commination of the penalty are based, and regards it not as an exception based on political considerations, but as a rule founded on principles of strict justice."[50]

Further, case law has shown that the rule on retroactivity under Article 22 of the RPC applies to said Code[51] and its amendments,[52]

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[49] *Laceste v. Santos, supra*, at 475.

[50] *Sr. Insp Valeroso v. People, supra* note 46, at 77, citing *People v. Moran*, 44 Phil. 387, 408 (1923).

[51] In *Escalante v. Santos* (*supra* note 48, at 487-488), the Court held:

And lest it be doubted that Article 22 of the Revised Penal Code applies to said Code, Representative Quintin Paredes adds the following:

"The use of the words 'penal laws' in general, instead of 'this Revised Penal Code and any other penal laws' in Article 22, may give room for a doubt as to whether said article meant to include in the phrase 'penal laws' the same Revised Penal Code that was establishing the provision. But this doubt, I think, should not be entertained inasmuch as the Revised Penal Code is itself a penal law and the phrase 'penal laws' is broad enough to include all laws that are penal in character."

See *Laceste v. Santos* (*supra* note 46), wherein the last paragraph of Article 344 of the RPC was applied instead of Section 2 of Act No. 1773 and Article 448 of the old Penal Code; and *Escalante v. Santos* (56 Phil. 483 [1932]) and *Rodriguez v. Director of Prisons* (57 Phil. 133 [1932]), wherein Article 315 Paragraph 3 of the RPC was applied instead of Article 534 Paragraph No. 3 of the old Penal Code.

[52] See *People v. Avila* (283 Phil. 995 [1992]) on Article 135 of the RPC, as amended by R.A. No. 6968; *Lamen v. Dir. of Bureau of Corrections* (311 Phil. 656 [1995]), *People v. Zervoulakos* (311 Phil. 724 [1995]), *Danao v. CA* (313 Phil. 354 [1995]), *People v. Flores* (313 Phil. 227 [1995]),

as well as to special laws,[53] such as Act No. 2126,[54] Presidential Decree No. 603,[55] R.A. No. 7636,[56] R.A. No. 8293,[57] R.A. No. 8294,[58] R.A. No. 9344,[59] and R.A. No. 10586,[60] to cite a few.

But what exactly is a penal law?

A penal provision or statute has been consistently defined by jurisprudence as follows:

A penal provision defines a crime or provides a punishment for one.[61]

Penal laws and laws which, while not penal in nature, have provisions defining offenses and prescribing penalties for their violation.[62]

Properly speaking, a statute is penal when it imposes punishment for an offense committed against the state which, under the

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Villa v. Court of Appeals, 377 Phil. 830 (1999), and *People v. Alao* (379 Phil. 402 [2000]) on R.A. No. 7659 or the Death Penalty Law; and *People v. Quiachon* (532 Phil. 414 [2006]), *People v. Canuto* (555 Phil. 337 [2007]), *People v. Tinsay* (587 Phil. 615 [2008]), *People v. Isang* (593 Phil. 549 [2008]), *People v. Adviento, et al.* (684 Phil. 507 [2012]), and *People v. Buado, Jr.* (701 Phil. 72 [2013]) on R.A. No. 9346 or the Anti-Death Penalty Law.

[53] *Go v. Dimagiba*, 499 Phil. 445, 460 (2005).

[54] *United States v. Almencion*, 25 Phil. 648 (1913).

[55] *People v. Garcia, et al.*, 192 Phil. 311 (1981).

[56] *People v. Hon. Pimentel*, 351 Phil. 781 (1998).

[57] *Savage v. Judge Taypin*, 387 Phil. 718 (2000).

[58] *People v. Narvasa*, 359 Phil. 168 (1998); *Cadua v. Court of Appeals*, 371 Phil. 627 (1999); *People v. Valdez*, 401 Phil. 19 (2000); *People v. Montinola*, 413 Phil. 176 (2001); and *Sr. Insp. Valeroso v. People*, 570 Phil. 58 (2008).

[59] *Estioca v. People*, 578 Phil. 853 (2008); *Ortega v. People*, 584 Phil. 429 (2008); and *Madali, et al. v. People*, 612 Phil. 582 (2009).

[60] *Sydeco v. People*, 746 Phil. 916 (2014).

[61] See *United States v. Parrone*, 24 Phil, 29, 35 (1913), as cited in *People v. Moran, supra* note 50, at 398.

[62] See *Benedicto v. Court of Appeals, supra* note 46, as cited in *Nasi-Villar v. People, supra* note 46.

Constitution, the Executive has the power to pardon. In common use, however, this sense has been enlarged to include within the term "penal statutes" all statutes which command or prohibit certain acts, and establish penalties for their violation, and even those which, without expressly prohibiting certain acts, impose a penalty upon their commission.[63]

Penal laws are those acts of the Legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment.[64]

The "penal laws" mentioned in Article 22 of the RPC refer to *substantive* laws, not procedural rules.[65] Moreover, the mere fact that a law contains penal provisions does not make it penal in nature.[66]

In the case at bar, petitioners assert that Article 22 of the RPC applies because R.A. No. 10592 is a penal law. They claim that said law has become an integral part of the RPC as Articles 29, 94, 97, 98 and 99 thereof. Edago *et al.* further argue that if an amendment to the RPC that makes the penalties more onerous or prejudicial to the accused cannot be applied retroactively for being an *ex post facto* law, a law that makes the penalties lighter should be considered penal laws in accordance with Article 22 of the RPC.

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[63] *Lorenzo v. Posadas*, 64 Phil. 353, 367 (1937). See also *Hernandez v. Albano, et al.*, 125 Phil. 513, 520-521.

[64] *Lacson v. The Executive Secretary*, 361 Phil. 251, 275 (1999), citing *Lorenzo v. Posadas, supra* note 63 and *Hernandez v. Albano, et al., supra* note 63. *Lacson* was cited in *Yu Oh v. Court of Appeals*, 451 Phil. 380, 387 (2003) and *Salvador v. Mapa, Jr.*, 564 Phil. 31, 45 (2007), which was cited in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Hon. Desierto, et al.*, 572 Phil. 71, (2008).

[65] See *Magtoto v. Hon. Manguera*, 159 Phil. 611, 629 (1975) and subsequent cases wherein the Court held that Section 20 Article IV of the 1973 Constitution, which declared inadmissible a confession obtained from a person under investigation for an offense who has not been informed of his right to remain silent and to counsel, applies only to those obtained after the Constitution took effect on January 17, 1973.

[66] See *Juarez v. Court of Appeals*, 289 Phil. 81, 91 (1992).

We concur.

While R.A. No. 10592 does not define a crime/offense or provide/prescribe/establish a penalty[67] as it addresses the rehabilitation component[68] of our correctional system, its provisions have the purpose and effect of diminishing the punishment attached to the crime. The further reduction on the length of the penalty of imprisonment is, in the ultimate analysis, beneficial to the detention and convicted prisoners alike; hence, calls for the application of Article 22 of the RPC.

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[67] Good conduct allowances that may be earned while serving sentence are under Chapter 2 Title 4 (on partial extinction of criminal liability), not Title 3 (on penalties), of Book 1 of the RPC (See Article 94, RPC). On the other hand, the arrest and temporary detention of accused persons is not considered as a penalty but one of the measures of prevention or safety (See Article 24[1], RPC).

[68] Section 1, Rule II of the IRR of R.A. No. 10592 states:

The credit for preventive imprisonment, as well as the increase in the time allowance granted for good conduct and exemplary services rendered or for loyalty, seek to:

a. redeem and uplift valuable human material towards economic and social usefulness;

b. level the field of opportunity by giving an increased time allowance to motivate prisoners to pursue a productive and law-abiding life; and

c. implement the state policy of restorative and compassionate justice by promoting the reformation and rehabilitation of prisoners, strengthening their moral fiber and facilitating their successful reintegration into the mainstream of society.

In *Frank v. Wolfe* (11 Phil. 466, 471 [1908]), this Court held that Act No. 1533, which is the predecessor of Article 97 of the RPC, has a double purpose: it is intended to encourage the convict in an effort to reform, and to induce him to acquire habits of industry and good conduct which will not be forgotten after he has served his sentence; and it is intended as an aid to discipline within the various jails and penitentiaries.

During the period of interpellations, Senator Joker P. Arroyo inquired on the purpose of Senate Bill No. 3064, which eventually became R.A. No. 10592. Senator Francis G. Escudero replied that (1) it is to decongest the jails; (2) to put a premium reward to inmates for good behavior; and (3) to emphasize a rehabilitative rather than a purely penal system as far as the service of sentence of certain accused are concerned (See Senate Journal, Session No. 17, September 11, 2012, p. 332).

The prospective application of the beneficial provisions of R.A. No. 10592 actually works to the disadvantage of petitioners and those who are similarly situated. It precludes the decrease in the penalty attached to their respective crimes and lengthens their prison stay; thus, making more onerous the punishment for the crimes they committed. Depriving them of time off to which they are justly entitled as a practical matter results in extending their sentence and increasing their punishment.[69] Evidently, this transgresses the clear mandate of Article 22 of the RPC.

In support of the prospective application of the grant of GCTA, TASTM, and STAL, respondents aver that a careful scrutiny of R.A. No. 10592 would indicate the need for "new procedures and standards of behavior" to fully implement the law by the BUCOR (as to persons serving their sentences after conviction) and the BJMP (as to accused who are under preventive detention). It is alleged that the amendments introduced are substantial and of utmost importance that they may not be implemented without a thorough revision of the BUCOR and the BJMP operating manuals on jail management. In particular, the establishment of the MSEC is said to be an administrative mechanism to address the policy and necessity that the BUCOR superintendents and the BJMP jail wardens must follow uniform guidelines in managing, screening and evaluating the behavior or conduct of prisoners prior to their recommendation to the heads of the two bureaus on who may be granted time allowances.

Respondents fail to persuade Us.

Except for the benefits of TASTM and the STAL granted to a prisoner who chose to stay in the place of his confinement despite the existence of a calamity or catastrophe enumerated in Article 158 of the RPC, the provisions of R.A. No. 10592 are mere modifications of the RPC that have been implemented by the BUCOR prior to the issuance of the challenged IRR. In view of this, the claim of "new procedures and standards of behavior" for the grant of time allowances is untenable.

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[69] See *Greenfield v. Scafati*, 277 F. Supp. 644 (1967).

It appears that even prior to February 1, 1916 when Act No. 2557 was enacted,[70] prisoners have already been entitled to deduct the period of preventive imprisonment from the service of their sentences. In addition, good conduct time allowance has been in existence since August 30, 1906 upon the passage of Act No. 1533.[71] Said law provided for the diminution of sentences imposed upon convicted prisoners in consideration of good conduct and diligence.[72] Under Act No. 1533 and subsequently under Article 97 of the RPC, the time allowance may also apply to detention prisoners if they voluntarily offer in writing to perform such labor as may be assigned to them.[73] Such prerequisite was removed by R.A. No. 10592.

Subject to the review, and in accordance with the rules and regulations, as may be prescribed by the Secretary of Public Instruction, the wardens or officers in charge of Insular or provincial jails or prisons were mandated to make and keep

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[70] *AN ACT PROVIDING FOR THE ALLOWANCE TO PERSONS SENTENCED IN ANY CRIMINAL CAUSE, WITH THE EXCEPTION OF CERTAIN CLASSES OF CRIMES, OF ONE-HALF OF THE PREVENTIVE IMPRISONMENT UNDERGONE BY THEM, REPEALING SECTION NINETY-THREE OF THE "PROVISIONAL LAW FOR THE APPLICATION OF THE PROVISIONS OF THE PENAL CODE TO THE PHILIPPINE ISLANDS" AND FOR OTHER PURPOSES.*

[71] *AN ACT PROVIDING FOR THE DIMINUTION OF SENTENCES IMPOSED UPON PRISONERS CONVICTED OF ANY OFFENSE AND SENTENCED FOR A DEFINITE TERM OF MORE THAN THIRTY DAYS AND LESS THAN LIFE IN CONSIDERATION OF GOOD CONDUCT AND DILIGENCE.*

[72] All prisoners who were actually undergoing sentence when the Act took effect were entitled to diminution of their sentences for the time served since January 1, 1900 (See Section 6, Act No. 1533).

[73] See Section 5 of Act No. 1533; Section 4, Chapter 4, Part III, Book 1, BUCOR Operating Manual dated March 30, 2000 (*Rollo* [G.R. No. 212719], p. 81); and *City Warden of the Manila City Jail v. Estrella*, 416 Phil. 634, 657 (2001), citing *Baking, et al. v. The Director of Prisons*, 139 Phil. 110 (1969). In such case, the credit shall be deducted from the sentence as may be imposed in the event of conviction (See Section 5 of Act No. 1533 and Section 4, Chapter 4, Part III, Book 1, BUCOR Operating Manual dated March 30, 2000, *Rollo* [G.R. No. 212719], p. 81).

such records and take such further actions as may be necessary to carry out the provisions of Act No. 1533.[74] When the RPC took effect on January 1, 1932,[75] the Director of Prisons was empowered to grant allowances for good conduct whenever lawfully justified.[76] With the effectivity of R.A. No. 10592 on June 6, 2013, such authority is now vested on the Director of the BUCOR, the Chief of the BJMP and/or the Warden of a provincial, district, municipal or city jail.[77]

Under the IRR of R.A. No. 10592, the MSECs are established to act as the recommending body for the grant of GCTA and TASTM.[78] They are tasked to manage, screen and evaluate the behavior and conduct of a detention or convicted prisoner and to monitor and certify whether said prisoner has actually studied, taught or performed mentoring activities.[79] The creation of the MSEC, however, does not justify the prospective application of R.A. No. 10592. Nowhere in the amendatory law was its formation set as a precondition before its beneficial provisions are applied. What R.A. No. 10592 only provides is that the Secretaries of the DOJ and the DILG are authorized to promulgate rules and regulations on the classification system for good conduct and time allowances, as may be necessary to implement its provisions.[80] Clearly, respondents went outside the bounds of their legal mandate when they provided for rules beyond what was contemplated by the law to be enforced.

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[74] Act No. 1533, Sec. 7.

[75] *Capulong v. People*, 806 Phil. 465, 477 (2017) and *Basilonia, et al. v. Judge Villaruz, et al.*, 766 Phil. 1, 8 (2015).

[76] RPC, Art. 99.

[77] R.A. No. 10592, Sec. 5.

[78] The composition of the MSEC shall be determined by the Director of the BUCOR, Chief of the BJMP or Wardens of Provincial and Sub-Provincial, District, City and Municipal Jails, respectively. Membership shall not be less than five (5) and shall include a Probation and Parole Officer, and if available, a psychologist and a social worker (See Sections 3[b], 4[c] and 7[c], Rule V, IRR of R.A. No. 10592).

[79] See Sections 4(b) and 7(b), Rule V, IRR of R.A. No. 10592.

[80] R.A. No. 10592, Sec. 7.

Indeed, administrative IRRs adopted by a particular department of the Government under legislative authority must be in harmony with the provisions of the law, and should be for the sole purpose of carrying the law's general provisions into effect. The law itself cannot be expanded by such IRRSs, because an administrative agency cannot amend an act of Congress.[81]

The contention of Edago *et al.* stands undisputed that, prior to the issuance of the assailed IRR and even before the enactment of R.A. No. 10592, a Classification Board had been handling the functions of the MSEC and implementing the provisions of the RPC on time allowances. While there is a noble intent to systematize and/or institutionalize existing set-up, the administrative and procedural restructuring should not in any way prejudice the substantive rights of current detention and convicted prisoners.

Furthermore, despite various amendments to the law, the standard of behavior in granting GCTA remains to be "good conduct." In essence, the definition of what constitutes "good conduct" has been invariable through the years, thus:

Act No. 1533: "not been guilty of a violation of discipline or any of the rules of the prison, and has labored with diligence and fidelity upon all such tasks as have been assigned to him."[82]

BUCOR Operating Manual dated March 30, 2000: "displays good behavior and who has no record of breach of discipline or violation of prison rules and regulations."[83]

IRR of R.A. No. 10592: "the conspicuous and satisfactory behavior of a detention or convicted prisoner consisting of active involvement in rehabilitation programs, productive participation in authorized work activities or accomplishment of exemplary deeds coupled with faithful obedience to all prison/jail rules and regulations"[84]

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[81] *GMA Network, Inc. v. COMELEC, supra* note 33, at 227.

[82] Sec. 1(a).

[83] Sec. 1, Chapter 4, Part III, Book 1 (*Rollo* [G.R. No. 212719], p. 81).

[84] Rule III, Sec. 1(p).

Among other data, an inmate's prison record contains information on his behavior or conduct while in prison.[85] Likewise, the certificate/diploma issued upon successful completion of an educational program or course (*i.e.*, elementary, secondary and college education as well as vocational training) forms part of the record.[86] These considered, the Court cannot but share the same sentiment of Roxas *et al.* It is indeed perplexing why it is complex for respondents to retroactively apply R.A. No. 10592 when all that the MSEC has to do is to utilize the same standard of behavior for the grant of time allowances and refer to existing prison records.

WHEREFORE, the consolidated petitions are **GRANTED**. Section 4, Rule 1 of the Implementing Rules and Regulations of Republic Act No. 10592 is **DECLARED** invalid insofar as it provides for the prospective application of the grant of good conduct time allowance, time allowance for study, teaching and mentoring, and special time allowance for loyalty. The Director General of the Bureau of Corrections and the Chief of the Bureau of Jail Management and Penology are **REQUIRED** to **RE-COMPUTE** with reasonable dispatch the time allowances due to petitioners and all those who are similarly situated and, thereafter, to **CAUSE** their immediate release from imprisonment in case of full service of sentence, unless they are being confined thereat for any other lawful cause.

This Decision is **IMMEDIATELY EXECUTORY.**

SO ORDERED.

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

Leonen, J., see separate concurring opinion.

Jardeleza, J., on wellness leave.

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[85] Section 3(n), Part I, Book 1, BUCOR Operating Manual dated March 30, 2000 (*Rollo* [G.R. No. 212719], p. 70).

[86] Section 19, Chapter 2, Part V, BUCOR Operating Manual dated March 30, 2000 (*Rollo* [G.R. No. 212719], p. 94).

CONCURRING OPINION

LEONEN, *J.*:

I concur with the finding that Rule I, Section 4 of the Implementing Rules and Regulations of Republic Act No. 10592 is invalid. I add that it is, as separately raised in the Petitions, void *ab initio* as it violates the due process and equal protection clauses of the Constitution. As such, applying the prospectivity rule amounts to a cruel and unusual punishment for those currently serving their penalties before the law took effect insofar as they are treated differently from others.

Indeed, Section 4 is not only invalid based on Article 22[1] of the Revised Penal Code alone, but the Constitution itself. In my view, Article 22 finds its anchor on Article III, Section 1[2] and Article II, Section 11[3] of the Constitution.

I

Respondents allege that this case is not justiciable and that this Court does not have jurisdiction over the remedies that petitioners availed of.

They are mistaken.

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[1] REV. PEN. CODE, Art. 22 provides:

ARTICLE 22. Retroactive Effect of Penal Laws. — Penal laws shall have a retroactive effect in so far as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

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

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

[3] CONST., Art. II, Sec. 11 provides:

SECTION 11. The State values the dignity of every human person and guarantees full respect for human rights.

To recapitulate, the courts' authority to "settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights"[4] is an aspect of judicial power that is anchored on Article VIII, Section 1 of the Constitution:

> SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Judicial review, as an aspect of judicial power, is the competence to: (1) settle actual controversies and enforce rights conferred by law; and (2) determine grave abuse of discretion by any government instrumentality. Jurisprudence refers to these two (2) judicial powers as the courts' traditional and expanded powers of judicial review, respectively.[5]

The courts' traditional power of judicial review applies whether the offense alleged violates a statute or the Constitution, or both. Clearly, the source of rights that are legally demandable and enforceable may be a constitutional provision, a statute, or an administrative issuance. The traditional power of judicial review may not involve a constitution question.

Thus, a trial court may simply determine the facts based on the evidence presented, and interpret and apply the relevant law invoked. Similarly, the Supreme Court's original jurisdiction for *mandamus* may entail a reading of the relevant law and its application to a given set of facts. In such cases, when there is concurrent jurisdiction and when only a statute is involved,

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[4] *Lopez v. Roxas*, 124 Phil. 168, 173 (1966) [Per *C.J.* Concepcion, *En Banc*].

[5] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 137-139 (2016) [Per *J.* Brion, *En Banc*] and *Araullo v. Aquino III*, 737 Phil. 457, 525-527 (2014) [Per *J.* Bersamin, *En Banc*].

this Court will seriously inquire as to whether the judicial principle of respect for the hierarchy of courts should be applied.

If only Article 22 of the Revised Penal Code is involved here, as the majority seems to have ruled in the *ponencia* of my esteemed colleague, Associate Justice Diosdado M. Peralta, then the consolidated Petitions could have been considered as petitions for *mandamus*. Thus, the issue would simply have been whether respondents had a legal duty to implement the rule on retroactivity under Article 22 of the Revised Penal Code.

In such case, reference to *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*,[6] *Pimentel, Jr. v. Aguirre*,[7] and *Araullo v. Aquino III*[8] would not have been necessary.

However, in my reading of the pleadings, the constitutionality of the questioned provision implementing Republic Act No. 10592 was raised. Specifically, petitioners claim that the provision and its non-implementation to those serving their sentence or preventively detained before the law took effect violate the due process and equal protection clauses. In my view, we should also rule on these issues. After all, Article 22 of the Revised Penal Code is founded on the concepts of fairness enshrined in the due process clause and non-discrimination expressed in the equal protection clause.

In the exercise of our traditional power of judicial review for constitutional adjudication, this Court only passes upon the constitutionality of a statute if "it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned."[9] A controversy is deemed justiciable if the following are present: (1) an actual

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[6] 589 Phil. 387 (2008) [Per *J*. Carpio Morales, *En Banc*].

[7] 391 Phil. 84 (2000) [Per *J*. Panganiban, *En Banc*].

[8] 737 Phil. 457 (2014) [Per *J*. Bersamin, *En Banc*].

[9] *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil. 806, 809 (1955) [Per *J*. Bengzon, *En Banc*].

case or controversy over legal rights, which require the exercise of judicial power; (2) standing or *locus standi* to bring up the constitutional issue; (3) the constitutionality issue was raised at the earliest opportunity; and (4) resolving the constitutionality issue is essential to the disposition of the case or its *lis mota*.[10]

Additionally, an actual case or controversy is present when the issues raised are ripe for adjudication or the challenged statute has a direct, adverse effect on the party that raised its constitutionality. Absent an actual case or controversy, this Court's decision would be a mere advisory opinion that "is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law."[11] *Angara v. Electoral Commission*[12] explained the reason behind the requirement of justiciability of a constitutional issue:

> Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the government.[13]

On the other hand, this Court's expanded power of judicial review requires a *prima facie* showing of grave abuse of discretion by any government branch or instrumentality. This expanded power is often mistaken for the remedy of *certiorari* under Rule 65 of the 1997 Revised Rules of Civil Procedure.

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[10] *Macasiano v. National Housing Authority*, 296 Phil. 56, 63-64 (1993) [Per *C.J.* Davide, Jr., *En Banc*].

[11] *J. Leonen, Concurring Opinion in Belgica v. Ochoa*, 721 Phil. 416, 661 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

[12] 63 Phil. 139 (1936) [Per *J.* Laurel, *En Banc*].

[13] *Id*. at 158-159.

But the expanded power is decidedly more expansive than a Rule 65 petition, which is limited to the review of judicial and quasi-judicial acts.[14]

Nonetheless, despite this Court's broad power under its expanded power of judicial review, an actual case or controversy, or "a legally demandable and enforceable right[,] must exist as basis, and must be shown to have been violated"[15] for the case to be justiciable.

Here, petitioners want to strike down Rule I, Section 4 of the Implementing Rules and Regulations of Republic Act No. 10592, which states:

> SECTION 4. *Prospective Application*. — Considering that these Rules provide for new procedures and standards of behavior for the grant of good conduct time allowance as provided in Section 4 of Rule V hereof and require the creation of a Management, Screening and Evaluation Committee (MSEC) as provided in Section 3 of the same Rule, the grant of good conduct time allowance under Republic Act No. 10592 shall be prospective in application.
>
> The grant of time allowance of study, teaching and mentoring and of special time allowance for loyalty shall also be prospective in application as these privileges are likewise subject to the management, screening and evaluation of the MSEC.

Rule V, Section 3 of the Implementing Rules and Regulations directs the Director of the Bureau of Corrections, the Chief of the Bureau of Jail Management and Penology, and wardens of local government units to create a committee that will manage, screen, and evaluate the entitlement of inmates to good conduct time allowance:

> SECTION 3. Management, Screening and Evaluation Committee (MSEC). —

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[14] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*, 802 Phil. 116, 142 (2016) [Per *J.* Brion, *En Banc*].

[15] *Id.* at 140.

a. The Director of the BUCOR, Chief of the BJMP and Wardens of various provinces, cities, districts and municipalities are mandated to assess, evaluate and grant time deduction to a deserving prisoner, whether detained or convicted by final judgment, in the form of [good conduct time allowance], [special time allowance for loyalty] and [time allowance for study, teaching and mentoring] as prescribed by these Rules through the creation of the MSEC.

b. The composition of the MSEC shall be determined by the Director of the BUCOR, Chief of the BJMP or Wardens of Provincial and Sub-Provincial, District, City and Municipal Jails, respectively. Membership shall not be less than five (5) and shall include a Probation and Parole Officer, and if available, a psychologist and a social worker.

c. The MSEC shall prepare minutes of every meeting to record each proceeding.

After considering the inmates' conduct and behavior, the Management, Screening and Evaluation Committee recommends the appropriate good conduct time allowance to which a detained or convicted prisoner is entitled.[16] The authorized

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[16] Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule V, Sec. 4 provides:

SECTION 4. Procedures for the Grant of Good Conduct Time Allowance. — The following procedures shall be followed in the grant of GCTA:

a. The BUCOR, BJMP and Provincial Jails shall give special considerations to satisfactory behavior of a detention or convicted prisoner consisting of active involvement in rehabilitation programs, productive participation in authorized work activities or accomplishment of exemplary deeds. It is understood that in all instances, the detained or convicted prisoner must faithfully obey all prison/jail rules and regulations;

b. The BUCOR, BJMP and Provincial Jails shall each create the MSEC or such appropriate number of MSECs tasked to manage, screen and evaluate the behavior or conduct of a detention or convicted prisoner;

c. After due consideration of the behavior or conduct shown by a detained or convicted prisoner, the MSEC shall then recommend to the appropriate official the appropriate GCTA that may be

official[17] then acts on this recommendation. Once granted, the time allowances shall be irrevocable.[18]

Petitioners are correct that the prospective application of Republic Act No. 10592 robs them of the opportunity to avail of the good conduct time allowance and substantially decrease their time behind bars.

In ruling that an actual case or controversy existed in this case, this Court cited *Pimentel, Jr. v. Aguirre*[19] and reasoned that there was no need to "wait for the implementing evil to befall"[20] before people could question an illegal or unconstitutional

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credited in favor of said prisoner ranging from the minimum of the allowable credit to the maximum credit thereof;

d. Acting on the recommendation of the MSEC, the appropriate official named in Section 1 of Rule VIII hereof shall either:

1. Approve the recommendation and issue a certification granting GCTA to the prisoner for the particular period;

2. Disapprove the recommendation if the prisoner recommended is not qualified to be granted the benefit or that errors or irregularities attended the evaluation of the prisoner; or

3. Return the recommendation, without action, for corrections as regards the name, prison number or other clerical or inadvertent errors, or for the further evaluation of the conduct or behavior of the prisoner concerned.

e. The appropriate official concerned shall ensure that GCTAs are processed each month and that there is proper recording of a prisoner's good behavior in the jail or prison records.

[17] Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule VIII, Sec. 1 provides:

SECTION 1. Who Grants Time Allowances. — Whenever lawfully justified, the following officials shall grant allowances for good conduct:

a) Director of the Bureau of Corrections;

b) Chief if the Bureau of Jail Management and Penology; and/or

c) Warden of a Provincial, District, City or Municipal Jail.

[18] Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule VIII, Sec. 2.

[19] 391 Phil. 84 (2000) [Per *J.* Panganiban, *En Banc*].

[20] *Ponencia*, p. 10.

act, because "[by] the mere enactment of the questioned law or the approval of the challenged action, the dispute is said to have ripened into a judicial controversy even without any other overt act."[21]

We should read *Pimentel, Jr.* more carefully.

Pimentel, Jr. involved the propriety of Sections 1 and 4 of Administrative Order No. 372. Section 1 required government agencies, state universities and colleges, government-owned and controlled corporations, and local government units to implement measures that would reduce their annual expenditure for non-personal services by at least 25%. On the other hand, Section 4 ordered that 10% of the internal revenue allotment released to local government units be withheld.[22]

Pimentel, Jr. upheld the validity of Section 1 as a legitimate exercise of the executive branch's supervisory power insofar as it directs government instrumentalities and local government units to undertake cost reduction measures in response to the economic difficulties facing the nation. *Pimentel, Jr.* clarified that despite its tone, Section 1 was merely advisory, and was not mandatory. Thus, no legal sanction would be meted on a government instrumentality or local government unit that failed to submit its own planned cost reduction measures.[23]

However, *Pimentel, Jr.* struck down Section 4 for directly contravening the constitutional mandates that the internal revenue allotment: (1) should be released directly to the concerned local government unit every quarter; and (2) cannot be the subject of any lien or holdback by the national government.[24]

In arguing for the ripeness of the Petition in *Pimentel, Jr.*, this Court declared that the mere violation of the Constitution

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[21] *Id. citing Pimentel, Jr. v. Aguirre*, 391 Phil. 84 (2000) [Per J. Panganiban, *En Banc*].

[22] *Id.* at 97.

[23] *Id.* at 104-105.

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

or any statute "is enough to awaken judicial duty."[25] Nonetheless, it admitted that the issue of prematurity was not raised by any of the parties.[26] Furthermore, an actual case or controversy existed in *Pimentel, Jr.* because the directive to withhold 10% of the internal revenue allotment was immediately executory and would cause a direct and adverse effect on the local government units, as represented by petitioners-intervenors League of Provinces of the Philippines and League of Leagues of Local Governments.[27] Hence, it was not the mere passage of Administrative Order No. 372 that was objected to in *Pimentel, Jr.*, but its direct detrimental effect on local government units and their fiscal autonomy.

As with *Pimentel, Jr.*, there is a similar immediate danger here. Petitioners will suffer a direct injury under Republic Act No. 10592's Implementing Rules and Regulations. While the entitlement to time credits is not automatic and is contingent upon the Management, Screening and Evaluation Committee's positive assessment of an inmate's application for time credits, the law's prospective application means that an inmate's application for time credits will be dismissed outright and will not even be considered by the recommending authority.

II

I also concur with the *ponencia*[28] that Rule I, Section 4 of the Implementing Rules and Regulations of Republic Act No. 10592 violates the well-entrenched principle that laws are applied prospectively. Nonetheless, penal laws that are favorable to the accused are given retroactive effect, as contained in Article 22[29] of the Revised Penal Code.

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[25] *Id*. at 107.

[26] *Id*. at 108.

[27] *Id*. at 94.

[28] *Ponencia*, pp. 17-20.

[29] REV. PEN. CODE, Art. 22 provides:

ARTICLE 22. Retroactive Effect of Penal Laws. — Penal laws shall have a retroactive effect in so far as they favor the person guilty of a

Moreover, Article 22 of the Revised Penal Code is not the sole basis for the invalidity of Republic Act No. 10592's prospective application. It also violates the inmates' constitutional rights to equal protection of the laws[30] and against "cruel, degrading[,] or inhuman punishment."[31]

Equal protection is covered under the mantle of due process, as unfair discrimination goes against the very nature of justice and fair play. Equal protection demands that similar subjects be treated similarly; to do otherwise would be to confer an unwarranted favor to some at the expense of others who are similarly situated.[32]

The equal protection clause ensures equality, not identity of rights. Hence, it is not required for a statute to affect every single person the same way.[33] Since a classification is a tacit recognition of an existing inequality or difference, its validity shall be upheld if it is based on a reasonable or rational basis:

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of

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felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

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

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

[31] CONST., Art. III, Sec. 19(1) provides:

SECTION 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*.

[32] *The Philippine Judges Association v. Prado*, 298 Phil. 502, 512-513 (1993) [Per *J*. Cruz, *En Banc*].

[33] *See Victoriano v. Elizalde Rope Workers' Union,* 158 Phil. 60 (1974) [Per *J*. Zaldivar, *En Banc*].

knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.[34]

Thus, a valid classification must contain the following requisites to hurdle the test of reasonableness: (1) it is based on substantial differences; (2) it is relevant to the purpose of the law; (3) it is not limited to existing conditions; and (4) it equally applies to all members of the same class.

Here, the Implementing Rules and Regulations of Republic Act No. 10592 states that the award of time credits to detained or convicted prisoners was meant to:

a) redeem and uplift valuable human material towards economic and social usefulness;

b) level the field of opportunity by giving an increased time allowance to motivate prisoners to pursue a productive and law-abiding life; and

c) implement the state policy of restorative and compassionate justice by promoting the reformation and rehabilitation of prisoners, strengthening their moral fiber and facilitating their successful reintegration into the mainstream of society.[35]

Yet, by directing a prospective application of the statute, the Implementing Rules and Regulations distinguishes prisoners

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[34] *Id*. at 87.

[35] Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule II, Sec. 1.

who were detained or convicted before Republic Act No. 10592 took effect from those who were detained or convicted after its effectivity.

Respondents explain that a prospective application was necessary in light of the "new procedures and standards of behavior for the grant of good conduct time allowance"[36] and the "creation of a Management, Screening and Evaluation Committee[.]"[37] But the supposed innovations and new procedures are mere modifications or reiterations of practices already in place even before the effectivity of Republic Act No. 10592, as the *ponencia*[38] has exhaustively discussed. Even the creation of the Management, Screening and Evaluation Committee as a recommendatory body was not a new innovation, as a Classification Board was already recommending time allowances and implementing its approved recommendations.[39]

Thus, if the statute's intention was to "redeem and uplift valuable human material towards economic and social usefulness[,]"[40] there was no reasonable basis to distinguish between the detained or convicted prisoners before and after Republic Act No. 10592 took effect. Not only was the distinction irrelevant to the statute's purpose, it also unjustly treats similarly situated prisoners under different standards, all because it used the arbitrary metric of when they were detained or convicted.

Likewise, the unreasonable discrimination created by the law's Implementing Rules and Regulations violates petitioners' right against "cruel, degrading[,] or inhuman punishment."[41]

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[36] Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule I, Sec. 4.

[37] Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule I, Sec. 4.

[38] *Ponencia*, pp. 20-23.

[39] *Id*. at 24.

[40] Implementing Rules and Regulations of Republic Act No. 10592 (2014), Rule II, Sec. 1.

[41] CONST., Art. III, Sec. 19.

Republic Act No. 10592 aims to uphold the State policy of restorative and compassionate justice by promoting prisoner rehabilitation and successful reintegration into mainstream society. But despite its avowed purpose, it capriciously denies the same opportunity of rehabilitation and reintegration to a big segment of the inmate population.

This blatant discrimination amounts to a cruel and unusual punishment, creating a disproportionate impact[42] on inmates who were detained or incarcerated prior to Republic Act No. 10592's enactment. They end up serving sentences lengthier than inmates who were convicted after Republic Act No. 10592 took effect, despite committing similar crimes.

Although not a penalty, the prospective application of Republic Act No. 10592 penalizes inmates by withholding from them the benefits of the good conduct time credits without any justifiable reason, squarely placing it under the constitutional ban for being "flagrantly and plainly oppressive[.]"[43]

Finally, the prospective application of Republic Act No. 10592 does not advance its guiding policy of restorative and compassionate justice. This is because it implies that all inmates detained or convicted prior to its effectivity can no longer be rehabilitated for a successful reintegration into society, effectively trampling upon their dignity as human beings.

As such, Section 4 of the Implementing Rules and Regulations of Republic Act No. 10592 must be struck down, and its retroactive application be allowed to benefit prisoners who are not habitual criminals.

ACCORDINGLY, I vote to **GRANT** the Petitions and Petitions-in-Intervention.

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[42] *J.* Leonen, Concurring Opinion in *Estipona, Jr. v. Lobrigo*, G.R. No. 226679, August 15, 2017, 837 SCRA 160, 196 [Per *J.* Peralta, *En Banc*].

[43] *People v. Estoista*, 93 Phil. 647, 655 (1953) [Per *J.* Tuason, *En Banc*].

INDEX

INDEX

Eva Castaño, was credible and straightforward; where the prosecution eyewitness was familiar with the accused, where the *locus criminis* afforded good visibility and where no improper motive can be attributed to the witness for testifying against the accused; the witness' version of the story prevails over alibi and denial and deserves much weight. (People *vs*. Verona, G.R. No. 227748, June 19, 2019) p. 422

AN ACT AMENDING ARTICLES 29, 94, 97, 98 AND 99 OF ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE (R.A. NO. 10592)

Creation of the Management, Screening and Evaluation Committee (MSEC) — Under the IRR of R.A. No. 10592, the MSECs are established to act as the recommending body for the grant of GCTA and TASTM; they are tasked to manage, screen and evaluate the behavior and conduct of a detention or convicted prisoner and to monitor and certify whether said prisoner has actually studied, taught or performed mentoring activities; the creation of the MSEC, however, does not justify the prospective application of R.A. No. 10592; nowhere in the amendatory law was its formation set as a precondition before its beneficial provisions are applied; what R.A. No. 10592 only provides is that the Secretaries of the DOJ and the DILG are authorized to promulgate rules and regulations on the classification system for good conduct and time allowances, as may be necessary to implement its provisions; respondents went outside the bounds of their legal mandate when they provided for rules beyond what was contemplated by the law to be enforced; Sec. 4, Rule 1 of the Implementing Rules and Regulations of R.A. No. 10592 is DECLARED invalid insofar as it provides for the prospective application of the grant of good conduct time allowance, time allowance for study, teaching and mentoring, and special time allowance for loyalty. (Inmates of the New Bilibid Prison, Muntinlupa City *vs*. Sec. De Lima, G.R. No. 212719, June 25, 2019) p. 675

APPEALS

parties as errors; the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. (People *vs*. Enriquez, Jr., G.R. No. 238171, June 19, 2019) p. 609

Factual findings of administrative or quasi-judicial bodies – – The issue of whether Malicdem's illnesses are work-related and compensable is essentially factual and not reviewable by the Court on Rule 45 petitions, save for some exceptions; however, inasmuch as factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by the Court as they are specialized to rule on matters falling within their jurisdiction, these findings are only binding when supported by substantial evidence; the Court confirms that the findings of the herein labor tribunals, as affirmed by the CA, that Malicdem's illnesses – hypertension and glaucoma – are not compensable under the POEA-SEC are correct and properly supported by substantial evidence on record; however, a number of clarifications must be made. (Malicdem *vs.* Asia Bulk Transport Phils., Inc., G.R. No. 224753, June 19, 2019) p. 358

Factual findings of the Court of Appeals — The factual findings of the CA, affirming that of the trial court, are generally final and conclusive on the Court; the foregoing rule, however, is subject to the following exceptions: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of fact are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the

of both fact and law, and the court may even consider issues which were not raised by the parties as errors; the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law. (People *vs.* Corpin, G.R. No. 232493, June 19, 2019) p. 516

— The Court agrees with the Office of the Solicitor General that "findings of fact of the trial court as to the credibility of witnesses are accorded great weight and respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions can be gathered from such findings"; the trial court is in a better position to decide the question of credibility of witnesses, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has overlooked certain facts of substance and value. (People *vs*. Verona, G.R. No. 227748, June 19, 2019) p. 422

Petition for review on certiorari to the Supreme Court under Rule 45— It is a hornbook principle that Rule 45 of the Rules of Court governs appeals from judgments or final orders, not interlocutory orders; an interlocutory order cannot be the subject of appeal until final judgment is rendered for one party or the other; further, the Court has previously distinguished *certiorari*, as a mode of appeal under Rule 45, as a remedy that involves the review of the judgment, award, or final order on the merits, as compared to the original action for *certiorari* under Rule 65, which refers to a remedy that may be directed against an interlocutory order; no appeal may be taken from an interlocutory order; instead, the proper remedy to assail such an order is to file a petition for *certiorari* under Rule 65. (Prime Savings Bank *vs*. Sps. Santos, G.R. No. 208283, June 19, 2019) p. 177

— Settled is the rule that only questions of law should be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court; factual findings of the lower

CA; considering that the findings of fact of both courts are obviously conflicting, the review of which is an admitted exception, the Court will proceed to rule on the present Petition. (Young Builders Corp. *vs*. Benson Industries, Inc., G.R. No. 198998, June 19, 2019) p. 24

Points of law, issues, theories, and arguments — Procedurally, petitioner cannot adopt a new theory in its appeal before the Court and abandon its theory in its appeal before the RTC; pursuant to Sec. 15, Rule 44 of the Rules, petitioner may include in his assignment of errors any question of law or fact that has been raised in the court below and is within the issues framed by the parties; in the Memorandum for Appellant which it filed before the RTC, petitioner did not raise the Rules on Electronic Evidence to justify that the so-called "duplicate original copies" of the SOAs and Credit History Inquiry are electronic documents; rather, it insisted that they were duplicate original copies, being computer-generated reports, and not mere photocopies or substitutionary evidence, as found by the MeTC; as observed by the RTC, the attachments to the said Manifestation "are merely photocopies of the annexes attached to the complaint, but with a mere addition of stamp marks bearing the same inscription as the first stamp marks" that were placed in the annexes to the complaint; because petitioner has not raised the electronic document argument before the RTC, it may no longer be raised nor ruled upon on appeal. (RCBC Bankard Services Copr. *vs*. Oracion, Jr., G.R. No. 223274, June 19, 2019) p. 337

—— The Petition is clearly a frivolous appeal; an appeal is frivolous if it presents no justiciable question and is so readily recognizable as devoid of any merit on the face of the record that there is little, if any, prospect that it can ever succeed; the Petition indubitably shows the counsel's frantic search for any ground to resuscitate petitioner's lost cause, which due to the counsel's fault was doomed with the filing of a deficient complaint; thus, pursuant to Sec. 3, Rule 142 of the Rules the

therefore timely filed the Petition for *Certiorari* when he filed the same on the next business day. (De Leon *vs.* Phil. Transmarine Carriers, Inc., G.R. No. 232194, June 19, 2019) p. 500

— The CA, in taking cognizance of the petition for *certiorari* of respondent JMV Corporation, thus reasoned that such error of judgment on the part of the RTC "unfolded" into one of jurisdiction, allegedly due to a misappreciation of the evidence; this is egregious error; the office of a writ of *certiorari* is narrow in scope and does not encompass an error of law or a mistake in the appreciation of evidence; as a corrective writ, the extraordinary remedy of *certiorari* is reserved only for jurisdictional errors and cannot be used to correct a lower tribunal's factual findings; as long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion is not reviewable via *certiorari* for being nothing more than errors of judgment; the CA committed reversible error when it annulled the RTC Decision based merely on errors of jurisdiction. (Mandagan *vs.* Jose M. Valero Corp., G.R. No. 215118, June 19, 2019) p. 276

— The Court is not unaware that, in some situations, it had allowed a review from a judgment of acquittal through the extraordinary remedy of a Rule 65 petition for *certiorari;* a survey of these exceptional instances would, however, show that such review was only allowed where the prosecution was denied due process or where the trial was a sham; petitioner faults the CA in granting the petition for *certiorari* of respondent JMV Corporation and reversing her acquittal; while petitioner agrees that the rule on double jeopardy is not without exceptions, she nevertheless maintains that no grave abuse of discretion was attributable to the RTC in rendering the Decision. (*Id.*)

Writ of — As held time and time again by the Court, for a writ of *certiorari* to issue, a petitioner must not only prove that the tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess

rule-making or quasi-legislative function; nevertheless, the Court has consistently held that "petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review, prohibit or nullify the acts of legislative and executive officials." (Inmates of the New Bilibid Prison, Muntinlupa City *vs*. Sec. De Lima, G.R. No. 212719, June 25, 2019) p. 675

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — In all drugs cases, 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. (People *vs*. Nieves *y* Acuavera, G.R. No. 239787, June 19, 2019) p. 619

—— 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; Sec. 21, Art. II of R.A. No. 9165, as amended by R.A. No. 10640, the applicable law at the time of the commission of the alleged crimes, 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

corpus delicti in illegal drug cases. (Jocson *y* Cristobal *vs.* People, G.R. No. 199644, June 19, 2019) p. 67

—— PO2 Molina's testimony, on its face, bears how the chain of custody here had been repeatedly breached many times over; *first*, the drug item was not marked at the place where it was seized; *second*, PO2 Molina admitted that the buy-bust team did not prepare an inventory of the seized item; he did not give any reason for the omission; *third*, PO2 Molina also conceded that he did not photograph the seized drug at all; no explanation was offered for this omission; *finally*, PO2 Molina testified that the seized drug was turned over to PO1 del Mundo, the investigator of the case who purportedly marked the same; it was not proved that the *corpus delicti* had been preserved in his hands; the repeated breach of the chain of custody rule here had cast serious uncertainty on the identity and integrity of the *corpus delicti;* the metaphorical chain did not link at all, albeit it unjustly restrained petitioner's right to liberty; a verdict of acquittal is in order. (Jocson *y* Cristobal *vs.* People, G.R. No. 199644, June 19, 2019) p. 67

—— 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; 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; Sec. 21 of R.A. No. 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

bust team and justify or explain the same; breaches of the procedure outlined in Sec. 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* would have been compromised; the records of the present case are bereft of evidence showing that the buy-bust team followed the outlined procedure despite its mandatory terms; hence, the integrity and evidentiary value of the *corpus delicti* have been compromised, thus necessitating the acquittal of Jimmy. (People *vs*. Fulinara *y* Fabelania, G.R. No. 237975, June 19, 2019) p. 586

— The first link refers to seizure and marking; "marking" means the apprehending officer or the poseur-buyer places his/her initials and signature on the seized item; marking after seizure is the starting point in the custodial link; it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference; marking though should be done in the presence of the apprehended violator immediately upon confiscation to truly ensure that they are the same items which enter the chain of custody; the first link also includes compliance with physical inventory and photograph of the seized dangerous drug; this is done before the dangerous drug is sent to the crime laboratory for testing; in the absence of competent proof that the required inventory and photography were complied with, sans any justification therefor, the chain of custody is considered to have been breached. (Largo *vs*. People, G.R. No. 201293, June 19, 2019) p. 144

— The third link refers to the transfer of the dangerous drug from the investigating officer to the forensic chemist of the crime laboratory; finally, the fourth link refers to the turnover and submission of the dangerous drug from the forensic chemist to the court; in drug related cases, it is of paramount necessity that the forensic chemist testifies as to details pertinent to the handling and analysis of the dangerous drug submitted for examination i.e.

Inventory and photographing of the seized drugs — 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 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; 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. (People *vs.* Nieves *y* Acuavera, G.R. No. 239787, June 19, 2019) p. 619

Requirement of witnesses — A careful perusal of the records would reveal that the supposed buy-bust operation was conducted without the presence of any of the three insulating witnesses; the "written manifesto" did not justify the police officers' deviation from the prescribed procedure; explained; it is important to stress 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; the prosecution has the burden of (1) proving their compliance with Sec. 21, R.A. No. 9165, and (2) providing a sufficient explanation in case of non-compliance; while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always do so within the bounds of the law; 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 would again rear 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 failure adversely affected the

— *People v. Holgado* warns that the danger of tampering with and planting evidence is inversely proportional to the amount of dangerous drug seized; a minuscule amount of dangerous drug magnifies the probability of planting, tampering, or contaminating evidence, which explains the need for exacting compliance with Sec. 21: 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 Sec. 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"; here, the prosecution claimed that the police officers recovered three (3) sachets of shabu from petitioner, with one (1) sachet containing 0.02 gram and the other two (2) sachets containing 0.05 gram each; it has not escaped this Court's attention that the prosecution did not even bother to proffer a justifiable cause for the lapses; nonetheless, its indifference to the legal safeguards was rewarded by the lower courts, which ruled that despite noncompliance, the prosecution proved the integrity and identity of the seized sachets; the unjustified noncompliance with Sec. 21 creates a substantial gap in the chain of custody and casts doubt on the identity of the *corpus delicti*. (*Id.*)

— Sec. 21 of the IRR of R.A. No. 9165 provides that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items"; 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; breaches of the procedure contained in Sec. 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond

such is not practicable, 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 or team; equally important is the presence of the accused, or his representative or counsel, a representative of the DOJ, the media, and an elected public official during the inventory, who shall all be required to sign the copies of the inventory and be given a copy thereof; thus, the three required witnesses – a representative of the DOJ, the media, and an elected public official – should be physically present at the time of apprehension or immediately thereafter while the inventory is being made as this is a measure to insulate the inventory from any taint of illegitimacy or irregularity; however, there may be instances where strict compliance with the procedure laid down in Sec. 21 (1), Art. II of R.A. No. 9165 and its IRR may be dispensed with; specifically, the IRR allows a deviation from the requirement of the presence of the three witnesses, when the following requisites concur: (a) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (b) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. (People *vs*. Silayan *y* Villamarin, G.R. No. 229362, June 19, 2019) p. 457

–– The burden of proving the requisites for the deviation from compliance with the procedure laid down in Sec. 21 of R.A. No. 9165 and its IRR lies with the prosecution which must allege and prove that the presence of the three witnesses during the physical inventory and photographing of the illegal drug seized was not obtained due to reasons such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and 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 officials themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media

CORPORATE REHABILITATION

Suspension of claims against a corporation — Corporate rehabilitation traces its roots to Act No. 1956 or the Insolvency Law of 1909; the amendatory provisions of PD 902-A, clothed the Securities and Exchange Commission with jurisdiction to hear petitions of corporations for declaration of state of suspension of payments; such jurisdiction was, however, transferred to the Regional Trial Court in 2000; presently, the FRIA is the prevailing law on corporate rehabilitation; since the petition for rehabilitation was filed on April 25, 2003, the provisions of PD 902-A, as amended, and the Interim Rules apply; Sec. 6(c) of PD 902-A, as amended, provides that "upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly"; Sec. 6, Rule 4 of the Interim Rules states that if the court finds the petition for rehabilitation to be sufficient in form and substance, it shall, not later than five days from the filing of the petition, issue an order which, *inter alia*, stays the enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the debtor; the purpose of the suspension is to prevent a creditor from obtaining an advantage or preference over another and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors. (La Savoie Dev't. Corp. *vs.* Buenavista Properties, Inc., G.R. Nos. 200934-35, June 19, 2019) p. 125

CORPORATION

Change in the corporate name — The Court has held that the corporation, upon such change in its name, is in no sense a new corporation, nor the successor of the original corporation; it is the same corporation with a different name, and its character is in no respect changed; a change

public office is a public trust; public officers must, at all times, be accountable to the people, serve them with utmost degree of responsibility, integrity, loyalty and efficiency; a court employee's repeated absences without leave constitutes conduct prejudicial to the best interest of public service and warrants the penalty of dismissal from the service with forfeiture of benefits. (*Id*.)

Functions — Respondent is bound by the Code of Conduct for Court Personnel; Canon IV, Sec. 1 provides: 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; respondent took four (4) years to comply with the court's order to provide the transcribed stenographic notes; even then, she completed the transcript of stenographic notes of only one (1) of the two (2) witnesses; she was constantly given the chance to comply, the case was reset several times, and the retaking of the witnesses' testimonies was repeatedly ordered; all these caused years' worth of delay in the promulgation of the judgment in the criminal case; respondent's conduct falls short of her mandate to properly and diligently perform her official duties; as an employee of the court, respondent's actions reflect upon the credibility of the institution she represents; court employees are held to a higher standard, and everyone from the "highest magistrate to the lowliest clerk . . . are expected to abide scrupulously by the law." (Nuezca *vs*. Verceles, A.M. No. P-19-3989 [Formerly OCA IPI No. 16-4524-P], June 25, 2019) p. 663

Nature and scope of work and specific functions — The 2002 Revised Manual for Clerks of Court defines the nature and scope of the work and specific function of Clerks of Court as follows: The Clerk of Court has general administrative supervision over all the personnel of the Court; as regards the Court's funds and revenues, records, properties and premises, said officer is the custodian; thus, the Clerk of Court is generally also the treasurer, accountant, guard and physical plant manager thereof;

Appeals, Manila, A.M. No. 18-06-07-CA, June 25, 2019) p. 650

Simple neglect of duty — Both Dulfo and Albano were remiss in their respective duties as Clerk of Court and as Sheriff; and as Clerk of Court, Dulfo was chiefly responsible for the shortcomings of Albano to whom was assigned the task of serving said court processes to complainants; the Court finds them guilty of simple neglect of duty, which is defined as "the failure of an employee to give one's attention to a task expected of him, and signifies a disregard of a duty resulting from carelessness or indifference"; pursuant to Sec. 46(D) of the Revised Rules on Administrative Cases in the Civil Service, the penalty for simple neglect of duty, a less grave offense, is suspension for a period of one (1) month and one (1) day, to six (6) months for the first violation; Sec. 48 of the same Rules provides the circumstances which mitigate the penalty, such as length of service in the government, physical illness, good faith, education, and/or other analogous circumstances; suspension from office for two (2) months, appropriate under the circumstances. (Banawa *vs*. Hon. Diasen, Jr., A.M. No. MTJ-19-1927 [Formerly OCA IPI No. 15-2764-MTJ], June 19, 2019) p. 1

COURT STENOGRAPHER

Functions — A stenographer is an officer of this Court who is burdened with great responsibilities; his or her neglect of duties may result in a delay in dispensing justice, as what happened in this case, which has been unjustly pending since 2009; Supreme Court Administrative Circular No. 24-90 directs court stenographers to attach the transcript to the case records not later than 20 days from the time the notes were taken: It was incumbent upon respondent to ensure that the transcript of stenographic notes was properly taken and expeditiously submitted, even without request of the court. (Nuezca *vs*. Verceles, A.M. No. P-19-3989 [Formerly OCA IPI No. 16-4524-P], June 25, 2019) p. 663

COURTS

rules of procedure so as not to deprive such birthright; the right to liberty, which stands second only to life in the hierarchy of constitutional rights, cannot be lightly taken away; substantive due process guarantees a right to liberty that cannot be taken away or unduly constricted, except through valid causes provided by law. (*Id*.)

CRIMINAL PROCEDURE

Conviction of an accused — Every criminal conviction requires the prosecution to prove two things with the same quantum of evidence of proof beyond reasonable doubt: (1) the fact of the crime, *i.e.*, the presence of all of the elements of the crime for which the accused stands charged; and (2) the fact that the accused is the perpetrator of the crime; it is basic that when a crime is committed, the first duty of the prosecution is to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the crime is established. (People *vs*. Verona, G.R. No. 227748, June 19, 2019) p. 422

Party-in-interest — It has long been settled that "in criminal cases, the People is the real party-in-interest and the private offended party is but a witness in the prosecution of offenses, the interest of the private offended party is limited only to the aspect of civil liability"; while a judgment of acquittal is immediately final and executory, "either the offended party or the accused may appeal the civil aspect of the judgment despite the acquittal of the accused; the real parties-in-interest in the civil aspect of a decision are the offended party and the accused"; there is no doubt that the People is the real party-in-interest in criminal proceedings; as the criminal complaint for violation of B.P. 22 was filed in the MTC, necessarily the criminal case before it was prosecuted "in the name of the People of the Philippines"; this very basic understanding of what transpired shows ineluctably the egregious error by the CA in ruling that the Conpil should have been "included in the title of the case."

DAMAGES

EMPLOYER-EMPLOYEE RELATIONSHIP

Elements — It is settled that "to determine the existence of an employer--employee relationship, four elements generally need to be considered, namely: (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; these elements or indicators comprise the so-called 'four-fold' test of employment relationship"; similar to the facts of this case, the Court in *Masonic Contractor, Inc. v. Madjos* (*Masonic Contractor*) ruled that the fact that the company provided identification cards and uniforms and the vague affidavit of the purported employer were sufficient evidence to prove the existence of employer-employee relationship; here, the totality of petitioner's evidence and the admissions of Kalookan Slaughterhouse convinces the Court that petitioner was indeed an employee of Kalookan Slaughterhouse; to the mind of the Court, Kalookan Slaughterhouse was petitioner's employer and it exercised its rights as an employer through Tablit and De Guzman, who were its employees. (Fernandez *vs.* Kalookan Slaughterhouse Inc., G.R. No. 225075, June 19, 2019) p. 384

EMPLOYMENT, TERMINATION OF

Illegal dismissal — Our laws afford protection to our workers, whether employed locally or abroad; it is this Court's bounden duty to uphold these laws and dispense justice for petitioners; with their right to substantive and procedural due process denied, it is clear that petitioners were illegally dismissed from service; as consequence of the illegal dismissal, petitioners are also entitled to moral damages, exemplary damages, and attorney's fees; being deprived of their hard-earned salaries and, eventually, of their employment, caused petitioners mental anguish, wounded feelings, and serious anxiety; the award of moral damages is but appropriate; the award of exemplary damages is necessary to deter future employers from committing the same acts; under Art. 2208 of the

value of ₱500.00 or more, regardless of who it came from, and (2) acceptance by an employee of any gift – regardless of value – from a crew member, ex-crew member, or representative of a crew member; it is clear from the said rule that a violation, even on the first instance, merits the dismissal of the employee from his employment; the Court's reading of the relevant rule from PTC's Code of Conduct is that it is not vague, nor is it unreasonable; the fact that it did not specify the origin of the gift or the purpose for which the gift was given did not automatically mean that the rule was vague; it simply means that this "no-gift" policy of PTC was absolute, that is, the origin or the purpose of the gift was irrelevant; 2003 POEA Rules and Regulations Governing the Recruitment of Seafarers (POEA Rules), cited; as it is recognized that company policies and regulations, unless shown to be grossly oppressive or contrary to law, are generally valid and binding on the parties and must be complied with until finally revised or amended, the dismissal of de Leon – hinged on a rule that provides for dismissal even on the first instance of violation – should therefore be upheld; the Court holds that PTC was well within its management prerogative in terminating de Leon's employment upon a finding of violation of its company rules; as pointed out by PTC and by the NLRC in its Resolution, de Leon's actions reveal that he was aware that he was violating a company rule; this constitutes *willful* misconduct or disobedience of company rules that further justifies PTC's decision to terminate de Leon's employment. (De Leon *vs.* Phil. Transmarine Carriers, Inc., G.R. No. 232194, June 19, 2019) p. 500

ESTOPPEL

Concept — Estoppel bars a party from raising issues, which have not been raised in the proceedings before the lower courts, for the first time on appeal; petitioner, by its acts and representations, is now estopped to claim that the annexes to its complaint are not duplicate original copies but electronic documents; it is too late in the day for

appearing in a private document, such private document may be excluded; in line with prevailing jurisprudence, the subject Accomplishment Billing should be excluded in evidence; thus, it cannot be accorded any probative value. (Young Builders Corp. *vs*. Benson Industries, Inc., G.R. No. 198998, June 19, 2019) p. 24

Best evidence rule — The Court notes that Exhibit "E" is a mere photocopy; pursuant to Sec. 3, Rule 130 of the Rules or the Best Evidence Rule: SEC. 3. *Original document must be produced; exceptions*. – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases: (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror; (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and (d) When the original is a public record in the custody of a public officer or is recorded in a public office; having been admitted in violation of the Best Evidence Rule, Exhibit "E" should have been excluded and not accorded any probative value. (Young Builders Corp. *vs*. Benson Industries, Inc., G.R. No. 198998, June 19, 2019) p. 24

Formal offer of evidence — *Candido v. Court of Appeals*, cited; it is settled that courts will only consider as evidence that which has been formally offered; in this case, even assuming that the Reply-Letter was appended to the records, the fact still remains that the court cannot consider evidence which was not formally offered; as such, any statement allegedly made on behalf of petitioner in the said letter could not be considered an admission of receipt of a notice of dishonor as the same has no evidentiary value whatsoever; the RTC could not be faulted, much

Preponderance of evidence — YBC being the claimant or plaintiff in this case, has not discharged its burden of proof – the duty to present evidence on the facts in issue necessary to establish its claim by the amount of evidence required by law, which is preponderance of evidence; preponderance of evidence is defined as the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence"; it is a phrase that, in the last analysis, means probability of the truth; it is evidence that is more convincing to the court as it is worthier of belief than that which is offered in opposition thereto; *United Airlines, Inc. v. Court of Appeals,* cited. (Young Builders Corp. *vs*. Benson Industries, Inc., G.R. No. 198998, June 19, 2019) p. 24

Substantial evidence — The degree of proof required in compensation cases is substantial evidence or that amount of relevant evidence which a reasonable mind might accept as adequate to justify the conclusion; substantial evidence is more than a mere scintilla; the evidence must be real and substantial, and not merely apparent; the rule is that whoever claims entitlement to the benefits provided by law should establish his or her right thereto by substantial evidence; applying the foregoing guidelines, the Court cannot grant Malicdem's Petition; he failed to discharge his burden to prove, by substantial evidence, satisfaction of items (3), (4) and (5) of the above mandatory requirements for compensability. (Malicdem *vs.* Asia Bulk Transport Phils., Inc., G.R. No. 224753, June 19, 2019) p. 358

Testimonial knowledge — The CA was correct in not appreciating the testimony of BBB in relation to what AAA allegedly told her about the instances of rape by CCC; the Revised Rules on Evidence provide: Section 36. *Testimony generally confined to personal knowledge; hearsay excluded*. – A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as

beyond reasonable doubt. (People *vs*. CCC, G.R. No. 228822, June 19, 2019) p. 438

— Notably, there were noticeable discrepancies between the prosecution witnesses' testimonies and the prosecution's documentary evidence; these discrepancies, coupled with the flagrant noncompliance with Sec. 21, create reasonable doubt as to whether PO1 Verde received a tip regarding petitioner, whether a surveillance was conducted on him, and ultimately, whether he was caught possessing dangerous drugs; a conviction in criminal proceedings requires proof beyond reasonable doubt, as defined under Rule 133, Sec. 2 of the Revised Rules on Evidence; proof beyond reasonable doubt does not require absolute certainty; rather, it calls for moral certainty since "the conscience must be satisfied that the accused is responsible for the offense charged"; the prosecution is tasked with establishing an accused's guilt purely on the strength of its own evidence, not on the weakness of the accused's defense; the prosecution failed in its task; petitioner, then, must be acquitted. (Veriño *y* Pingol *vs*. People, G.R. No. 225710, June 19, 2019) p. 401

EXPROPRIATION

Just compensation — As for the contention of petitioner that it is the value indicated in the property's tax declaration, as well as its zonal valuation that must govern, the Court adopts the findings of the RTC and the CA in ruling that the same are not truly reflective of the value of the subject property, but is just one of the several factors to be considered under Sec. 5 of R.A. No. 8974; time and again, the Court has held that zonal valuation, although one of the indices of the fair market value of real estate, cannot, by itself, be the sole basis of just compensation in expropriation cases; moreover, in *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*, the Court clarified that the payment of the provisional value as a condition for the issuance of a writ of possession is different from the payment of just compensation for the expropriated property; while the provisional value is

the doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court is an elementary principle in the administration of justice: no court can interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by the injunction; no law confers upon the Rehabilitation Court the authority to interfere with the order of a co-equal court; only the CA or this Court, in a petition appropriately filed for the purpose, may halt the execution of the judgment of a Regional Trial Court; the Order of the Rehabilitation Court preventing the implementation of the QC RTC Decision is invalid for being issued with grave abuse of discretion amounting to lack of jurisdiction. (La Savoie Dev't. Corp. *vs.* Buenavista Properties, Inc., G.R. Nos. 200934-35, June 19, 2019) p. 125

Court-approved rehabilitation plan — A court-approved rehabilitation plan may include a reduction of liability; in *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*, we held that there is nothing unreasonable or onerous about the 50% reduction of the principal amount owing to the creditor; restructuring the debts of the corporation under financial distress is part and parcel of its rehabilitation; in the same case, we stressed that reduction of the amount due to creditors does not violate the non-impairment of contracts' clause of the Constitution; this case does not involve a law or an executive issuance declaring the modification of the contract among debtor PALI, its creditors and its accommodation mortgagors; thus, the non-impairment clause may not be invoked; as held in *Oposa v. Factoran, Jr.* even assuming that the same may be invoked, the non-impairment clause must yield to the police power of the State; the prevailing principle is that the order or judgment of the courts, not being a law, is not within the ambit of the non-impairment clause. (La Savoie Dev't. Corp. *vs.* Buenavista Properties, Inc., G.R. Nos. 200934-35, June 19, 2019) p. 125

by the said certification are not present." (BDO Leasing & Finance, Inc. *vs*. Great Domestic Insurance Co. of the Phils., Inc., G.R. No. 205286, June 19, 2019) p. 163

HOMICIDE

Commission of –– With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder; the penalty for Homicide under Art. 249 of the RPC is *reclusion temporal*; in the absence of any mitigating circumstance, the penalty shall be imposed in its medium period; applying the Indeterminate Sentence Law, Corpin should be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor* (the penalty next lower in degree to that provided in Art. 249 of the RPC) and whose maximum shall be within the range of *reclusion temporal* in its medium period; there being no mitigating or aggravating circumstance proven in the present case, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months; thus, applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which is *prision mayor* (six [6] years and one [1] day to twelve [12] years); hence, the indeterminate sentence of eight (8) 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, should be as it is hereby imposed. (People *vs*. Corpin, G.R. No. 232493, June 19, 2019) p. 516

Penalty and civil liability — With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder; the penalty for Homicide under Art. 249 of the RPC is *reclusion temporal;* in the absence of any modifying circumstance, the penalty shall be imposed in its medium period; applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor*

court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity; it is settled that "a judge presiding over a branch of a court is, in legal contemplation, the head thereof having effective control and authority to discipline all employees within the branch"; Judge Diasen shares accountability for the administrative lapses of Dulfo and Albano in this case; he is similarly guilty of simple neglect of duty; the Court imposes upon him a fine in the amount of ₱20,000.00, to be deducted from his retirement benefits. (Banawa *vs*. Hon. Diasen, Jr., A.M. No. MTJ-19-1927 [Formerly OCA IPI No. 15-2764-MTJ], June 19, 2019) p. 1

JUDGMENTS

Acquittal — In criminal cases, no rule is more settled than that a judgment of acquittal is immediately final and unappealable; such rule proceeds from the accused's constitutionally-enshrined right against prosecution if the same would place him under double jeopardy; thus, a judgment in such cases, once rendered, may no longer be recalled for correction or amendment — regardless of any claim of error or incorrectness. (Mandagan *vs.* Jose M. Valero Corp., G.R. No. 215118, June 19, 2019) p. 276

Void judgment — The Rehabilitation Court issued a Stay Order during the pendency of Civil Case No. Q-98-33682 before the QC RTC; the effect of the Stay Order is to *ipso jure* suspend the proceedings in the QC RTC at whatever stage the action may be; the Stay Order notwithstanding, the QC RTC proceeded with the case and rendered judgment; respondent relies on this alleged finality to prevent us from looking into the effect of the Stay Order on the QC RTC Decision; respondent's attempt fails; in *Lingkod Manggagawa sa Rubberworld Adidas-Anglo v. Rubberworld (Phils.) Inc. (Lingkod)*, we ruled that proceedings and orders undertaken and issued in violation of the SEC suspension order are null and void; as such, they could not have achieved a final and executory

further, the submission of certified prison records is immaterial in determining whether or not petitioners' rights were breached by the IRR because, to repeat, the possible violation was already *fait accompli* by the issuance of the IRR; the prison records were merely furnished to show that respondents have prospectively applied R.A. No. 10592 and that petitioners will be affected thereby. (*Id*.)

— There is an actual case or controversy in the case at bar because there is a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence; respondents stand for the prospective application of the grant of GCTA, TASTM, and STAL while petitioners and intervenors view that such provision violates the Constitution and Art. 22 of the RPC; the legal issue posed is ripe for adjudication as the challenged regulation has a direct adverse effect on petitioners and those detained and convicted prisoners who are similarly situated; there exists an immediate and/or threatened injury and they have sustained or are immediately in danger of sustaining direct injury as a result of the act complained of; in fact, while the case is pending, petitioners are languishing in jail; if their assertion proved to be true, their illegal confinement or detention in the meantime is oppressive; with the prisoners' continued incarceration, any delay in resolving the case would cause them great prejudice. (*Id*.)

JUSTICES

Retirement — The current retirement program budget for the retiring Presiding and Associate Justices of the Court of Appeals is Two Hundred Thousand Pesos (200,000.00) each, which is below what Justices of other courts of equal and higher ranks receive; thus, it is readily apparent that the retirement program budget for retiring members of the Court of Appeals is due for an update and/or adjustment; per the Chief of the Fiscal Management and Budget Division of the Court of Appeals, the increased retirement program budget for the retiring Presiding or

to government instrumentalities when beneficial use of a real property owned by a government instrumentality is granted to a taxable person; stated differently, when beneficial use of a real property owned by a government instrumentality is granted to a taxable person, then the taxable person is not exempted from paying real property tax on such property; this is the doctrine used by the City Assessor and the City Treasurer in the present set of facts; the City Assessor and the City Treasurer concluded that ALI is liable for the real property tax on the land that it leased from UP. (Univ. of the Phils. *vs.* City Treasurer of Quezon City, G.R. No. 214044, June 19, 2019) p. 251

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995, AS AMENDED (R.A. NO. 8042, AS AMENDED BY R.A. NO. 10022)

Wages to be recovered by illegally dismissed overseas workers — In *Serrano*, this Court ruled that the clause "or for three (3) months for every year of the unexpired term, whichever is less" under Section 10 of the Migrant Workers and Overseas Filipinos Act is unconstitutional for violating the equal protection and substantive due process clauses; later, however, this clause was kept when the law was amended by R.A. No. 10022 in 2010; Sec. 7 of the new law mirrors the same clause: In *Sameer Overseas Placement Agency, Inc. v. Cabiles*, this Court was confronted with the question of the constitutionality of the reinstated clause in R.A. No. 10022; reiterating our finding in *Serrano*, we ruled that "limiting wages that should be recovered by an illegally dismissed overseas worker to three months is both a violation of due process and the equal protection clauses of the Constitution"; this case should be no different from *Serrano* and *Sameer;* a statute declared unconstitutional "confers no rights; it imposes no duties; it affords no protection; it creates no office; it is inoperative as if it has not been passed at all"; incorporating a similarly worded provision in a subsequent legislation does not cure its unconstitutionality; without any discernable change in the circumstances warranting a reversal, this Court will not hesitate to

in denying petitioner's motion for substitution, followed the ruling in *Asset Pool A (SPV-AMC), Inc. v. Court of Appeals;* the CA gave weight to the fact that the SPV failed to prove that the bank filed an application for eligibility as NPA of the borrower's loan.; it also failed to establish that the bank had given its borrowers a period of 90 days to restructure or renegotiate its loan; this, however, is in stark contrast with the instant case since petitioner was able to present the certificate of eligibility issued by the BSP recognizing Allied Bank's NPAs and approving their transfer/sale in favor of petitioner; accordingly, the deed of assignment is valid; petitioner steps into the shoes of Allied Bank and succeeds to its rights and interests as private respondents' creditor; the CA committed grave abuse of discretion when it denied petitioner's motion for substitution. (Grandholdings Investments (SPV-AMC), Inc. *vs.* Court of Appeals, G.R. No. 221271, June 19, 2019) p. 297

PENAL LAWS

Nature — A penal provision defines a crime or provides a punishment for one; penal laws and laws which, while not penal in nature, have provisions defining offenses and prescribing penalties for their violation; properly speaking, a statute is penal when it imposes punishment for an offense committed against the state which, under the Constitution, the Executive has the power to pardon; in common use, however, this sense has been enlarged to include within the term "penal statutes" all statutes which command or prohibit certain acts, and establish penalties for their violation, and even those which, without expressly prohibiting certain acts, impose a penalty upon their commission; penal laws are those acts of the Legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment; the "penal laws" mentioned in Art. 22 of the RPC refer to *substantive* laws, not procedural rules; moreover, the mere fact that a law contains penal provisions does not

2010 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Compensability of illness or injury — As found by the LA, when Malicdem was repatriated, his contract with ABPTI was already finished; this already weighs strongly against his claims; the Court had, in the past, ruled that repatriation for an expired contract belies a seafarer's submission that his ailment was aggravated by his working conditions and that it was existing during his term of employment. (Malicdem *vs*. Asia Bulk Transport Phils., Inc., G.R. No. 224753, June 19, 2019) p. 358

— For disability to be compensable under Sec. 20(A) of the Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers on-Board Ocean-Going Ships issued on October 26, 2010 (2010 POEA-SEC), two (2) elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract; the 2010 POEA-SEC defines "work-related illness" as "any sickness as a result of an occupational disease listed under Sec. 32-A of the Contract with the conditions set therein satisfied"; as for those diseases not listed as occupational diseases, jurisprudence mandates that the same may be compensated if it is shown that they are work-related and the conditions for compensability are satisfied; Sec. 20(A)(3) of the POEA-SEC commands that the employee seeking disability benefits submit himself to post-employment medical examination by a company-designated physician within three (3) working days from his repatriation; thus, in situations where the seafarer seeks to claim the compensation and benefits that Sec. 20(A) of the POEA-SEC grants to him, the law requires the seafarer to prove that: (1) he suffered an illness; (2) he suffered this illness during the term of his employment contract; (3) he

complied with the procedures prescribed under Sec. 20(A)(3); (4) his illness is one of the enumerated occupational disease or that his illness or injury is otherwise work-related; and (5) he complied with the four conditions enumerated under Sec. 32(A) for an occupational disease or a disputably-presumed work-related disease to be compensable. (*Id*.)

— Sec. 20(A)(4) of the 2010 POEA-SEC creates a disputable presumption that illnesses not listed as an occupational disease in Sec. 32 are work-related; this disputable presumption is made in the law to signify that the non-inclusion in the list of compensable diseases/illnesses does not translate to an absolute exclusion from disability benefits; at the same time, however, this disputable presumption does not signify an automatic grant of compensation and/or benefits claim; hence, despite the presumption, the Court has held that, on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease, as awards of compensation cannot rest entirely on bare assertions and presumptions; the claimant must prove, not that his illness is work-related, but that the same is ultimately compensable by satisfying the conditions for compensability under Sec. 32(A) of the 2000 POEA-SEC, *to wit*: for an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1) The seafarers work must involve the risks described herein; 2) The disease was contracted as a result of the seafarer's exposure to the described risks; 3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; and 4) There was no notorious negligence on the part of the seafarer; the CA, NLRC, and LA were correct in finding that Malicdem is not entitled to disability benefits for his hypertension and glaucoma; as factually found by the NLRC, Malicdem presented no competent medical history, records or physician's report to objectively substantiate the claim that there is a reasonable connection

between his work and his glaucoma; what he has are bare allegations which fall far short of the substantial evidence required of him by law. (*Id*.)

— The LA found that Malicdem failed to report to ABPTI within three (3) working days from his repatriation for post-employment medical examination by ABPTI's designated physician; Sec. 20(A)(3) of the POEA-SEC requires a claiming seafarer to submit himself for medical examination within a three-day period post- repatriation; jurisprudence abounds holding that failure to comply with the mandatory reporting requirement under the POEA-SEC results in the forfeiture of the right to claim compensation and disability benefits of a seafarer; a belated submission of the seafarer to the company for post-employment medical examination has been held to be insufficient compliance with the reporting requirement and, hence, fatal to the seafarer's case; the mandatory requirement does admit of exceptions, namely: (1) when the seafarer is incapacitated to report to the employer upon his repatriation; and (2) when the employer inadvertently or deliberately refused to submit the seafarer to a post-employment medical examination by a company-designated physician; none of these, however, is proven or even alleged to obtain in the present case. (*Id*.)

— While Dr. Salvador's findings in 2011 pertain to Malicdem's glaucoma during his previous employment with ABPTI, and, hence, not binding in the present case, the same must nevertheless be given reasonable weight and credence in light of the settled jurisprudence that it is the company-designated physician who is entrusted with the task of assessing a seafarer's illness for purposes of claiming disability benefits; jurisprudence is replete with cases where the Court upheld the findings of the company-designated physicians as against those of the private physician hired by the seafarer-claimant, because the former devoted more attention and time in observing and treating the claimant's condition; in this case, Malicdem was assessed by the company-designated physician on his glaucoma immediately after his first

repatriation; he was not, however, assessed by ABPTI's doctors after his latest repatriation because, as found by the labor tribunals and the CA, he failed to report to ABPTL; instead, Malicdem sought the advice of a private physician, but only after more than a year from his latest arrival in the country; he likewise failed to show that his private doctor's findings were reached based on an extensive or comprehensive examination of his condition. (*Id.*)

Permanent and total disability benefits –– In *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.* (*Elburg*), the Court summarized the rules when a seafarer claims total and permanent disability benefits, as follows: 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him; 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total; 3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (e.g. seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days; the employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification; a final, conclusive, and definite medical assessment must clearly state whether the seafarer is fit to work or the exact disability rating, or whether such illness is work-related, and without any further condition or treatment; following *Elburg*, the company-designated physicians' failure to issue a final and definite assessment within the 120-day period makes respondent entitled to permanent and total disability

PLEADINGS

simple specific denial without oath is sufficient: (1) where the instrument or document is not the basis but a mere evidence of the claim or defense; (2) when the adverse party does not appear as a party to the document or instrument; and (3) when compliance with an order for an inspection of the original instrument is refused. (Young Builders Corp. *vs*. Benson Industries, Inc., G.R. No. 198998, June 19, 2019) p. 24

— Even where the written instrument or document copied in or attached to the pleading is the basis of the claim or defense alleged therein, if the party against whom the written instrument or document is sought to be enforced does not appear therein to have taken part in its execution, such party is not bound to make a verified specific denial; for example, heirs who are sued upon a written contract executed by their father, are not bound to make a verified specific denial; and the defendant, in an action upon a note executed by him and endorsed by the payee to the plaintiff, is not bound to make a verified specific denial of the genuineness and due execution of the indorsement; since BII does not appear to have taken part in the execution of the Accomplishment Billing, a verified specific denial of its genuineness and due execution is therefore unnecessary; the Court cannot, thus, sustain YBC's contention that the subject Accomplishment Billing should be admitted in evidence due to BII's failure to specifically deny under oath its genuineness and due execution. (*Id*.)

PRESUMPTIONS

Presumption of regular performance of official duties — The Court clarified that a perfect chain may be impossible to obtain at all times because of varying field conditions; the Implementing Rules and Regulations of R.A. No. 9165 offers a saving clause allowing leniency whenever justifiable grounds exist which warrant deviation from established protocol so long as the integrity and evidentiary value of the seized items are properly preserved; PO2 Molina, however, offered no explanation at all which

laid out in Sec. 21 of R.A. No. 9165 and the Implementing Rules and Regulations and the suspicious handling of the seized drug here had impeached its integrity and evidentiary value; as the dangerous drug presented before the court constitutes the *corpus delicti* of the offense charged, it must be proven with moral certainty that it is the same item seized from Largo during the roving patrol conducted by the *barangay tanods* at the Carbon Public Market; since the prosecution miserably failed to discharge this burden, petitioner is entitled to a verdict of acquittal on ground of reasonable doubt. (Largo *vs.* People, G.R. No. 201293, June 19, 2019) p. 144

—— The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right; the burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein; judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity; the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused; otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent; trial courts have been directed by the Court to apply this differentiation; in this case, the presumption of regularity does not even arise because of the buy-bust team's blatant disregard of the established procedures under Sec. 21 of R.A. No. 9165. (People *vs.* Fulinara *y* Fabelania, G.R. No. 237975, June 19, 2019) p. 586

(People *vs.* Escaran *y* Tariman, G.R. No. 212170, June 19, 2019) p. 218

with the conditions imposed by law is a ground for holding such title void; the lapse of one (1) year period within which a decree of title may be reopened for fraud would not prevent the cancellation thereof for to hold that a title may become indefeasible by registration, even if such title had been secured through fraud or in violation of the law would be the height of absurdity; registration should not be a shield of fraud in securing title. (Heirs of Sps. Suyam *vs*. Heirs of Feliciano Julaton, G.R. No. 209081, June 19, 2019) p. pp. 183-184

— Under Sec. 11, Chap. III of Commonwealth Act No. 141, otherwise known as the Public Land Act, only public lands suitable for agricultural purposes can be disposed by virtue of a homestead settlement; according to Sec. 14 of the Public Land Act, no certificate of title shall be issued pursuant to a homestead patent application made under Sec. 13 unless one-fifth of the land has been improved and cultivated by the applicant within no less than one and no more than five years from and after the date of the approval of the application; the certificate shall issue only when the applicant shall prove that he has resided continuously for at least one year in the municipality in which the land is located, or in a municipality adjacent to the same, and has cultivated at least one-fifth of the land continuously since the approval of the application: x x x To reiterate, under Sec. 11 of the Public Land Act, only public lands suitable for agricultural purposes can be disposed by virtue of a homestead patent application; the rule is well-settled that an OCT issued on the strength of a homestead patent partakes of the nature of a certificate of title only when the land disposed of is really part of the disposable land of the public domain; the open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period, *ipso jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property. (*Id*.)

QUALIFIED RAPE

Elements — The elements of qualified rape are as follows: (1) sexual congress; (2) with a woman; (3) done by force, threat, or intimidation and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree of the victim, or the common-law spouse of the parent of the victim; the actual force, threat, or intimidation that is an element of rape under Art. 266-A, par. (1) (a) is no longer required to be present because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires; in this case, we find that the prosecution was not able to sufficiently prove all the elements of qualified rape; the age of AAA was proven by the Certificate of Live Birth, which was identified by AAA's mother BBB in open court; when the first alleged incident happened in January of 2004, AAA was only twelve (12) years and seven (7) months old; as to the relationship of AAA and CCC, BBB testified that CCC was indeed the father of AAA, and that AAA was using her maiden name because she gave birth to AAA before she married CCC; to be convicted of rape under Art. 266-A, par. (1) of the Revised Penal Code, it must be proven that CCC had carnal knowledge of AAA, and that it had been done by force, threat, or intimidation; while it can be argued that the moral ascendancy of CCC over AAA can sufficiently substitute for force, threat, or intimidation, the prosecution still failed to prove the sexual intercourse between AAA and CCC as an element of qualified rape. (People *v*s. CCC, G.R. No. 228822, June 19, 2019) p. 438

— We agree with the CA that appellant is guilty of two counts of qualified rape considering that the following elements thereof had been duly established here: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted)

of the victim"; established facts revealed that appellant had carnal knowledge of his own biological daughter, "AAA," who at the time of the first rape incident was just 14 years old, and was only 15 years old when appellant raped her the second time; "AAA" testified in a clear and straightforward manner her harrowing ordeal; and equally important, the medical examination on "AAA" corroborated her testimony, as elucidated by the RTC; her account on how the carnal knowledge/sexual intercourse had been committed by means of force and intimidation has been consistent even under grueling cross-examination by the defense counsel; her testimony contained the adequate recital of evidentiary facts constituting the crime of rape under par. 1 of Art. 266-A. (People *vs*. De Guzman *y* Villanueva, G.R. No. 229714, June 19, 2019) p. 472

RAPE

Abuse of moral influence — There is also no merit in accused-appellant's argument that force, intimidation, threat, fraud, or grave abuse of authority was not present; in *People v. Gacusan*, this Court reiterated that "the abuse of moral influence is the intimidation required in rape committed by the common-law father of a minor." (People *vs*. ZZZ, G.R. No. 229862, June 19, 2019) p. 481

Commission of — The absence of hymenal laceration fails to exonerate accused-appellant; as explained in *People v. Osing*: Mere touching, no matter how slight of the labia or lips of the female organ by the male genital, even without rupture or laceration of the hymen, is sufficient to consummate rape; the absence of fresh hymenal laceration does not disprove sexual abuse, especially when the victim is a young girl; this Court has consistently held that an intact hymen does not negate the commission of rape; the element of rape does not even include hymenal laceration; the absence of external signs or physical injuries on the complaint's body does not necessarily negate the commission of rape, hymenal laceration not being, to repeat, an element of the crime of rape; a healed or fresh

proof of maladaptive behavior; in making a diagnosis of mental retardation, a thorough evaluation based on history, physical and laboratory examination made by a clinician is necessary; the Court, in *Cartuano* and as subsequently clarified in *Dalandas*, does not require a comprehensive medical examination in each and every case where mental retardation needed to be proved; however, the conviction of an accused of rape based on the mental retardation of the private complainant must be anchored on proof beyond reasonable doubt of her mental retardation. (People *vs.* Bermas *y* Asis, G.R. No. 234947, June 19, 2019) p. 556

Guiding principles in reviewing rape cases — In reviewing rape cases, the Court observes the following guiding principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense; this must be so as the guilt of an accused must be proved beyond reasonable doubt; before he is convicted, there should be moral certainty – a certainty that convinces and satisfies the reason and conscience of those who are to act upon it; absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender; proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict; these basic postulates assume that the court and others at the trial are able to comprehend the testimony of witnesses, particularly of the victim herself if she is presented and testified under oath. (People *vs.* Bermas *y* Asis, G.R. No. 234947, June 19, 2019) p. 556

(Nuezca *vs*. Verceles, A.M. No. P-19-3989 [Formerly OCA IPI No. 16-4524-P], June 25, 2019) p. 663

RIGHTS OF THE ACCUSED

Right to speedy disposition of cases — In determining whether the right of the accused to a speedy disposition of his/her case was violated, it is essential for the accused to show that he/she suffered prejudice due to the delay; this "prejudice" is assessed in light of the interests of the accused which the speedy disposition right is designed to protect, such as: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired; to begin with, the first criterion does not apply in the case at bar, as the respondent was never arrested or taken into custody, or otherwise deprived of his liberty in any manner; thus, the only conceivable harm to Diaz are the anxiety brought by the investigation, and the potential prejudice to his ability to defend his case; even then, the harm suffered by Diaz occasioned by the filing of the criminal cases against him is too minimal and insubstantial to tip the scales in his favor. (People *vs*. Sandiganbayan (1st Div.), G.R. Nos. 23557-67, June 19, 2019) p. 529

— No less than the 1987 Constitution guarantees to all persons accused of crimes the right to a speedy disposition of their case; Art. III, Sec. 16 in no uncertain terms mandates that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies"; the term "speedy disposition" is a relative term and necessarily a flexible concept; mere mathematical reckoning of the time involved would not suffice, as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum; as such, any alleged delay in the disposition of the case should be considered in view of the entirety of the proceedings; accordingly, in determining whether the right has been violated, the following factors may be considered and balanced, namely, (i) the length

of delay; (ii) the reasons for the delay; (iii) the assertion or failure to assert such right by the accused; and (iv) the prejudice caused by the delay. (*Id*.)

— The Court, in the recent *en banc* case of *Cesar Matas Cagang v. Sandiganbayan, Fifth Division, Quezon City, Office of the Ombudsman, and People of the Philippines*, laid down the following guidelines in determining whether the delay in the disposition of the case constitutes a violation of the accused's right to speedy disposition of cases, to wit: (i) The right to speedy disposition of cases is different from the right to speedy trial; (ii) A case shall deemed initiated upon the filing of a formal complaint prior to the conduct of a preliminary investigation; the period taken for fact-finding investigations prior to the filing of the formal complaint shall no longer be included in the determination of whether there has been inordinate delay; the OMB shall set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case; delays beyond the periods set by the OMB shall be taken against the prosecution; (iii) Courts must first determine which party carries the burden of proof; if the case was resolved within the time periods contained in the law; Supreme Court resolutions, and circulars, then the burden falls on the defense to prove that the accused's right to speedy disposition was indeed violated; specifically, the defense must show that the case is motivated by malice, or is politically motivated and attended by utter lack of evidence; and that it did not contribute to the delay; otherwise, if the case drags beyond the reasonable periods, and the accused invokes his right to speedy disposition, then the prosecution must justify the delay; the prosecution must prove that it followed the prescribed procedure in the conduct of the preliminary investigation and in the prosecution of the case; the issues in the case were complex, and that the volume of evidence made the delay inevitable; and that the accused did not suffer any prejudice as a result of the delay; (iv) "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"; (v) The right to speedy disposition of cases or the right to speedy trial must be timely raised. (*Id*.)

— The invocation of one's right to speedy disposition of cases must be timely raised; the accused must file the appropriate motion upon the lapse of the statutory or procedural periods; failure to do so constitutes a waiver of such right; although the Sandiganbayan noted that Diaz raised this right immediately after the filing of the Information, there was no showing that he attempted to assert his right during the conduct of the preliminary investigation; Diaz, as the accused, has no obligation to bring himself to trial; his act of waiting for four (4) years while the preliminary investigation took place, passively accepting the delay without any objection, and then suddenly asserting his right to speedy disposition as soon as he received the OMB's adverse ruling, is certainly questionable. (*Id*.)

Right to speedy trial — "Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman"; hence, "it cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate; it is consistent with delays and depends upon circumstances; it secures rights to the accused, but it does not preclude the rights of public justice"; the right to speedy trial cannot be invoked where to sustain the same would result in a clear denial of due process to the prosecution; this right should not operate to deprive the State of its inherent prerogative to prosecute criminal cases; this, the prosecution sufficiently did; likewise, the OMB sufficiently explained the reasons behind the purported delay in the disposition of the case. (People *vs*. Sandiganbayan (1st Div.), G.R. Nos. 23557-67, June 19, 2019) p. 529

RULES ON ELECTRONIC EVIDENCE

of law and afterward, plead that the Court, on equitable grounds, grant its Petition, nonetheless; for the Court to exercise its equity jurisdiction, certain facts must be presented to justify the same; a review on a pure question of law necessarily negates the review of facts; petitioner has not presented any compelling equitable arguments to persuade the Court to relax the application of elementary evidentiary rules in its cause; secondly, petitioner has not been candid in admitting its error as pointed out by both the MeTC and the RTC; after being apprised that the annexes to its complaint do not conform to the Best Evidence Rule, petitioner did not make any effort to comply so that the lower courts could have considered its claim. (RCBC Bankard Services Corp. *vs*. Oracion, Jr., G.R. No. 223274, June 19, 2019) p. 337

— Sec. 4, Rule 130 of the Rules and Sec. 2, Rule 4 of the Rules on Electronic Evidence identify the following instances when copies of a document are equally regarded as originals: [1] When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals; [2] When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals; [3] When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original; apparently, "duplicate original copies" or "multiple original copies" wherein two or more copies are executed at or about the same time with identical contents are contemplated in 1 and 3 above; if the copy is generated after the original is executed, it may be called a "print-out or output" based on the definition of

an electronic document, or a "counterpart" based on Sec. 2, Rule 4 of the Rules on Electronic Evidence. (*Id*.)

— With respect to paper-based documents, the original of a document, *i.e*., the original writing, instrument, deed, paper, inscription, or memorandum, is one the contents of which are the subject of the inquiry; under the Rules on Electronic Evidence, an electronic document is regarded as the functional equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately; "electronic document" refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically; and it includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document; the term "electronic document" may be used interchangeably with "electronic data message" and the latter refers to information generated, sent, received or stored by electronic, optical or similar means. (*Id*.)

SEARCH AND SEIZURE

Search incidental to a lawful arrest — Even if it were true that the accused-appellant did urinate in a public place, the police officers involved in this case still conducted an illegal search when they frisked Picardal for allegedly violating the regulation; it was not a search incidental to a lawful arrest as there was no or there could not have been any lawful arrest to speak of; *Luz v. People*, cited; 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: *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; 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; there was similarly no lawful arrest in this case as Picardal's violation, if at all committed, was only punishable by fine; thus, as the firearm was discovered through an illegal search, the same cannot be used in any prosecution against him as mandated by Sec. 3(2), Art. III of the 1987 Constitution. (Picardal *y* Baluyot *vs.* People, G.R. No. 235749, June 19, 2019) p. 575

SECURITIES AND EXCHANGE COMMISSION (SEC)

Quasi-judicial jurisdiction — P.D. No. 902-A defines the jurisdiction of the SEC; pursuant to the exercise of its quasi-judicial jurisdiction, the SEC stands as a co-equal body of the RTC; hence, all orders and issuances issued by the SEC in the exercise of such jurisdiction may not be interfered with, let alone overturned, by the RTC; as courts of general jurisdiction, the RTC ordinarily exercise exclusive original jurisdiction over civil actions incapable of pecuniary estimation, such as that of accounting, cancellation of certificates of sale issued in foreclosure proceedings and injunction; nevertheless, the scope of such general jurisdiction cannot be extended over matters falling under the special jurisdiction of another court or quasi-judicial body; jurisdiction, once acquired is not lost, and continues until the case is terminated; thus, in cases where, as here, a petition for suspension of payments is filed before the SEC, it acquires jurisdiction over the action and all matters relating thereto to the exclusion of the RTC; jurisdiction over subject matter, like that over the nature of the action, is "conferred by law and not by the consent or acquiescence of any or all of the parties, or by erroneous belief of the court that it exists"; the doctrine of the law of the case cannot be applied to serve as a bar against jurisdictional challenges involving

in settlement of loans and receivables for purposes of availing of the tax exemptions and privileges granted by R.A. No. 9182; before a bank or NBQB can transfer its NPAs to an SPV, it is required to file an application for eligibility of said NPAs in accordance with SPV Rule 12 of "The Implementing Rules and Regulations of the Special Purpose Vehicle (SPV) Act of 2002"; it can be gleaned from the foregoing that the certificate of eligibility shall only be issued upon compliance with the requirements laid down in the IRR and in Memorandum No. M 2006-001, one of which is that the application must be accompanied by a certification signed by the duly authorized officer of the bank or the NBQB that: 1) the assets to be transferred are NPAs; 2) the proposed transfer is under a true sale; 3) prior notice has been given to the borrowers; and that 4) the borrowers were given 90 days to restructure the loan with the bank or NBQB; failure to comply with the requirements and adhere to the procedural guidelines will preclude the BSP from issuing the corresponding certificate of eligibility; thus, it does not go against logic and reason to conclude that with the issuance of the certificate of eligibility, Allied Bank observed all the conditions, including the prior written notice requirement, and submitted all the necessary documents required by the SPV Law and its IRR; ultimately, the transfer of the NPLs is valid and effective, and, thus, raised petitioner to the status of a transferee *pendente lite*. (Grandholdings Investments (SPV-AMC), Inc. *vs.* Court of Appeals, G.R. No. 221271, June 19, 2019) p. 297

TREACHERY

As a qualifying circumstance — There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make; to qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of

ensuring its commission without risk of himself; in this case, the circumstances negate the presence of treachery; Corpin's decision to attack the victim was more of sudden impulse than a planned decision; thus, Corpin can only be held guilty of the crime of Homicide. (People *vs.* Corpin, G.R. No. 232493, June 19, 2019) p. 516

— Manuel's killing in this case was attended with treachery – a sudden and unexpected attack by the aggressors on the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressors, and without the slightest provocation on the part of the victim; the qualifying circumstance of treachery was correctly appreciated by the lower courts given the manner by which Efren and Edwin killed Manuel; the sudden attack by Efren and Edwin with stab blows and 33-cm. Long *bolos* against an unsuspecting Manuel while he was riding the jeepney caught the victim by surprise; such aggression ensured the commission of the crime without risk on Efren and Edwin; treachery was attendant not only because of the suddenness of the attack but also due to the absence of opportunity to repel the aggression. (People *vs.* Verona, G.R. No. 227748, June 19, 2019) p. 422

UP CHARTER OF 2008 (R.A. NO. 9500)

Exemption of revenues and assets used for educational purposes — Before the passage of R.A. No. 9500, it was essentially wrong for UP to assume in its lease contract with ALI the liability of ALI for real property taxes based on its beneficial use of the land, and then turn around and tell the City Treasurer that UP is exempt from paying taxes on the land because it is a government instrumentality; R.A. No. 9500 is UP's congressional authority for this particular exemption from real property tax; thus, when the City Treasurer addressed to UP the Statement of Delinquency and the Final Notice of Delinquency and required UP to pay real property tax on the subject land, UP was already authorized by the legislature to validly claim exemption from real property

the beneficial user to further ascertain whether UP's revenue or asset is exempt from tax. (*Id*.)

\WAIVERS AND QUITCLAIMS

Execution by employees — Waivers and quitclaims executed by employees are generally frowned upon for being contrary to public policy; this is based on the recognition that employers and employees do not stand on equal footing; in *Land and Housing Development Corporation v. Esquillo*: x x x Along this line, we have more trenchantly declared that quitclaims and/or complete releases executed by the employees do not estop them from pursuing their claims arising from unfair labor practices of the employer; the basic reason for this is that such quitclaims and/or complete releases are against public policy and, therefore, null and void; the acceptance of termination does not divest a laborer of the right to prosecute his employer for unfair labor practice acts; quitclaims do not bar employees from filing labor complaints and demanding benefits to which they are legally entitled; they are "ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel"; the law does not recognize agreements that result in compensation less than what is mandated by law; these quitclaims do not prevent employees from subsequently claiming benefits to which they are legally entitled. In *Am-Phil Food Concepts, Inc. v. Padilla*, this Court held that quitclaims do not negate charges for illegal dismissal: x x x Blanket waivers exonerating employers from liability on the claims of their employees are ineffective. (Aldovino *vs.* Gold and Green Manpower Mgm't. and Dev't. Services, Inc., G.R. No. 200811, June 19, 2019) p. 100

WITNESSES

Credibility of — Efren and Edwin put much weight on the inconsistent testimony given by Eva Castaño regarding the first time she saw Efren and Edwin; these inconsistencies are minor details which do not detract from Eva Castaño's credibility; they may be disregarded

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS

(Local)

II. FOREIGN AUTHORITIES

BOOKS